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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8980]

RIN 1545–AW90

Notice and Opportunity for Hearing Before Levy

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the provision of notice to taxpayers of a right to a hearing before levy. The regulations implement certain changes made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998. They affect taxpayers against whose property or rights to property the Internal Revenue Service (IRS) intends to levy.

DATES: *Effective Date:* January 18, 2002.

Applicability date: These regulations apply to any levy which occurs on or after January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Jerome D. Sekula, (202) 622–3610 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Regulations on Procedure and Administration (26 CFR part 301) relating to the provision of notice under section 6330 of the Internal Revenue Code to taxpayers of a right to a hearing (a collection due process, or CDP, hearing) before levy. These final regulations implement certain changes made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Pub. L. 105–206; 112 Stat. 685) (RRA 1998). The final regulations affect taxpayers against whose property or rights to property the IRS intends to levy.

On January 22, 1999, temporary regulations (TD 8809) implementing these changes made by section 3401 of RRA 1998 were published in the **Federal Register** (64 FR 3405). A notice of proposed rulemaking (REG–117620–98) cross-referencing the temporary regulations was published on the same day in the **Federal Register** (64 FR 3462). No written comments were received within the 90-day period provided for comments, although two comments were received after this comment period.

Section 6320 also was added by section 3401 of RRA 1998 and provides for notice to taxpayers of a right to a hearing after the filing of a notice of federal tax lien (NFTL). A number of the provisions in section 6330 concerning the conduct and judicial review of a CDP hearing are incorporated by reference in section 6320. On January 22, 1999, temporary regulations (TD 8810) under section 6320 were published in the **Federal Register** (64 FR 3398). A notice of proposed rulemaking (REG–116824–98) cross-referencing the temporary regulations was published on the same day in the **Federal Register** (64 FR 3461). Final regulations under section 6320 are being published in the **Federal Register** along with these final regulations under section 6330.

After consideration of the comments, the proposed regulations, with certain changes to reflect IRS administrative practice under section 6330, are adopted as final regulations. The comments and changes are discussed below.

Summary of Comments

Both commentators urged that final regulations under section 6330 provide that potentially affected third-parties (i.e., persons not liable for the tax at issue) are entitled to notice and a hearing before the IRS Office of Appeals (Appeals) before the IRS levies on any property or right to property. Treasury and the IRS have concluded that the person liable for the tax set out in the collection due process notice (CDP Notice), whether issued under section 6320 or section 6330, is the person entitled to a CDP Notice and a CDP hearing under those sections. Section 6320(a)(1) provides that a CDP Notice provided under section 6320 will be sent to the person described in section 6321. The person described in section 6321 is the person liable to pay the tax—i.e., the taxpayer.

With respect to section 6330, the legislative history to section 6330 indicates that Congress intended to supplement the existing notice requirement under section 6331. Under section 6331, the IRS generally must provide a person liable for any tax (and who refuses to pay the tax after notice and demand) notice before levying on the property or rights to property of that person. Section 6330, in addition to the notice required under section 6331, provides for notice of the right to an Appeals hearing before levy.

Accordingly, the final regulations under both section 6320 and section 6330 provide that the person entitled to a CDP Notice under those sections is the person liable for the tax set out in the CDP Notice, or the taxpayer. Generally, when a third party's rights are affected by lien or levy, those rights can be protected through other administrative and judicial remedies, such as an administrative hearing before Appeals under its Collection Appeals Program or a wrongful levy or quiet title action.

One commentator requested that the final regulations establish formal procedures for the conduct of a CDP hearing as well as procedures for the admission and preservation of evidence to be considered by Appeals. Treasury and the IRS have declined to adopt this comment. Section 6320 and section 6330 are intended to give all taxpayers a right to an impartial Appeals review of the filing of a NFTL or of an intended levy action, with an additional right of judicial review of the Appeals determination. Section 6330(c) (applicable to both sections) and the proposed regulations under section 6320 and section 6330 (as modified by final regulations) already set out the specific requirements, including the issues to be considered, for a CDP hearing and require that Appeals issue a written determination (Notice of Determination) setting forth Appeals' findings and decisions. Due to the varied circumstances of taxpayers and the varied situations in which the filing of a NFTL or an intended levy action may arise, the final regulations provide flexibility regarding the manner in which a CDP hearing may be conducted.

One commentator stated that persons should have a right to judicial review in a retained jurisdiction case under section 6330(d)(2). Treasury and the IRS decline to adopt this comment. Under section 6330(b)(2), a taxpayer is entitled to only one CDP hearing with respect to the tax set out on a CDP Notice issued under section 6330. Section 6320(b)(2) provides a similar rule for section 6320. Under section 6330(d)(1), applicable to both section 6320 and section 6330, a taxpayer is entitled to judicial review only after the issuance of the determination by Appeals after a CDP hearing. Once the Notice of Determination has been issued, any subsequent consideration of the case by Appeals, including changed circumstances, based on Appeals' retained jurisdiction under section 6330(d)(2), is not part of the CDP hearing subject to judicial review.

One commentator also urged that a taxpayer be allowed to challenge the existence or amount of the tax liability set out in a CDP Notice issued under section 6330 even if the taxpayer had previously failed to raise such a challenge pursuant to a CDP Notice issued under section 6320. The commentator points to section 6330(c)(4), which provides generally that a person who had meaningfully participated in a section 6320 CDP hearing in which an issue was raised may not raise that same issue in a subsequent section 6330 CDP hearing. Treasury and the IRS have concluded that section 6330(c)(2)(B), addressing specifically a person's right to challenge the underlying tax liability, is clear that any prior opportunity to challenge the underlying tax liability, which would include a section 6320 CDP hearing, precludes a taxpayer from doing so at a later section 6330 CDP hearing.

Explanation of Revisions

The proposed regulations provided that district directors, directors of service centers and the Assistant Commissioner (International) would be the officials required to give notice of the right to, and the opportunity for, a CDP hearing to a taxpayer prior to levy on that taxpayer's property. To reflect the recent reorganization of the IRS, paragraphs (a)(1) and (2) of the final regulations eliminate references to these specific officers and substitutes a general authorization to the IRS to provide such notification.

Examples, similar to those in the corresponding paragraphs of the final regulations under section 6320, have been added in paragraphs (b) and (c) of these final regulations to illustrate the provisions of those paragraphs.

Question and Answer (Q&A) C1 of the proposed regulations stated that a request for a CDP hearing must be signed by the taxpayer or the taxpayer's authorized representative. Requests for CDP hearings on occasion are not signed by the taxpayer or the taxpayer's authorized representative but instead are filed on the taxpayer's behalf by the taxpayer's spouse or other personal representative not authorized to practice before Appeals. The IRS's administrative practice has been to treat these requests as complying with the temporary regulations provided that the taxpayer or the taxpayer's authorized representative signs the request within a reasonable period of time. Q&A C1 in the final regulations is revised to reflect this administrative practice.

Q&A C6 of the proposed regulations provided that a request for a CDP hearing should be filed with the IRS office that issued the CDP Notice or, if the taxpayer did not know the address of that IRS office, then with one of two alternative IRS offices. Q&A C6 of the final regulations requires that a request for a CDP hearing be filed with the IRS office and address indicated on the CDP Notice. The final regulations change the alternative addresses to reflect the IRS's recent reorganization. The final regulations provide that if no address is provided in the CDP Notice, then the request must be filed with the compliance area director, or his or her successor, serving the compliance area in which the taxpayer resides or has its principal place of business. The final regulations provide a toll-free number to obtain the address of the office of the appropriate compliance area director, or his or her successor.

The proposed regulations did not discuss how a CDP hearing should be conducted and where or how it may occur. A new Q&A D6, relating to how CDP hearings are conducted, and a new Q&A D7, relating to where in-person meetings will be held, are added to the final regulations to clarify how a CDP hearing may be conducted.

Paragraph (e)(2) of the proposed regulations, dealing with spousal defenses under section 6015, has been revised in the final regulations to also address spousal defenses raised under section 66. Q&A E3 of the proposed regulations, dealing with the extent of any limitations imposed under section 6330(c)(2)(B), has been revised in the final regulations to also address the effect of a spousal defense raised under section 66. The proposed regulations did not specifically discuss whether a taxpayer may raise a spousal defense at a CDP hearing when the taxpayer has raised that defense administratively, but has not raised it in a judicial proceeding that has become final. A new Q&A E4 is added to the final regulations to provide that a spousal defense may be raised if the IRS has not made a final determination as to that spousal defense in a final determination letter or statutory notice of deficiency. Q&A E4 of the proposed regulations, dealing with spousal defenses that were raised in a prior judicial proceeding, has been revised to also discuss the effect of a spousal defense raised under section 66, and has been renumbered as Q&A E5 of the final regulations.

Q&A E8 of the proposed regulations dealt with the question of whether there were any time limits on when a Notice of Determination must be issued. That Q&A, now Q&A E9 of the final regulations, has been revised to clarify the there are no time limitations on when a CDP hearing must be held or on when a Notice of Determination must be issued, except that both must be done as expeditiously as possible under the circumstances.

Under section 6330(c)(2)(B), a taxpayer may not challenge the existence or the amount of the underlying tax liability at a CDP hearing if the taxpayer has had a prior opportunity to dispute that liability—i.e., the taxpayer had received a statutory notice of deficiency or otherwise had an opportunity to dispute the underlying tax liability. The final regulations add a new Q&A E11 to address the effect of an Appeals officer's or employee's consideration of liability issues when the taxpayer has had a prior opportunity to dispute the underlying tax liability. In such circumstances, any consideration of liability issues by the Appeals officer or employee is discretionary and is not treated as part of the CDP hearing. Accordingly, the Appeals officer's or employee's determinations, if any, made with respect to liability issues are not required to appear in the Notice of Determination. Any determinations regarding the underlying tax liability that are included in the Notice of Determination are not reviewable by a district court or the Tax Court.

Q&A F2 and Q&A I5 of the proposed regulations, both relating to judicial review of CDP cases where a spousal defense under section 6015 is raised, specifically referred only to paragraphs (b) and (c) of section 6015. Q&A F2 and Q&A I5 have been revised in the final regulations also to include a denial of relief under section 6015(f).

Section 6330(e) generally provides for the suspension of the periods of limitation under section 6502, section 6531, and section 6532 after the filing of

a request for a CDP hearing under section 6330, and also provides that levy actions that are the subject of the requested CDP hearing are suspended during this same period. A new Q&A G3 is added to the final regulations to clarify what collection actions the IRS may take after a request for a CDP hearing under section 6330 has been filed.

As set out in Q&A G3 of the final regulations, the IRS may file NFTLs for the tax and tax period covered by the CDP Notice issued under section 6330, although such filings may give rise to issuance of a CDP Notice under section 6320. The IRS also may take enforcement actions for tax periods and taxes not covered by a CDP Notice that is the subject of the CDP hearing requested under section 6320. For example, the IRS may file NFTLs for tax periods or taxes not covered by the CDP Notice (although such filings may give rise to issuance of a CDP Notice under section 6320) and may levy for those taxes and tax periods if the CDP requirements under section 6330 as to those taxes and tax periods have been satisfied and CDP proceedings, if any, concluded. The IRS further is not prohibited by section 6330(e) from taking other non-levy collection actions such as initiating judicial proceedings to collect the tax shown on the CDP Notice issued under section 6330 or from offsetting overpayments from other periods, or of other taxes, against the tax shown on the CDP Notice. Moreover, the IRS may levy upon any state tax refund due the taxpayer, and, under appropriate circumstances, make jeopardy levies for the tax and tax periods covered by the CDP Notice at issue in the CDP hearing. Finally, section 6330 does not prohibit the IRS from accepting any voluntary payments made for the tax and tax period set out in the CDP Notice.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the preceding temporary regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this regulation is Jerome D. Sekula, of the Office of Associate Chief Counsel, Procedure and Administration (Collection, Bankruptcy and Summonses Division).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

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

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

2. Section 301.6330–1 is added under the undesignated centerheading ''Seizure of Property for Collection of Taxes'' to read as follows:

§ 301.6330–1 Notice and opportunity for hearing prior to levy.

(a) *Notification*—(1) *In general.* Except as specified in paragraph (a)(2) of this section, the Commissioner, or his or her delegate (the Commissioner), will prescribe procedures to provide persons upon whose property or rights to property the IRS intends to levy (hereinafter referred to as the taxpayer) on or after January 19, 1999, notice of that intention and to give them the right to, and the opportunity for, a pre-levy Collection Due Process (CDP) hearing with the Internal Revenue Service (IRS) Office of Appeals (Appeals). This pre-levy Collection Due Process Hearing Notice (CDP Notice) must be given in person, left at the dwelling or usual place of business of the taxpayer, or sent by certified or registered mail, return receipt requested, to the taxpayer's last known address. For further guidance regarding the definition of last known address, see § 301.6212–2.

(2) *Exceptions*—(i) *state tax refunds.* Section 6330(f) does not require the Commissioner to provide the taxpayer with notification of the taxpayer's right to a CDP hearing prior to issuing a levy to collect state tax refunds owing to the taxpayer. However, the Commissioner will prescribe procedures to give the taxpayer notice of the right to, and the opportunity for, a CDP hearing with Appeals with respect to any such levy issued on or after January 19, 1999, within a reasonable time after the levy has occurred. The notification required to be given following a levy on a state tax refund is referred to as a post-levy CDP Notice.

(ii) *Jeopardy.* Section 6330(f) does not require the Commissioner to provide the taxpayer with notification of the taxpayer's right to a CDP hearing prior to a levy when there has been a determination that collection of the tax is in jeopardy. However, the Commissioner will prescribe procedures to provide notice of the right to, and the opportunity for, a CDP hearing with Appeals to the taxpayer with respect to any such levy issued on or after January 19, 1999, within a reasonable time after the levy has occurred. The notification required to be given following a jeopardy levy also is referred to as post-levy CDP Notice.

(3) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (a) as follows:

Q–A1. Who is the person to be notified under section 6330?

A–A1. Under section 6330(a)(1), a pre-levy or post-levy CDP Notice is required to be given only to the person whose property or right to property is intended to be levied upon, or, in the case of a levy made on a state tax refund or a jeopardy levy, the person whose property or right to property was levied upon. The person described in section 6330(a)(1) is the same person described in section 6331(a)—i.e., the person liable to pay the tax due after notice and demand who refuses or neglects to pay (referred to here as the taxpayer). A pre-levy or post-levy CDP Notice therefore will be given only to the taxpayer.

Q–A2. Will the IRS give notification to a known nominee of, a person holding property of, or a person who holds property subject to a lien with respect to, the taxpayer of the IRS' intention to issue a levy?

A–A2. No. Such a person is not the person described in section 6331(a)(1), but such persons have other remedies. See A–B5 of paragraph (b)(2) of this section.

Q–A3. Will the IRS give notification for each tax and tax period it intends to include or has included in a levy issued on or after January 19, 1999?

A–A3. Yes. The notification of an intent to levy or of the issuance of a jeopardy or state tax refund levy will specify each tax and tax period that will be or was included in the levy.

Q–A4. Will the IRS give notification to a taxpayer with respect to levies for a tax and tax period issued on or after January 19, 1999, even though the IRS had issued a levy prior to January 19,

1999, with respect to the same tax and tax period?

A–A4. Yes. The IRS will provide appropriate pre-levy or post-levy notification to a taxpayer regarding the first levy it intends to issue or has issued on or after January 19, 1999, with respect to a tax and tax period, even though it had issued a levy with respect to that same tax and tax period prior to January 19, 1999.

Q–A5. When will the IRS provide this notice?

A–A5. Beginning on January 19, 1999, the IRS will give a pre-levy CDP Notice to the taxpayer of the IRS' intent to levy on property or rights to property, other than in state tax refund and jeopardy levy situations, at least 30 days prior to the first such levy with respect to a tax and tax period. If the taxpayer has not received a pre-levy CDP Notice and the IRS levies on a state tax refund or issues a jeopardy levy on or after January 19, 1999, the IRS will provide a post-levy CDP Notice to the taxpayer within a reasonable time after that levy.

Q–A6. What must a pre-levy CDP Notice include?

A–A6. Pursuant to section 6330(a)(3), a pre-levy CDP Notice must include, in simple and nontechnical terms:

(i) The amount of the unpaid tax.

(ii) Notification of the right to request a CDP hearing.

(iii) A statement that the IRS intends to levy.

(iv) The taxpayer's rights with respect to the levy action, including a brief statement that sets forth—

(A) The statutory provisions relating to the levy and sale of property;

(B) The procedures applicable to the levy and sale of property;

(C) The administrative appeals available to the taxpayer with respect to the levy and sale and the procedures relating to those appeals;

(D) The alternatives available to taxpayers that could prevent levy on the property (including installment agreements); and

(E) The statutory provisions and the procedures relating to the redemption of property and the release of liens on property.

Q–A7. What must a post-levy CDP Notice include?

A–A7. A post-levy CDP Notice must include, in simple and nontechnical terms:

(i) The amount of the unpaid tax.

(ii) Notification of the right to request a CDP hearing.

(iii) A statement that the IRS has levied upon the taxpayer's state tax refund or has made a jeopardy levy on property or rights to property of the taxpayer, as appropriate.

(iv) The taxpayer's rights with respect to the levy action, including a brief statement that sets forth—

(A) The statutory provisions relating to the levy and sale of property;

(B) The procedures applicable to the levy and sale of property;

(C) The administrative appeals available to the taxpayer with respect to the levy and sale and the procedures relating to those appeals;

(D) The alternatives available to taxpayers that could prevent any further levies on the taxpayer's property (including installment agreements); and

(E) The statutory provisions and the procedures relating to the redemption of property and the release of liens on property.

Q–A8. How will this pre-levy or post-levy notification under section 6330 be accomplished?

A–A8. The IRS will notify the taxpayer by means of a pre-levy CDP Notice or a post-levy CDP Notice, as appropriate. The additional information the IRS is required to provide, together with Form 12153, Request for a Collection Due Process Hearing, will be included with the CDP Notice.

(i) The IRS may effect delivery of a pre-levy CDP Notice (and accompanying materials) in one of three ways:

(A) By delivering the notice personally to the taxpayer.

(B) By leaving the notice at the taxpayer's dwelling or usual place of business.

(C) By mailing the notice to the taxpayer at the taxpayer's last known address by certified or registered mail, return receipt requested.

(ii) The IRS may effect delivery of a post-levy CDP Notice (and accompanying materials) in one of three ways:

(A) By delivering the notice personally to the taxpayer.

(B) By leaving the notice at the taxpayer's dwelling or usual place of business.

(C) By mailing the notice to the taxpayer at the taxpayer's last known address by certified or registered mail.

Q–A9. What are the consequences if the taxpayer does not receive or accept the notification which was properly left at the taxpayer's dwelling or usual place of business, or properly sent by certified or registered mail, return receipt requested, to the taxpayer's last known address?

A–A9. Notification properly sent to the taxpayer's last known address or left at the taxpayer's dwelling or usual place of business is sufficient to start the 30-day period within which the taxpayer may request a CDP hearing. See paragraph (c) of this section for when a request for a CDP hearing must be filed. Actual receipt is not a prerequisite to the validity of the CDP Notice.

Q–A10. What if the taxpayer does not receive the CDP Notice because the IRS did not send that notice by certified or registered mail to the taxpayer's last known address, or failed to leave it at the dwelling or usual place of business of the taxpayer, and the taxpayer fails to request a CDP hearing with Appeals within the 30-day period commencing the day after the date of the CDP Notice?

A–A10. When the IRS determines that it failed properly to provide a taxpayer with a CDP Notice, it will promptly provide the taxpayer with a substitute CDP Notice and provide the taxpayer with an opportunity to request a CDP hearing. Substitute CDP Notices are discussed in Q&A–B3 of paragraph (b)(2) and Q&A–C8 of paragraph (c)(2) of this section.

(4) *Examples.* The following examples illustrate the principles of this paragraph (a):

Example 1. Prior to January 19, 1999, the IRS issues a continuous levy on a taxpayer's wages and a levy on that taxpayer's fixed right to future payments. The IRS is not required to release either levy on or after January 19, 1999, until the requirements of section 6343(a)(1) are met. The taxpayer is not entitled to a CDP Notice or a CDP hearing under section 6330 with respect to either levy because both levy actions were initiated prior to January 19, 1999.

Example 2. The same facts as in *Example 1,* except the IRS intends to levy upon a taxpayer's bank account on or after January 19, 1999. The taxpayer is entitled to a pre-levy CDP Notice with respect to this proposed new levy.

(b) *Entitlement to a CDP hearing*—(1) *In general.* A taxpayer is entitled to one CDP hearing with respect to the unpaid tax and tax periods covered by the pre-levy or post-levy CDP Notice provided to the taxpayer. The taxpayer must request the CDP hearing within the 30-day period commencing on the day after the date of the CDP Notice.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (b) as follows:

Q–B1. Is the taxpayer entitled to a CDP hearing where a levy for state tax refunds is issued on or after January 19, 1999, even though the IRS had previously issued other levies prior to January 19, 1999, seeking to collect the taxes owed for the same period?

A–B1. Yes. The taxpayer is entitled to a CDP hearing under section 6330 for the type of tax and tax periods set forth in the state tax refund levy issued on or after January 19, 1999.

Q–B2. Is the taxpayer entitled to a CDP hearing when the IRS, more than

30 days after issuance of a CDP Notice under section 6330 with respect to the unpaid tax and periods, provides subsequent notice to that taxpayer that the IRS intends to levy on property or rights to property of the taxpayer for the same tax and tax periods shown on the CDP Notice?

A–B2. No. Under section 6330, only the first pre-levy or post-levy CDP Notice with respect to the unpaid tax and tax periods entitles the taxpayer to request a CDP hearing. If the taxpayer does not timely request a CDP hearing with Appeals following that first notification, the taxpayer foregoes the right to a CDP hearing with Appeals and judicial review of Appeals' determination with respect to levies relating to that tax and tax period. The IRS generally provides additional notices or reminders (reminder notifications) to the taxpayer of its intent to levy when no collection action has occurred within 180 days of a proposed levy. Under such circumstances, a taxpayer may request an equivalent hearing as described in paragraph (i) of this section.

Q–B3. When the IRS provides a taxpayer with a substitute CDP Notice and the taxpayer timely requests a CDP hearing, is the taxpayer entitled to a CDP Hearing before Appeals?

A–B3. Yes. Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, the taxpayer is entitled to a CDP hearing before Appeals. Following the hearing, Appeals will issue a Notice of Determination, and the taxpayer is entitled to seek judicial review of that Notice of Determination.

Q–B4. If the IRS sends a second CDP Notice under section 6330 (other than a substitute CDP Notice) for a tax period and with respect to an unpaid tax for which a CDP Notice under section 6330 was previously sent, is the taxpayer entitled to a section 6330 CDP hearing based on the second CDP Notice?

A–B4. No. The taxpayer is entitled to only one CDP hearing under section 6330 with respect to the tax and tax period. The taxpayer must request the CDP hearing within 30 days of the date of the first CDP Notice provided for that tax and tax period.

Q–B5. Will the IRS give pre-levy or post-levy CDP Notices to known nominees of, persons holding property of, or persons holding property subject to a lien with respect to the taxpayer?

A–B5. No. Such person is not the person described in section 6331(a) and is, therefore, not entitled to a CDP hearing or an equivalent hearing (as discussed in paragraph (i) of this section). Such person, however, may seek reconsideration by the IRS office collecting the tax, assistance from the National Taxpayer Advocate, or an administrative hearing before Appeals under its Collection Appeals Program. However, any such administrative hearing would not be a CDP hearing under section 6330 and any determination or decision resulting from the hearing would not be subject to judicial review.

(3) *Example.* The following example illustrates the principles of this paragraph (b):

Example. Federal income tax liability for 1997 is assessed against individual D. D buys an asset and puts it in individual E's name. The IRS gives D a CDP Notice of intent to levy with respect to the 1997 tax liability. The IRS will not notify E of its intent to levy. The IRS is not required to notify E of its intent to levy although E holds property of individual D. E is not the taxpayer.

(c) *Requesting a CDP hearing*—(1) *In general.* When a taxpayer is entitled to a CDP hearing under section 6330, the CDP hearing must be requested during the 30-day period that commences the day after the date of the CDP Notice.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (c) as follows:

Q–C1. What must a taxpayer do to obtain a CDP hearing?

A–C1. (i) The taxpayer must make a request in writing for a CDP hearing. A written request in any form which requests a CDP hearing will be acceptable. The request must include the taxpayer's name, address, and daytime telephone number, and must be signed by the taxpayer or the taxpayer's authorized representative and dated. The CDP Notice should include, when appropriate, a Form 12153, Request for a Collection Due Process Hearing, that can be used by the taxpayer to request a CDP hearing.

(ii) The Form 12153 requests the following information:

(A) The taxpayer's name, address, daytime telephone number, and taxpayer identification number (SSN or TIN).

(B) The type of tax involved.

(C) The tax period at issue.

(D) A statement that the taxpayer requests a hearing with Appeals concerning the proposed collection activity.

(E) The reason or reasons why the taxpayer disagrees with the proposed collection action.

(iii) Taxpayers are encouraged to use a Form 12153 in requesting a CDP hearing so that the request can be readily identified and forwarded to Appeals. Taxpayers may obtain a copy of Form 12153 by contacting the IRS office that issued the CDP Notice or by calling, toll-free, 1–800–829–3676.

(iv) The taxpayer may perfect any timely written request for a CDP hearing, which otherwise meets the requirements set forth above and which is made or alleged to have been made on the taxpayer's behalf by the taxpayer's spouse or any other representative, by filing, within a reasonable time of a request from Appeals, a signed written affirmation that the request was originally submitted on the taxpayer's behalf.

Q–C2. Must the request for the CDP hearing be in writing?

A–C2. Yes. There are several reasons why the request for a CDP hearing must be in writing. The filing of a timely request for a CDP hearing is the first step in what may result in a court proceeding. A written request will provide proof that the CDP hearing was requested and thus permit the court to verify that it has jurisdiction over any subsequent appeal of the Notice of Determination issued by Appeals. In addition, the receipt of the written request will establish the date on which the periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended as a result of the CDP hearing and any judicial appeal. Moreover, because the IRS anticipates that taxpayers will contact the IRS office that issued the CDP Notice for further information or assistance in filling out Form 12153, or to attempt to resolve their liabilities prior to going through the CDP hearing process, the requirement of a written request should help prevent any misunderstanding as to whether a CDP hearing has been requested. If the information requested on Form 12153 is furnished by the taxpayer, the written request also will help to establish the issues for which the taxpayer seeks a determination by Appeals.

Q–C3. When must a taxpayer request a CDP hearing with respect to a CDP Notice issued under section 6330?

A–C3. A taxpayer must submit a written request for a CDP hearing within the 30-day period commencing the day after the date of the CDP Notice issued under section 6330. This period is slightly different from the period for submitting a written request for a CDP hearing with respect to a CDP Notice issued under section 6320. For a CDP Notice issued under section 6320, a taxpayer must submit a written request for a CDP hearing within the 30-day period commencing the day after the end of the five business day period

following the filing of the notice of federal tax lien (NFTL).

Q–C4. How will the timeliness of a taxpayer's written request for a CDP hearing be determined?

A–C4. The rules and regulations under section 7502 and section 7503 will apply to determine the timeliness of the taxpayer's request for a CDP hearing, if properly transmitted and addressed as provided in A–C6 of this paragraph (c)(2).

Q–C5. Is the 30-day period within which a taxpayer must make a request for a CDP hearing extended because the taxpayer resides outside the United States?

A–C5. No. Section 6330 does not make provision for such a circumstance. Accordingly, all taxpayers who want a CDP hearing under section 6330 must request such a hearing within the 30-day period commencing the day after the date of the CDP Notice.

Q–C6. Where should the written request for a CDP hearing be sent?

A–C6. The written request for a CDP hearing must be sent, or hand delivered, to the IRS office that issued the CDP Notice at the address indicated on the CDP Notice. If the address of that office does not appear on the CDP notice, the request must be sent, or hand delivered, to the compliance area director, or his or her successor, serving the compliance area in which the taxpayer resides or has its principal place of business. If the taxpayer does not have a residence or principal place of business in the United States, the request must be sent, or hand delivered, to the compliance director, Philadelphia Submission Processing Center, or his or her successor. Taxpayers may obtain the address of the appropriate person to which the written request should be sent or hand delivered by calling, toll-free, 1–800–829–1040 and providing their taxpayer identification number (SSN or TIN).

Q–C7. What will happen if the taxpayer does not request a CDP hearing in writing within the 30-day period commencing on the day after the date of the CDP Notice issued under section 6330?

A–C7. If the taxpayer does not request a CDP hearing with Appeals within the 30-day period commencing the day after the date of the CDP Notice, the taxpayer will forego the right to a CDP hearing under section 6330 with respect to the unpaid tax and tax periods shown on the CDP Notice. The taxpayer may, however, request an equivalent hearing. See paragraph (i) of this section.

Q–C8. When must a taxpayer request a CDP hearing with respect to a substitute CDP Notice?

A–C8. A CDP hearing with respect to a substitute CDP Notice must be requested in writing by the taxpayer prior to the end of the 30-day period commencing the day after the date of the substitute CDP Notice.

Q–C9. Can taxpayers attempt to resolve the matter of the proposed levy with an officer or employee of the IRS office collecting the tax liability stated on the CDP Notice either before or after requesting a CDP hearing?

A–C9. Yes. Taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax, either before or after they request a CDP hearing. If such a discussion occurs before a request is made for a CDP hearing, the matter may be resolved without the need for Appeals consideration. However, these discussions do not suspend the running of the 30-day period within which the taxpayer is required to request a CDP hearing, nor do they extend that 30-day period. If discussions occur after the request for a CDP hearing is filed and the taxpayer resolves the matter with the IRS office collecting the tax, the taxpayer may withdraw in writing the request that a CDP hearing be conducted by Appeals. The taxpayer can also waive in writing some or all of the requirements regarding the contents of the Notice of Determination.

(3) *Examples.* The following examples illustrate the principles of this paragraph (c):

Example 1. The IRS mails a CDP Notice of intent to levy to individual A's last known address on June 24, 1999. Individual A has until July 26, 1999, a Monday, to request a CDP hearing. The 30-day period within which individual A may request a CDP hearing begins on June 25, 1999. Because the 30-day period expires on July 24, 1999, a Saturday, individual A's written request for a CDP hearing will be considered timely if it is properly transmitted and addressed to the IRS in accordance with section 7502 and the regulations thereunder no later than July 26, 1999.

Example 2. Same facts as in *Example 1,* except that individual A is on vacation, outside the United States, or otherwise does not receive or read the CDP Notice until July 19, 1999. As in *Example 1,* individual A has until July 26, 1999, to request a CDP hearing. If individual A does not request a CDP hearing, individual A may request an equivalent hearing as to the levy at a later time. The taxpayer should make a request for an equivalent hearing at the earliest possible time.

Example 3. Same facts as in *Example 2,* except that individual A does not receive or read the CDP Notice until after July 26, 1999, and does not request a hearing by July 26, 1999. Individual A is not entitled to a CDP hearing. Individual A may request an equivalent hearing as to the levy at a later time. The taxpayer should make a request for an equivalent hearing at the earliest possible time.

Example 4. Same facts as in *Example 1,* except the IRS determines that the CDP Notice mailed on June 24, 1999, was not mailed to individual A's last known address. As soon as practicable after making this determination, the IRS will mail a substitute CDP Notice to individual A at individual A's last known address, hand deliver the substitute CDP Notice to individual A, or leave the substitute CDP Notice at individual A's dwelling or usual place of business. Individual A will have 30 days commencing on the day after the date of the substitute CDP Notice within which to request a CDP hearing.

(d) *Conduct of CDP hearing*—(1) *In general.* If a taxpayer requests a CDP hearing under section 6330(a)(3)(B) (and does not withdraw that request), the CDP hearing will be held with Appeals. The taxpayer is entitled to only one CDP hearing under section 6330 with respect to the unpaid tax and tax periods shown on the CDP Notice. To the extent practicable, the CDP hearing requested under section 6330 will be held in conjunction with any CDP hearing the taxpayer requests under section 6320. A CDP hearing will be conducted by an employee or officer of Appeals who, prior to the first CDP hearing under section 6320 or section 6330, has had no involvement with respect to the tax for the tax periods to be covered by the hearing, unless the taxpayer waives this requirement.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (d) as follows:

Q–D1. Under what circumstances can a taxpayer receive more than one pre-levy CDP hearing under section 6330 with respect to a tax period?

A–D1. The taxpayer may receive more than one CDP pre-levy hearing under section 6330 with respect to a tax period where the tax involved is a different type of tax (for example, an employment tax liability, where the original CDP hearing for the tax period involved an income tax liability), or where the same type of tax for the same period is involved, but where the amount of the unpaid tax has changed as a result of an additional assessment of tax (not including interest or penalties) for that period or an additional accuracy-related or filing-delinquency penalty has been assessed. The taxpayer is not entitled to another CDP hearing under section 6330 if the additional assessment represents accruals of interest, accruals of penalties, or both.

Q–D2. Will a CDP hearing with respect to one tax period be combined with a CDP hearing with respect to another tax period?

A–D2. To the extent practicable, a CDP hearing with respect to one tax period shown on a CDP Notice will be combined with any and all other CDP hearings which the taxpayer has requested.

Q–D3. Will a CDP hearing under section 6330 be combined with a CDP hearing under section 6320?

A–D3. To the extent it is practicable, a CDP hearing under section 6330 will be held in conjunction with a CDP hearing under section 6320.

Q–D4. What is considered to be prior involvement by an employee or officer of Appeals with respect to the tax and tax period or periods involved in the hearing?

A–D4. Prior involvement by an employee or officer of Appeals includes participation or involvement in an Appeals hearing (other than a CDP hearing held under either section 6320 or section 6330) that the taxpayer may have had with respect to the tax and tax periods shown on the CDP Notice.

Q–D5. How can a taxpayer waive the requirement that the officer or employee of Appeals have no prior involvement with respect to the tax and tax period or periods involved in the CDP hearing?

A–D5. The taxpayer must sign a written waiver.

Q–D6. How are CDP hearings conducted?

A–D6. The formal hearing procedures required under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, do not apply to CDP hearings. CDP hearings are much like Collection Appeal Program (CAP) hearings in that they are informal in nature and do not require the Appeals officer or employee and the taxpayer, or the taxpayer's representative, to hold a face-to-face meeting. A CDP hearing may, but is not required to, consist of a face-to-face meeting, one or more written or oral communications between an Appeals officer or employee and the taxpayer or the taxpayer's representative, or some combination thereof. A transcript or recording of any face-to-face meeting or conversation between an Appeals officer or employee and the taxpayer or the taxpayer's representative is not required. The taxpayer or the taxpayer's representative does not have the right to subpoena and examine witnesses at a CDP hearing.

Q–D7. If a taxpayer wants a face-to-face CDP hearing, where will it be held?

A–D7. The taxpayer must be offered an opportunity for a hearing at the Appeals office closest to taxpayer's residence or, in the case of a business taxpayer, the taxpayer's principal place of business. If that is not satisfactory to the taxpayer, the taxpayer will be given an opportunity for a hearing by correspondence or by telephone. If that is not satisfactory to the taxpayer, the Appeals officer or employee will review the taxpayer's request for a CDP hearing, the case file, any other written communications from the taxpayer (including written communications, if any, submitted in connection with the CDP hearing), and any notes of any oral communications with the taxpayer or the taxpayer's representative. Under such circumstances, review of those documents will constitute the CDP hearing for the purposes of section 6330(b).

(e) *Matters considered at CDP hearing*—(1) *In general.* Appeals has the authority to determine the validity, sufficiency, and timeliness of any CDP Notice given by the IRS and of any request for a CDP hearing that is made by a taxpayer. Prior to issuance of a determination, the hearing officer is required to obtain verification from the IRS office collecting the tax that the requirements of any applicable law or administrative procedure have been met. The taxpayer may raise any relevant issue relating to the unpaid tax at the hearing, including appropriate spousal defenses, challenges to the appropriateness of the proposed collection action, and offers of collection alternatives. The taxpayer also may raise challenges to the existence or amount of the tax liability specified on the CDP Notice for any tax period shown on the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for that tax liability or did not otherwise have an opportunity to dispute that tax liability. Finally, the taxpayer may not raise an issue that was raised and considered at a previous CDP hearing under section 6320 or in any other previous administrative or judicial proceeding if the taxpayer participated meaningfully in such hearing or proceeding. Taxpayers will be expected to provide all relevant information requested by Appeals, including financial statements, for its consideration of the facts and issues involved in the hearing.

(2) *Spousal defenses.* A taxpayer may raise any appropriate spousal defenses at a CDP hearing unless the Commissioner has already made a final determination as to spousal defenses in a statutory notice of deficiency or final determination letter. To claim a spousal defense under section 66 or section 6015, the taxpayer must do so in writing according to rules prescribed by the Commissioner or the Secretary. Spousal defenses raised under sections 66 and 6015 in a CDP hearing are governed in all respects by the provisions of sections 66 and section 6015 and the regulations and procedures thereunder.

(3) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (e) as follows:

Q–E1. What factors will Appeals consider in making its determination?

A–E1. Appeals will consider the following matters in making its determination:

(i) Whether the IRS met the requirements of any applicable law or administrative procedure.

(ii) Any issues appropriately raised by the taxpayer relating to the unpaid tax.

(iii) Any appropriate spousal defenses raised by the taxpayer.

(iv) Any challenges made by the taxpayer to the appropriateness of the proposed collection action.

(v) Any offers by the taxpayer for collection alternatives.

(vi) Whether the proposed collection action balances the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.

Q–E2. When is a taxpayer entitled to challenge the existence or amount of the tax liability specified in the CDP Notice?

A–E2. A taxpayer is entitled to challenge the existence or amount of the tax liability specified in the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for such liability or did not otherwise have an opportunity to dispute such liability. Receipt of a statutory notice of deficiency for this purpose means receipt in time to petition the Tax Court for a redetermination of the deficiency asserted in the notice of deficiency. An opportunity to dispute a liability includes a prior opportunity for a conference with Appeals that was offered either before or after the assessment of the liability.

Q–E3. Are spousal defenses subject to the limitations imposed under section 6330(c)(2)(B) on a taxpayer's right to challenge the tax liability specified in the CDP Notice at a CDP hearing?

A–E3. The limitations imposed under section 6330(c)(2)(B) do not apply to spousal defenses. When a taxpayer asserts a spousal defense, the taxpayer is not disputing the amount or existence of the liability itself, but asserting a defense to the liability which may or may not be disputed. A spousal defense raised under section 66 or section 6015 is governed by section 66 or section 6015 and the regulations and procedures thereunder. Any limitation under those sections, regulations, and procedures therefore will apply.

Q–E4. May a taxpayer raise at a CDP hearing a spousal defense under section 66 or section 6015 if that defense was raised and considered administratively and the Commissioner has issued a statutory notice of deficiency or final determination letter addressing the spousal defense?

A–E4. No. A taxpayer is precluded from raising a spousal defense at a CDP hearing when the Commissioner has made a final determination (under section 66 or section 6015) as to spousal defenses in a final determination letter or statutory notice of deficiency. However, a taxpayer may raise spousal defenses in a CDP hearing when the taxpayer has previously raised spousal defenses, but the Commissioner has not yet made a final determination regarding this issue.

Q–E5. May a taxpayer raise at a CDP hearing a spousal defense under section 66 or section 6015 if that defense was raised and considered in a prior judicial proceeding that has become final?

A–E5. No. A taxpayer is precluded by the doctrine of res judicata and by the specific limitations under section 66 or section 6015 from raising a spousal defense in a CDP hearing under these circumstances.

Q–E6. What collection alternatives are available to the taxpayer?

A–E6. Collection alternatives would include, for example, a proposal to withhold the proposed or future collection action in circumstances that will facilitate the collection of the tax liability, an installment agreement, an offer-in-compromise, the posting of a bond, or the substitution of other assets.

Q–E7. What issues may a taxpayer raise in a CDP hearing under section 6330 if the taxpayer previously received a notice under section 6320 with respect to the same tax and tax period and did not request a CDP hearing with respect to that notice?

A–E7. The taxpayer may raise appropriate spousal defenses, challenges to the appropriateness of the proposed collection action, and offers of collection alternatives. The existence or amount of the tax liability for the tax for the tax period specified in the CDP Notice may be challenged only if the taxpayer did not already have an opportunity to dispute that tax liability. Where the taxpayer previously received a CDP Notice under section 6320 with respect to the same tax and tax period and did not request a CDP hearing with respect to that earlier CDP Notice, the taxpayer already had an opportunity to dispute the existence or amount of the underlying tax liability.

Q–E8. How will Appeals issue its determination?

A–E8. (i) Taxpayers will be sent a dated Notice of Determination by certified or registered mail. The Notice of Determination will set forth Appeals' findings and decisions. It will state whether the IRS met the requirements of any applicable law or administrative procedure; it will resolve any issues appropriately raised by the taxpayer relating to the unpaid tax; it will include a decision on any appropriate spousal defenses raised by the taxpayer; it will include a decision on any challenges made by the taxpayer to the appropriateness of the collection action; it will respond to any offers by the taxpayer for collection alternatives; and it will address whether the proposed collection action represents a balance between the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary. The Notice of Determination will also set forth any agreements that Appeals reached with the taxpayer, any relief given the taxpayer, and any actions the taxpayer or the IRS are required to take. Lastly, the Notice of Determination will advise the taxpayer of the taxpayer's right to seek judicial review within 30 days of the date of the Notice of Determination.

(ii) Because taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax, certain matters that might have been raised at a CDP hearing may be resolved without the need for Appeals consideration. Unless, as a result of these discussions, the taxpayer agrees in writing to withdraw the request that Appeals conduct a CDP hearing, Appeals will still issue a Notice of Determination, but the taxpayer can waive in writing Appeals' consideration of some or all of the matters it would otherwise consider in making its determination.

Q–E9. Is there a period of time within which Appeals must conduct a CDP hearing or issue a Notice of Determination?

A–E9. No. Appeals will, however, attempt to conduct a CDP hearing and issue a Notice of Determination as expeditiously as possible under the circumstances.

Q–E10. Why is the Notice of Determination and its date important?

A–E10. The Notice of Determination will set forth Appeals' findings and decisions with respect to the matters set forth in A–E1 of this paragraph (e)(3). The 30-day period within which the taxpayer is permitted to seek judicial review of Appeals' determination commences the day after the date of the Notice of Determination.

Q–E11. If an Appeals officer considers the merits of a taxpayer's liability in a CDP hearing when the taxpayer had previously received a statutory notice of deficiency or otherwise had an opportunity to dispute the liability prior to the issuance of a notice of intention to levy, will the Appeals officer's determination regarding those liability issues be considered part of the Notice of Determination?

A–E11. No. An Appeals officer may consider the existence and amount of the underlying tax liability as a part of the CDP hearing only if the taxpayer did not receive a statutory notice of deficiency for the tax liability in question or otherwise have a prior opportunity to dispute the tax liability. Similarly, an Appeals officer may not consider any other issue if the issue was raised and considered at a previous hearing under section 6320 or in any other previous administrative or judicial proceeding in which the person seeking to raise the issue meaningfully participated. In the Appeals officer's sole discretion, however, the Appeals officer may consider the existence or amount of the underlying tax liability, or such other precluded issues, at the same time as the CDP hearing. Any determination, however, made by the Appeals officer with respect to such a precluded issue shall not be treated as part of the Notice of Determination issued by the Appeals officer and will not be subject to any judicial review. Because any decision made by the Appeals officer on such precluded issues is not properly a part of the CDP hearing, such decisions are not required to appear in the Notice of Determination issued following the hearing. Even if a decision concerning such precluded issues is referred to in the Notice of Determination, it is not reviewable by a district court or the Tax Court because the precluded issue is not properly part of the CDP hearing.

(4) *Examples.* The following examples illustrate the principles of this paragraph (e):

Example 1. The IRS sends a statutory notice of deficiency to the taxpayer at his last known address asserting a deficiency for the tax year 1995. The taxpayer receives the notice of deficiency in time to petition the Tax Court for a redetermination of the asserted deficiency. The taxpayer does not timely file a petition with the Tax Court. The taxpayer is precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

Example 2. Same facts as in *Example 1,* except the taxpayer does not receive the notice of deficiency in time to petition the Tax Court and did not have another prior opportunity to dispute the tax liability. The taxpayer is not precluded from challenging

the existence or amount of the tax liability in a subsequent CDP hearing.

Example 3. The IRS properly assesses a trust fund recovery penalty against the taxpayer. The IRS offers the taxpayer the opportunity for a conference with Appeals at which the taxpayer would have the opportunity to dispute the assessed liability. The taxpayer declines the opportunity to participate in such a conference. The taxpayer is precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

(f) *Judicial review of Notice of Determination*—(1) *In general.* Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, Appeals is required to issue a Notice of Determination in all cases where a taxpayer has timely requested a CDP hearing. The taxpayer may appeal such determinations made by Appeals within the 30-day period commencing the day after the date of the Notice of Determination to the Tax Court or a district court of the United States, as appropriate.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (f) as follows:

Q–F1. What must a taxpayer do to obtain judicial review of a Notice of Determination?

A–F1. Subject to the jurisdictional limitations described in A–F2, the taxpayer must, within the 30-day period commencing the day after the date of the Notice of Determination, appeal the determination by Appeals to the Tax Court or to a district court of the United States.

Q–F2. With respect to the relief available to the taxpayer under section 6015, what is the time frame within which a taxpayer may seek Tax Court review of Appeals' determination following a CDP hearing?

A–F2. If the taxpayer seeks Tax Court review not only of Appeals' denial of relief under section 6015, but also of relief with respect to other issues raised in the CDP hearing, the taxpayer should request Tax Court review within the 30-day period commencing the day after the date of the Notice of Determination. If the taxpayer only seeks Tax Court review of Appeals' denial of relief under section 6015, the taxpayer should request review by the Tax Court, as provided by section 6015(e), within 90 days of Appeals' determination. If a request for Tax Court review is filed after the 30-day period for seeking judicial review under section 6330, then only the taxpayer's section 6015 claims may be reviewable by the Tax Court.

Q–F3. Where should a taxpayer direct a request for judicial review of a Notice of Determination?

A–F3. If the Tax Court would have jurisdiction over the type of tax specified in the CDP Notice (for example, income and estate taxes), then the taxpayer must seek judicial review by the Tax Court. If the tax liability arises from a type of tax over which the Tax Court would not have jurisdiction, then the taxpayer must seek judicial review by a district court of the United States in accordance with Title 28 of the United States Code.

Q–F4. What happens if the taxpayer timely appeals Appeals' determination to the incorrect court?

A–F4. If the court to which the taxpayer directed a timely appeal of the Notice of Determination determines that the appeal was to the incorrect court (because of jurisdictional, venue or other reasons), the taxpayer will have 30 days after the court's determination to that effect within which to file an appeal to the correct court.

Q–F5. What issue or issues may the taxpayer raise before the Tax Court or before a district court if the taxpayer disagrees with the Notice of Determination?

A–F5. In seeking Tax Court or district court review of Appeals' Notice of Determination, the taxpayer can only ask the court to consider an issue that was raised in the taxpayer's CDP hearing.

(g) *Effect of request for CDP hearing and judicial review on periods of limitation and collection activity*—(1) *In general.* The periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended until the date the IRS receives the taxpayer's written withdrawal of the request for a CDP hearing by Appeals or the determination resulting from the CDP hearing becomes final by expiration of the time for seeking judicial review or the exhaustion of any rights to appeals following judicial review. In no event shall any of these periods of limitation expire before the 90th day after the date on which the IRS receives the taxpayer's written withdrawal of the request that Appeals conduct a CDP hearing or the Notice of Determination with respect to such hearing becomes final upon either the expiration of the time for seeking judicial review or upon exhaustion of any rights to appeals following judicial review.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (g) as follows:

Q–G1. For what period of time will the periods of limitation under section 6502, section 6531, and section 6532 remain suspended if the taxpayer timely requests a CDP hearing concerning a pre-levy or post-levy CDP Notice?

A–G1. The suspension period commences on the date the IRS receives the taxpayer's written request for a CDP hearing. The suspension period continues until the IRS receives a written withdrawal by the taxpayer of the request for a CDP hearing or the Notice of Determination resulting from the CDP hearing becomes final upon either the expiration of the time for seeking judicial review or upon exhaustion of any rights to appeals following judicial review. In no event shall any of these periods of limitation expire before the 90th day after the day on which there is a final determination with respect to such hearing. The periods of limitation that are suspended under section 6330 are those which apply to the taxes and the tax period or periods to which the CDP Notice relates.

Q–G2. For what period of time will the periods of limitation under section 6502, section 6531, and section 6532 be suspended if the taxpayer does not request a CDP hearing concerning the CDP Notice, or the taxpayer requests a CDP hearing, but his request is not timely?

A–G2. Under either of these circumstances, section 6330 does not provide for a suspension of the periods of limitation.

Q–G3. What, if any, enforcement actions can the IRS take during the suspension period?

A–G3. Section 6330(e) provides for the suspension of the periods of limitation discussed in paragraph (g)(1) of these regulations. Section 6330(e) also provides that levy actions that are the subject of the requested CDP hearing under that section shall be suspended during the same period. The IRS, however, may levy for other taxes and periods not covered by the CDP Notice if the CDP requirements under section 6330 for those taxes and periods have been satisfied. The IRS also may file NFTLs for tax periods and taxes, whether or not covered by the CDP Notice issued under section 6330, and may take other non-levy collection actions such as initiating judicial proceedings to collect the tax shown on the CDP Notice or offsetting overpayments from other periods, or of other taxes, against the tax shown on the CDP Notice. Moreover, the provisions in section 6330 do not apply when the IRS levies for the tax and tax period shown

on the CDP Notice to collect a state tax refund due the taxpayer, or determines that collection of the tax is in jeopardy. Finally, section 6330 does not prohibit the IRS from accepting any voluntary payments made for the tax and tax period stated on the CDP Notice.

(3) *Examples.* The following examples illustrate the principles of this paragraph (g):

Example 1. The period of limitation under section 6502 with respect to the taxpayer's tax period listed in the CDP Notice will expire on August 1, 1999. The IRS sent a CDP Notice to the taxpayer on April 30, 1999. The taxpayer timely requested a CDP hearing. The IRS received this request on May 15, 1999. Appeals sends the taxpayer its determination on June 15, 1999. The taxpayer timely seeks judicial review of that determination. The period of limitation under section 6502 would be suspended from May 15, 1999, until the determination resulting from that hearing becomes final by expiration of the time for seeking review or reconsideration before the appropriate court, plus 90 days.

Example 2. Same facts as in *Example 1*, except the taxpayer does not seek judicial review of Appeals' determination. Because the taxpayer requested the CDP hearing when fewer than 90 days remained on the period of limitation, the period of limitation will be extended to October 13, 1999 (90 days from July 15, 1999).

(h) *Retained jurisdiction of Appeals*—(1) *In general.* The Appeals office that makes a determination under section 6330 retains jurisdiction over that determination, including any subsequent administrative hearings that may be requested by the taxpayer regarding levies and any collection actions taken or proposed with respect to Appeals' determination. Once a taxpayer has exhausted his other remedies, Appeals' retained jurisdiction permits it to consider whether a change in the taxpayer's circumstances affects its original determination. Where a taxpayer alleges a change in circumstances that affects Appeals' original determination, Appeals may consider whether changed circumstances warrant a change in its earlier determination.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (h) as follows:

Q–H1. Are the periods of limitation suspended during the course of any subsequent Appeals consideration of the matters raised by a taxpayer when the taxpayer invokes the retained jurisdiction of Appeals under section 6330(d)(2)(A) or (B)?

A–H1. No. Under section 6330(b)(2), a taxpayer is entitled to only one CDP hearing under section 6330 with respect to the tax and tax periods specified in the CDP Notice. Any subsequent consideration by Appeals pursuant to its retained jurisdiction is not a continuation of the original CDP hearing and does not suspend the periods of limitation.

Q–H2. Is a decision of Appeals resulting from a retained jurisdiction hearing appealable to the Tax Court or a district court?

A–H2. No. As discussed in A–H1, a taxpayer is entitled to only one CDP hearing under section 6330 with respect to the tax and tax period or periods specified in the CDP Notice. Only determinations resulting from CDP hearings are appealable to the Tax Court or a district court.

(i) *Equivalent hearing*—(1) *In general.* A taxpayer who fails to make a timely request for a CDP hearing is not entitled to a CDP hearing. Such a taxpayer may nevertheless request an administrative hearing with Appeals, which is referred to herein as an ''equivalent hearing.'' The equivalent hearing will be held by Appeals and generally will follow Appeals procedures for a CDP hearing. Appeals will not, however, issue a Notice of Determination. Under such circumstances, Appeals will issue a Decision Letter.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (i) as follows:

Q–I1. What issues will Appeals consider at an equivalent hearing?

A–I1. In an equivalent hearing, Appeals will consider the same issues that it would have considered at a CDP hearing on the same matter.

Q–I2. Are the periods of limitation under sections 6502, 6531, and 6532 suspended if the taxpayer does not timely request a CDP hearing and is subsequently given an equivalent hearing?

A–I2. No. The suspension period provided for in section 6330(e) relates only to hearings requested within the 30-day period that commences the day following the date of the pre-levy or post-levy CDP Notice, that is, CDP hearings.

Q–I3. Will collection action be suspended if a taxpayer requests and receives an equivalent hearing?

A–I3. Collection action is not required to be suspended. Accordingly, the decision to take collection action during the pendency of an equivalent hearing will be determined on a case-by-case basis. Appeals may request the IRS office with responsibility for collecting the taxes to suspend all or some collection action or to take other appropriate action if it determines that such action is appropriate or necessary under the circumstances.

Q–I4. What will the Decision Letter state?

A–I4. The Decision Letter will generally contain the same information as a Notice of Determination.

Q–I5. Will a taxpayer be able to obtain court review of a decision made by Appeals with respect to an equivalent hearing?

A–I5. Section 6330 does not authorize a taxpayer to appeal the decision of Appeals with respect to an equivalent hearing. A taxpayer may under certain circumstances be able to seek Tax Court review of Appeals' denial of relief under section 6015. Such review must be sought within 90 days of the issuance of Appeals' determination on those issues, as provided by section 6015(e).

(j) *Effective date.* This section is applicable with respect to any levy which occurs on or after January 19, 1999.

§ 301.6330–1T [Removed]

3. Section 301.6330–1T is removed.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: January 14, 2002.

Mark A. Weinberger,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 02–1305 Filed 1–17–02; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8979]

RIN 1545–AW91

Notice and Opportunity for Hearing Upon Filing of Notice of Lien

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the provision of notice to taxpayers of the filing of a notice of federal tax lien (NFTL). A taxpayer receiving notice of a NFTL may request a hearing with IRS Office of Appeals and may subsequently seek judicial review of Appeals' determination. The regulations implement certain changes made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998. They affect taxpayers against whose property or rights to property the IRS files a NFTL.

DATES: *Effective Date:* These regulations are effective on or after January 18, 2002.

Applicability Date: These regulations apply to any notice of Federal tax lien which is filed on or after January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Jerome D. Sekula, (202) 622–3610 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Regulations on Procedure and Administration (26 CFR part 301) relating to the provision of notice under section 6320 of the Internal Revenue Code to taxpayers of a right to a hearing (a collection due process, or CDP, hearing) after the filing of a notice of federal tax lien (NFTL). These final regulations implement certain changes made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Pub. L. 105–206, 112 Stat. 685) (RRA 1998). The final regulations affect taxpayers against whose property or rights to property the IRS files a NFTL on or after January 19, 1999.

On January 22, 1999, temporary regulations (TD 8810) implementing these changes made by section 3401 of RRA 1998 were published in the **Federal Register** (64 FR 3398). A notice of proposed rulemaking (REG–116824–98) cross-referencing the temporary regulations was published on the same day in the **Federal Register** (64 FR 3461). No public hearing was requested or held. No written comments were received within the 90-day period provided for comments, although two comments were received after this period.

Section 6330 also was added by section 3401 of RRA 1998 and provides for notice to taxpayers of a right to a hearing prior to a levy. A number of the provisions in section 6330 concerning the conduct and judicial review of a CDP hearing are incorporated by reference in section 6320. On January 22, 1999, temporary regulations (TD 8809) implementing the changes made by section 3401 of RRA 1998 with respect to section 6330 were published in the **Federal Register** (64 FR 3405). A notice of proposed rulemaking (REG–117620–98) cross-referencing those temporary regulations was published on the same day in the **Federal Register** (64 FR 3462). Final regulations under section 6330 are being published in the **Federal Register** along with these final regulations under section 6320.

After consideration of the comments, the proposed regulations, with certain changes to reflect the IRS administrative practice under section 6320, are adopted as final regulations. These comments and changes are discussed below.

Summary of Comments

Although the two comments were directed generally at the proposed regulations under section 6330, the comments are discussed here because they address provisions that, in large part, apply to both section 6320 and section 6330.

Both commentators urged that final regulations under section 6330 provide that potentially affected third-parties (*i.e.,* persons not liable for the tax at issue) are entitled to notice and a hearing before the IRS Office of Appeals (Appeals) before the IRS levies on any property or right to property. Treasury and the IRS have concluded that the person liable for the tax set out in the collection due process notice (CDP Notice), whether issued under section 6320 or section 6330, is the person entitled to a CDP Notice and a CDP hearing under those sections. Section 6320(a)(1) provides that a CDP Notice provided under section 6320 will be sent to the person described in section 6321. The person described in section 6321 is the person liable to pay the tax—*i.e.,* the taxpayer.

With respect to section 6330, the legislative history to that section indicates that Congress intended to supplement the existing notice requirement under section 6331. Under section 6331, the IRS generally must provide a person liable for any tax (and who refuses to pay the tax after notice and demand) notice before levying on the property or rights to property of that person. Section 6330, in addition to the notice required under section 6331, provides for notice of the right to an Appeals hearing before levy.

Accordingly, the final regulations under both section 6320 and section 6330 provide that the person entitled to a CDP Notice under those sections is the person liable for the tax set out in the CDP Notice, *i.e.,* the taxpayer. Generally, when a third party's rights are affected by lien or levy, those rights can be protected through other administrative and judicial remedies, such as an administrative hearing before Appeals under its Collection Appeals Program or a wrongful levy or quiet title action.

One commentator requested that the final regulations establish formal procedures for the conduct of a CDP hearing as well as procedures for the admission and preservation of evidence to be considered by Appeals. Treasury and the IRS have declined to adopt this comment. Section 6320 and section 6330 are intended to give all taxpayers a right to an impartial Appeals review of the filing of a NFTL or of an intended levy action, with an additional right of judicial review of the Appeals determination. Section 6330(c) (which is applicable to both section 6320 and section 6330) and the proposed regulations under section 6320 and section 6330 (as modified by final regulations) already set out the specific requirements, including the issues to be considered, for a CDP hearing and require that Appeals issue a written determination (Notice of Determination) setting forth Appeals' findings and decisions. Due to the varied circumstances of taxpayers and the varied situations in which the filing of a NFTL or an intended levy action may arise, the final regulations provide flexibility regarding the manner in which a CDP hearing may be conducted.

One commentator stated that taxpayers should have a right to judicial review in a retained jurisdiction case under section 6330(d)(2). Treasury and the IRS decline to adopt this comment. Under section 6330(b)(2), a taxpayer is entitled to only one CDP hearing with respect to the tax set out on a CDP Notice issued under section 6330. Section 6320(b)(2) provides a similar rule for section 6320. Under section 6330(d)(1), applicable to both section 6320 and section 6330, a taxpayer is entitled to judicial review only after the issuance of the determination by Appeals after a CDP hearing. Once the Notice of Determination has been issued, any subsequent consideration of the case by Appeals, including changed circumstances, based on Appeals' retained jurisdiction under section 6330(d)(2), is not part of the CDP hearing subject to judicial review.

One commentator also urged that a taxpayer be allowed to challenge the existence or amount of the tax liability set out in a CDP Notice issued under section 6330 even if the taxpayer had previously failed to raise such a challenge pursuant to a CDP Notice issued under section 6320. The commentator points to section 6330(c)(4), which provides generally that a person who had meaningfully participated in a section 6320 CDP hearing in which an issue was raised may not raise that same issue in a subsequent section 6330 CDP hearing. Treasury and the IRS have concluded that section 6330(c)(2)(B), addressing specifically a person's right to challenge the underlying tax liability, is clear that any prior opportunity to challenge the

underlying tax liability, which would include a section 6320 CDP hearing, precludes a taxpayer from doing so at a later section 6330 CDP hearing.

Explanation of Revisions

The proposed regulations provided that district directors, directors of service centers and the Assistant Commissioner (International) would be the IRS officials required to give notice of the right to, and the opportunity for, a CDP hearing to a taxpayer following the filing of a NFTL. To reflect the recent reorganization of the IRS, paragraph (a)(1) of the final regulations eliminates reference to these specific officers and substitutes a general authorization to the IRS to provide such notification.

Question and Answer (Q&A) C1 of the proposed regulations stated that a request for a CDP hearing must be signed by the taxpayer or the taxpayer's authorized representative. Requests for CDP hearings on occasion are not signed by the taxpayer or the taxpayer's authorized representative but instead are filed on the taxpayer's behalf by the taxpayer's spouse or other personal representative not authorized to practice before Appeals. The IRS's administrative practice has been to treat these requests as complying with the temporary regulations provided that the taxpayer or the taxpayer's authorized representative signs the request within a reasonable period of time. Q&A C1 in the final regulations is revised to reflect this administrative practice.

Q&A C6 of the proposed regulations provided that a request for a CDP hearing should be filed with the IRS office that issued the CDP Notice or, if the taxpayer did not know the address of that IRS office, then with one of two alternative IRS offices. Q&A C6 of the final regulations requires that a request for a CDP hearing be filed with the IRS office and address indicated on the CDP Notice. The final regulations change the alternative addresses to reflect the IRS's recent reorganization. The final regulations provide that if no address is provided in the CDP Notice, then the request must be filed with the compliance area director, or his or her successor, serving the compliance area in which the taxpayer resides or has its principal place of business. The final regulations provide a toll-free number to obtain the address of the office of the appropriate compliance area director, or his or her successor.

The proposed regulations did not discuss how a CDP hearing should be conducted, or where or how it may occur. A new Q&A D6, relating to how CDP hearings are conducted, and a new Q&A D7, relating to when in-person meetings will be held, are added to the final regulations to clarify how a CDP hearing may be conducted.

Paragraph (e)(2) of the proposed regulations, dealing with spousal defenses under section 6015, has been revised in the final regulations to also address spousal defenses raised under section 66. Q&A E3 of the proposed regulations, dealing with the extent of any limitations imposed under section 6330(c)(2)(B), has been revised in the final regulations to also address the effect of a spousal defense raised under section 66. The proposed regulations did not specifically discuss whether a taxpayer may raise a spousal defense at a CDP hearing when the taxpayer has raised that defense administratively, but has not raised it in a judicial proceeding that has become final. A new Q&A E4 is added to the final regulations to provide that a spousal defense may be raised if the IRS has not made a final determination as to that spousal defense in a final determination letter or statutory notice of deficiency. Q&A E4 of the proposed regulations, dealing with spousal defenses that were raised in a prior judicial proceeding, has been revised to also discuss the effect of a spousal defense raised under section 66, and has been renumbered as Q&A E5 of the final regulations.

Q&A E8 of the proposed regulations addressed whether a Notice of Determination was required to be issued within a certain period of time after the CDP hearing. That Q&A, now Q&A E9 of the final regulations, has been revised to clarify that there are no time limitations on when a CDP hearing must be held or on when a Notice of Determination must be issued, except that both must be done as expeditiously as possible under the circumstances.

Under section 6330(c)(2)(B), a taxpayer may not challenge the existence or the amount of the underlying tax liability at a CDP hearing if the taxpayer has had a prior opportunity to dispute that liability—i.e., the taxpayer had received a statutory notice of deficiency or otherwise had an opportunity to dispute the underlying tax liability. The final regulations add a new Q&A E11 to address the effect of an Appeals officer's or employee's consideration of liability issues when the taxpayer has had a prior opportunity to dispute the underlying tax liability. In such circumstances, any consideration of liability issues by the Appeals officer or employee is discretionary and is not treated as part of the CDP hearing. Accordingly, the Appeals officer's or employee's determinations, if any, made with respect to liability issues are not required to appear in the Notice of Determination. Any determinations regarding the underlying tax liability that are included in the Notice of Determination are not reviewable by a district court or the Tax Court.

Q&A F2 and Q&A I5 of the proposed regulations, both relating to judicial review of CDP cases where a spousal defense under section 6015 is raised, specifically referred only to paragraphs (b) and (c) of section 6015. Q&A F2 and Q&A I5 have been revised in the final regulations also to include a denial of relief under section 6015(f).

Section 6320(c) incorporates by reference section 6330(e), which generally provides for the suspension of the periods of limitation under section 6502, section 6531, and section 6532 after the filing of a request for a CDP hearing under section 6330. Section 6330(e) also provides that levy actions that are the subject of the requested CDP hearing are suspended during this same period. Levy actions, however, are not the subject of a CDP hearing under section 6320. A new Q&A G3 is added to the final regulations to clarify what collection actions the IRS may take after a request for a CDP hearing under section 6320 has been filed.

As set out in Q&A G3 of the final regulations, the IRS may take enforcement actions for tax periods and taxes not covered by a CDP Notice that is the subject of the CDP hearing requested under section 6320. For example, the IRS may file NFTLs for tax periods or taxes not covered by the CDP Notice (although such filings may give rise to issuance of a CDP Notice under section 6320) and may levy for those taxes and tax periods and for the tax and tax periods covered by the CDP Notice under section 6320, if the CDP requirements under section 6330 as to those taxes and tax periods have been satisfied and CDP proceedings, if any, concluded. The IRS also is not prohibited by section 6330(e) from taking other non-levy collection actions such as initiating judicial proceedings to collect the tax shown on the CDP Notice issued under section 6320 or from offsetting overpayments from other periods, or of other taxes, against the tax shown on the CDP Notice. Moreover, the IRS may levy upon any state tax refund due the taxpayer, and, under appropriate circumstances, make jeopardy levies for the tax and tax periods covered by the CDP Notice at issue in the CDP hearing. Finally, section 6330 does not prohibit the IRS from accepting any voluntary payments made for the tax and tax periods set out in the CDP Notice.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the preceding temporary regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this regulation is Jerome D. Sekula, of the Office of Associate Chief Counsel, Procedure and Administration (Collection, Bankruptcy and Summonses Division).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

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

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

2. Section 301.6320–1 is added under the undesignated centerheading ''Lien for Taxes'' to read as follows:

§ 301.6320–1 Notice and opportunity for hearing upon filing of notice of Federal tax lien.

(a) *Notification*—(1) *In general.* For a notice of Federal tax lien (NFTL) filed on or after January 19, 1999, the Commissioner, or his or her delegate (the Commissioner), will prescribe procedures to notify the person described in section 6321 of the filing of a NFTL not more than five business days after the date of any such filing. The Collection Due Process Hearing Notice (CDP Notice) and other notices given under section 6320 must be given in person, left at the dwelling or usual place of business of such person, or sent by certified or registered mail to such person's last known address, not more than five business days after the day the NFTL was filed. For further guidance regarding the definition of last known address, see Sec. 301.6212–2.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (a) as follows:

Q–A1. Who is the person entitled to notice under section 6320?

A–A1. Under section 6320(a)(1), notification of the filing of a NFTL on or after January 19, 1999, is required to be given only to the person described in section 6321 who is named on the NFTL that is filed. The person described in section 6321 is the person liable to pay the tax due after notice and demand who refuses or neglects to pay the tax due (hereinafter, referred to as the taxpayer).

Q–A2. When will the Internal Revenue Service (IRS) provide the notice required under section 6320?

A–A2. The IRS will provide this notice within five business days after the filing of the NFTL.

Q–A3. Will the IRS give notification to the taxpayer for each tax period listed in a NFTL filed on or after January 19, 1999?

A–A3. Yes. A NFTL can be filed for more than one tax period. The notification of the filing of a NFTL will specify each unpaid tax and tax period listed in the NFTL.

Q–A4. Will the IRS give notification to the taxpayer of any filing of a NFTL for the same tax period or periods at another place of filing?

A–A4. Yes. The IRS will notify a taxpayer when a NFTL is filed on or after January 19, 1999, for a tax period or periods at any recording office.

Q–A5. Will the IRS give notification to the taxpayer if a NFTL is filed on or after January 19, 1999, for a tax period or periods for which a NFTL was filed in another recording office prior to that date?

A–A5. Yes. The IRS will notify a taxpayer when each NFTL is filed on or after January 19, 1999, for a tax period or periods at any recording office.

Q–A6. Will the IRS give notification to the taxpayer when a NFTL is refiled on or after January 19, 1999?

A–A6. No. Section 6320(a)(1) does not require the IRS to notify the taxpayer of the refiling of a NFTL. A taxpayer may, however, seek reconsideration by the IRS office that is collecting the tax or refiling the NFTL, an administrative hearing before the IRS Office of Appeals (Appeals), or assistance from the National Taxpayer Advocate.

Q–A7. Will the IRS give notification to a known nominee of, or a person holding property of, the taxpayer of the filing of the NFTL?

A–A7. No. Such person is not the person described in section 6321 and, therefore, is not entitled to notice, but such persons have other remedies. See A–B5 of paragraph (b)(2) of this section.

Q–A8. Will the IRS give notification to the taxpayer when a subsequent NFTL is filed for the same period or periods?

A–A8. Yes. If the IRS files an additional NFTL with respect to the same tax period or periods for which an original NFTL was filed, the IRS will notify the taxpayer when the subsequent NFTL is filed. Not all such notices will, however, give rise to a right to a CDP hearing (see paragraph (b) of this section).

Q–A9. How will notification under section 6320 be accomplished?

A–A9. The IRS will notify the taxpayer by letter. Included with this letter will be the additional information the IRS is required to provide taxpayers as well as, when appropriate, a Form 12153, Request for a Due Process Hearing. The IRS may effect delivery of the letter (and accompanying materials) in one of three ways: by delivering the notice personally to the taxpayer; by leaving the notice at the taxpayer's dwelling or usual place of business; or by mailing the notice to the taxpayer at his last known address by certified or registered mail.

Q–A10. What must a CDP Notice given under section 6320 include?

A–A10. These notices must include, in simple and nontechnical terms:

(i) The amount of the unpaid tax.

(ii) A statement concerning the taxpayer's right to request a CDP hearing during the 30-day period that commences the day after the end of the five business day period within which the IRS is required to provide the taxpayer with notice of the filing of the NFTL.

(iii) The administrative appeals available to the taxpayer with respect to the NFTL and the procedures relating to such appeals.

(iv) The statutory provisions and the procedures relating to the release of liens on property.

Q–A11. What are the consequences if the taxpayer does not receive or accept a CDP Notice that is properly left at the taxpayer's dwelling or usual place of business, or sent by certified or registered mail to the taxpayer's last known address?

A–A11. A CDP Notice properly sent by certified or registered mail to the taxpayer's last known address or left at the taxpayer's dwelling or usual place of business is sufficient to start the 30-day

period, commencing the day after the end of the five business day notification period, within which the taxpayer may request a CDP hearing. Actual receipt is not a prerequisite to the validity of the CDP Notice.

Q–A12. What if the taxpayer does not receive the CDP Notice because the IRS did not send that notice by certified or registered mail to the taxpayer's last known address, or failed to leave it at the dwelling or usual place of business of the taxpayer, and the taxpayer fails to request a CDP hearing with Appeals within the 30-day period commencing the day after the end of the five business day notification period?

A–A12. A NFTL becomes effective upon filing. The validity and priority of a NFTL is not conditioned on notification to the taxpayer pursuant to section 6320. Therefore, the failure to notify the taxpayer concerning the filing of a NFTL does not affect the validity or priority of the NFTL. When the IRS determines that it failed properly to provide a taxpayer with a CDP Notice, it will promptly provide the taxpayer with a substitute CDP Notice and provide the taxpayer with an opportunity to request a CDP hearing. Substitute CDP Notices are discussed in Q&A–B3 of paragraph (b)(2) and Q&A–C8 of paragraph (c)(2) of this section.

(3) *Examples.* The following examples illustrate the principles of this paragraph (a):

Example 1. H and W are jointly and severally liable with respect to a jointly filed income tax return for 1996. IRS files a NFTL with respect to H and W in County X on January 26, 1999. This is the first NFTL filed on or after January 19, 1999, for their 1996 liability. H and W will each be notified of the filing of the NFTL.

Example 2. Employment taxes for 1997 are assessed against ABC Corporation. A NFTL is filed against ABC Corporation for the 1997 liability in County X on June 5, 1998. A NFTL is filed against ABC Corporation for the 1997 liability in County Y on June 17, 1999. The IRS will notify the ABC Corporation with respect to the filing of the NFTL in County Y.

Example 3. Federal income tax liability for 1997 is assessed against individual D. D buys an asset and puts it in individual E's name. A NFTL is filed against D in County X on June 5, 1999, for D's federal income tax liability for 1997. On June 17, 1999, a NFTL for the same tax liability is filed in County Y against E, as nominee of D. The IRS will notify D of the filing of the NFTL in both County X and County Y. The IRS will not notify E of the NFTL filed in County X. The IRS is not required to notify E of the NFTL filed in County Y. Although E is named on the NFTL filed in County Y, E is not the person described in section 6321 (the taxpayer) who is named on the NFTL.

(b) *Entitlement to a CDP hearing*—(1) *In general.* A taxpayer is entitled to one CDP hearing with respect to the first filing of a NFTL (on or after January 19, 1999) for a given tax period or periods with respect to the unpaid tax shown on the NFTL if the taxpayer timely requests such a hearing. The taxpayer must request such a hearing during the 30-day period that commences the day after the end of the five business day period within which the IRS is required to provide the taxpayer with notice of the filing of the NFTL.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (b) as follows:

Q–B1. Is a taxpayer entitled to a CDP hearing with respect to the filing of a NFTL for a type of tax and tax periods previously subject to a CDP Notice with respect to a NFTL filed in a different location on or after January 19, 1999?

A–B1. No. Although the taxpayer will receive notice of each filing of a NFTL, under section 6320(b)(2), the taxpayer is entitled to only one CDP hearing under section 6320 for the type of tax and tax periods with respect to the first filing of a NFTL that occurs on or after January 19, 1999, with respect to that unpaid tax. Accordingly, if the taxpayer does not timely request a CDP hearing with respect to the first filing of a NFTL on or after January 19, 1999, for a given tax period or periods with respect to an unpaid tax, the taxpayer forgoes the right to a CDP hearing with Appeals and judicial review of the Appeals determination with respect to the NFTL. Under such circumstances, the taxpayer may request an equivalent hearing as described in paragraph (i) of this section.

Q–B2. Is the taxpayer entitled to a CDP hearing when a NFTL for an unpaid tax is filed on or after January 19, 1999, in one recording office and a NFTL was previously filed for the same unpaid tax in another recording office prior to that date?

A–B2. Yes. Under section 6320(b)(2), the taxpayer is entitled to a CDP hearing under section 6320 for each tax period with respect to the first filing of a NFTL on or after January 19, 1999, with respect to an unpaid tax, whether or not a NFTL was filed prior to January 19, 1999, for the same unpaid tax and tax period or periods.

Q–B3. When the IRS provides the taxpayer with a substitute CDP Notice and the taxpayer timely requests a CDP hearing, is the taxpayer entitled to a CDP hearing before Appeals?

A–B3. Yes. Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, the taxpayer is entitled to a CDP hearing before Appeals. Following the hearing, Appeals will issue a Notice of Determination, and the taxpayer is entitled to seek judicial review of that Notice of Determination.

Q–B4. If the IRS sends a second CDP Notice under section 6320 (other than a substitute CDP Notice) for a tax period and with respect to an unpaid tax for which a section 6320 CDP Notice was previously sent, is the taxpayer entitled to a section 6320 CDP hearing based on the second CDP Notice?

A–B4. No. The taxpayer is entitled to a CDP hearing under section 6320 for each tax period only with respect to the first filing of a NFTL on or after January 19, 1999, with respect to an unpaid tax.

Q–B5. Is a nominee of, or a person holding property of, the taxpayer entitled to a CDP hearing or an equivalent hearing?

A–B5. No. Such person is not the person described in section 6321 and is, therefore, not entitled to a CDP hearing or an equivalent hearing (as discussed in paragraph (i) of this section). Such person, however, may seek reconsideration by the IRS office collecting the tax or filing the NFTL, an administrative hearing before Appeals under its Collection Appeals Program, or assistance from the National Taxpayer Advocate. However, any such administrative hearing would not be a CDP hearing under section 6320 and any determination or decision resulting from the hearing would not be subject to judicial review under section 6320. Such person also may avail himself of the administrative procedure included in section 6325(b)(4) or of any other procedures to which he is entitled.

(3) *Examples.* The following examples illustrate the principles of this paragraph (b):

Example 1. H and W are jointly and severally liable with respect to a jointly filed income tax return for 1996. The IRS files a NFTL with respect to H and W in County X on January 26, 1999. This is the first NFTL filed on or after January 19, 1999, for their 1996 liability. H and W are each entitled to a CDP hearing with respect to the NFTL filed in County X. On June 17, 1999, a NFTL for the same tax liability is filed against H and W in County Y. The IRS will give H and W notification of the NFTL filed in County Y. H and W, however, are not entitled to a CDP hearing or an equivalent hearing with respect to the NFTL filed in County Y.

Example 2. Federal income tax liability for 1997 is assessed against individual D. D buys an asset and puts it in individual E's name. A NFTL is filed against E, as nominee of D in County X on June 5, 1999, for D's federal income tax liability for 1997. The IRS will give D a CDP Notice with respect to the NFTL filed in County X. The IRS will not notify E of the NFTL filed in County X. The IRS is not required to notify E of the filing of the NFTL in County X. Although E is named on the

NFTL filed in County X, E is not the person described in section 6321 (the taxpayer) who is named on the NFTL.

(c) *Requesting a CDP hearing*—(1) *In general.* When a taxpayer is entitled to a CDP hearing under section 6320, the CDP hearing must be requested during the 30-day period that commences the day after the end of the five business day period within which the IRS is required to provide the taxpayer with a CDP Notice with respect to the filing of the NFTL.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (c) as follows:

Q–C1. What must a taxpayer do to obtain a CDP hearing?

A–C1. (i) The taxpayer must make a request in writing for a CDP hearing. A written request in any form, which requests a CDP hearing, will be acceptable. The request must include the taxpayer's name, address, and daytime telephone number, and must be signed by the taxpayer or the taxpayer's authorized representative and dated. The CDP Notice should include, when appropriate, a Form 12153 (Request for a Collection Due Process Hearing) that can be used by the taxpayer to request a CDP hearing.

(ii) The Form 12153 requests the following information:

(A) The taxpayer's name, address, daytime telephone number, and taxpayer identification number (SSN or TIN).

(B) The type of tax involved.

(C) The tax period at issue.

(D) A statement that the taxpayer requests a hearing with Appeals concerning the filing of the NFTL.

(E) The reason or reasons why the taxpayer disagrees with the filing of the NFTL.

(iii) Taxpayers are encouraged to use a Form 12153 in requesting a CDP hearing so that the request can be readily identified and forwarded to Appeals. Taxpayers may obtain a copy of Form 12153 by contacting the IRS office that issued the CDP Notice or by calling, toll free, 1–800–829–3676.

(iv) The taxpayer may perfect any timely written request for a CDP hearing which otherwise meets the requirements set forth above and which is made or alleged to have been made on the taxpayer's behalf by the taxpayer's spouse or any other representative by filing, within a reasonable time of a request from Appeals, a signed written affirmation that the request was originally submitted on the taxpayer's behalf.

Q–C2. Must the request for the CDP hearing be in writing?

A–C2. Yes. There are several reasons why the request for a CDP hearing must be in writing. The filing of a timely request for a CDP hearing is the first step in what may result in a court proceeding. A written request will provide proof that the CDP hearing was requested and thus permit the court to verify that it has jurisdiction over any subsequent appeal of the Notice of Determination issued by Appeals. In addition, the receipt of the written request will establish the date on which the periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended as a result of the CDP hearing and any judicial appeal. Moreover, because the IRS anticipates that taxpayers will contact the IRS office that issued the CDP Notice for further information or assistance in filling out Form 12153, or to attempt to resolve their liabilities prior to going through the CDP hearing process, the requirement of a written request should help prevent any misunderstanding as to whether a CDP hearing has been requested. If the information requested on Form 12153 is furnished by the taxpayer, the written request also will help to establish the issues for which the taxpayer seeks a determination by Appeals.

Q–C3. When must a taxpayer request a CDP hearing with respect to a CDP Notice issued under section 6320?

A–C3. A taxpayer must submit a written request for a CDP hearing within the 30-day period that commences the day after the end of the five business day period following the filing of the NFTL. Any request filed during the five business day period (before the beginning of the 30-day period) will be deemed to be filed on the first day of the 30-day period. The period for submitting a written request for a CDP hearing with respect to a CDP Notice issued under section 6320 is slightly different from the period for submitting a written request for a CDP hearing with respect to a CDP Notice issued under section 6330. For a CDP Notice issued under section 6330, the taxpayer must submit a written request for a CDP hearing within the 30-day period commencing the day after the date of the CDP Notice.

Q–C4. How will the timeliness of a taxpayer's written request for a CDP hearing be determined?

A–C4. The rules and regulations under section 7502 and section 7503 will apply to determine the timeliness of the taxpayer's request for a CDP hearing, if properly transmitted and addressed as provided in A–C6 of this paragraph (c)(2).

Q–C5. Is the 30-day period within which a taxpayer must make a request for a CDP hearing extended because the taxpayer resides outside the United States?

A–C5. No. Section 6320 does not make provision for such a circumstance. Accordingly, all taxpayers who want a CDP hearing under section 6320 must request such a hearing within the 30-day period that commences the day after the end of the five business day notification period.

Q–C6. Where should the written request for a CDP hearing be sent?

A–C6. The written request for a CDP hearing must be sent, or hand delivered, to the IRS office that issued the CDP Notice at the address indicated on the CDP Notice. If the address of that office does not appear on the CDP Notice, the request must be sent, or hand delivered, to the compliance area director, or his or her successor, serving the compliance area in which the taxpayer resides or has its principal place of business. If the taxpayer does not have a residence or principal place of business in the United States, the request must be sent, or hand delivered, to the compliance director, Philadelphia Submission Processing Center, or his or her successor. Taxpayers may obtain the address of the appropriate person to which the written request should be sent or hand delivered by calling, toll-free, 1–800–829–1040 and providing their taxpayer identification number (SSN or TIN).

Q–C7. What will happen if the taxpayer does not request a CDP hearing in writing within the 30-day period that commences the day after the end of the five business day notification period?

A–C7. If the taxpayer does not request a CDP hearing in writing within the 30-day period that commences on the day after the end of the five business day notification period, the taxpayer will forego the right to a CDP hearing under section 6320 with respect to the unpaid tax and tax periods shown on the CDP Notice. The taxpayer may, however, request an equivalent hearing. See paragraph (i) of this section.

Q–C8. When must a taxpayer request a CDP hearing with respect to a substitute CDP Notice?

A–C8. A CDP hearing with respect to a substitute CDP Notice must be requested in writing by the taxpayer prior to the end of the 30-day period commencing the day after the date of the substitute CDP Notice.

Q–C9. Can taxpayers attempt to resolve the matter of the NFTL with an officer or employee of the IRS office collecting the tax or filing the NFTL either before or after requesting a CDP hearing?

A–C9. Yes. Taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax or filing the NFTL, either before or after they request a CDP hearing. If such a discussion occurs before a request is made for a CDP hearing, the matter may be resolved without the need for Appeals consideration. However, these discussions do not suspend the running of the 30-day period, commencing the day after the end of the five business day notification period, within which the taxpayer is required to request a CDP hearing, nor do they extend that 30-day period. If discussions occur after the request for a CDP hearing is filed and the taxpayer resolves the matter with the IRS office collecting the tax or filing the NFTL, the taxpayer may withdraw in writing the request that a CDP hearing be conducted by Appeals. The taxpayer can also waive in writing some or all of the requirements regarding the contents of the Notice of Determination.

(3) *Examples.* The following examples illustrate the principles of this paragraph (c):

Example 1. A NFTL for a 1997 income tax liability assessed against individual A is filed in County X on June 17, 1999. The IRS mails a CDP Notice to individual A's last known address on June 18, 1999. Individual A has until July 26, 1999, a Monday, to request a CDP hearing. The five business day period within which the IRS is required to notify individual A of the filing of the NFTL in County X expires on June 24, 1999. The 30-day period within which individual A may request a CDP hearing begins on June 25, 1999. Because the 30-day period expires on July 24, 1999, a Saturday, individual A's written request for a CDP hearing will be considered timely if it is properly transmitted and addressed to the IRS in accordance with section 7502 and the regulations thereunder no later than July 26, 1999.

Example 2. Same facts as in *Example 1,* except that individual A is on vacation, outside the United States, or otherwise does not receive or read the CDP Notice until July 19, 1999. As in *Example 1,* individual A has until July 26, 1999, to request a CDP hearing. If individual A does not request a CDP hearing, individual A may request an equivalent hearing as to the NFTL at a later time. The taxpayer should make a request for an equivalent hearing at the earliest possible time.

Example 3. Same facts as in *Example 2,* except that individual A does not receive or read the CDP Notice until after July 26, 1999, and does not request a hearing by July 26, 1999. Individual A is not entitled to a CDP hearing. Individual A may request an equivalent hearing as to the NFTL at a later time. The taxpayer should make a request for an equivalent hearing at the earliest possible time.

Example 4. Same facts as in *Example 1,* except the IRS determines that the CDP Notice mailed on June 18, 1999, was not mailed to individual A's last known address. As soon as practicable after making this determination, the IRS will mail a substitute CDP Notice to individual A at individual A's last known address, hand deliver the substitute CDP Notice to individual A, or leave the substitute CDP Notice at individual A's dwelling or usual place of business. Individual A will have 30 days commencing on the day after the date of the substitute CDP Notice within which to request a CDP hearing.

(d) *Conduct of CDP hearing*—(1) *In general.* If a taxpayer requests a CDP hearing under section 6320(a)(3)(B) (and does not withdraw that request), the CDP hearing will be held with Appeals. The taxpayer is entitled under section 6320 to a CDP hearing for the unpaid tax and tax periods set forth in a NFTL only with respect to the first filing of a NFTL on or after January 19, 1999. To the extent practicable, the CDP hearing requested under section 6320 will be held in conjunction with any CDP hearing the taxpayer requests under section 6330. A CDP hearing will be conducted by an employee or officer of Appeals who, prior to the first CDP hearing under section 6320 or section 6330, has had no involvement with respect to the unpaid tax for the tax periods to be covered by the hearing, unless the taxpayer waives this requirement.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (d) as follows:

Q–D1. Under what circumstances can a taxpayer receive more than one CDP hearing under section 6320 with respect to a tax period?

A–D1. The taxpayer may receive more than one CDP hearing under section 6320 with respect to a tax period where the tax involved is a different type of tax (for example, an employment tax liability, where the original CDP hearing for the tax period involved an income tax liability), or where the same type of tax for the same period is involved, but where the amount of the unpaid tax has changed as a result of an additional assessment of tax (not including interest or penalties) for that period or an additional accuracy-related or filing-delinquency penalty has been assessed. The taxpayer is not entitled to another CDP hearing under section 6320 if the additional assessment represents accruals of interest, accruals of penalties, or both.

Q–D2. Will a CDP hearing with respect to one tax period be combined with a CDP hearing with respect to another tax period?

A–D2. To the extent practicable, a CDP hearing with respect to one tax period shown on the NFTL will be combined with any and all other CDP hearings which the taxpayer has requested.

Q–D3. Will a CDP hearing under section 6320 be combined with a CDP hearing under section 6330?

A–D3. To the extent practicable, a CDP hearing under section 6320 will be held in conjunction with a CDP hearing under section 6330.

Q–D4. What is considered to be prior involvement by an employee or officer of Appeals with respect to the unpaid tax and tax period involved in the hearing?

A–D4. Prior involvement by an employee or officer of Appeals includes participation or involvement in an Appeals hearing (other than a CDP hearing held under either section 6320 or section 6330) that the taxpayer may have had with respect to the unpaid tax and tax periods shown on the NFTL.

Q–D5. How can a taxpayer waive the requirement that the officer or employee of Appeals have no prior involvement with respect to the tax and tax periods involved in the CDP hearing?

A–D5. The taxpayer must sign a written waiver.

Q–D6. How are CDP hearings conducted?

A–D6. The formal hearing procedures required under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, do not apply to CDP hearings. CDP hearings are much like Collection Appeal Program (CAP) hearings in that they are informal in nature and do not require the Appeals officer or employee and the taxpayer, or the taxpayer's representative, to hold a face-to-face meeting. A CDP hearing may, but is not required to, consist of a face-to-face meeting, one or more written or oral communications between an Appeals officer or employee and the taxpayer or the taxpayer's representative, or some combination thereof. A transcript or recording of any face-to-face meeting or conversation between an Appeals officer or employee and the taxpayer or the taxpayer's representative is not required. The taxpayer or the taxpayer's representative does not have the right to subpoena and examine witnesses at a CDP hearing.

Q–D7. If a taxpayer wants a face-to-face CDP hearing, where will it be held?

A–D7. The taxpayer must be offered an opportunity for a hearing at the Appeals office closest to taxpayer's

residence or, in the case of business taxpayers, the taxpayer's principal place of business. If that is not satisfactory to the taxpayer, the taxpayer will be given an opportunity for a hearing by correspondence or by telephone. If that is not satisfactory to the taxpayer, the Appeals officer or employee will review the taxpayer's request for a CDP hearing, the case file, any other written communications from the taxpayer (including written communications, if any, submitted in connection with the CDP hearing), and any notes of any oral communications with the taxpayer or the taxpayer's representative. Under such circumstances, review of those documents will constitute the CDP hearing for the purposes of section 6320(b).

(e) *Matters considered at CDP hearing*—(1) *In general.* Appeals has the authority to determine the validity, sufficiency, and timeliness of any CDP Notice given by the IRS and of any request for a CDP hearing that is made by a taxpayer. Prior to the issuance of a determination, the hearing officer is required to obtain verification from the IRS office collecting the tax or filing the NFTL that the requirements of any applicable law or administrative procedure have been met. The taxpayer may raise any relevant issue relating to the unpaid tax at the hearing, including appropriate spousal defenses, challenges to the appropriateness of the NFTL filing, and offers of collection alternatives. The taxpayer also may raise challenges to the existence or amount of the tax liability specified on the CDP Notice for any tax period shown on the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for that tax liability or did not otherwise have an opportunity to dispute that tax liability. Finally, the taxpayer may not raise an issue that was raised and considered at a previous CDP hearing under section 6330 or in any other previous administrative or judicial proceeding if the taxpayer participated meaningfully in such hearing or proceeding. Taxpayers will be expected to provide all relevant information requested by Appeals, including financial statements, for its consideration of the facts and issues involved in the hearing.

(2) *Spousal defenses.* A taxpayer may raise any appropriate spousal defenses at a CDP hearing unless the Commissioner has already made a final determination as to spousal defenses in a statutory notice of deficiency or final determination letter. To claim a spousal defense under section 66 or section 6015, the taxpayer must do so in writing according to rules prescribed by the Commissioner or the Secretary. Spousal defenses raised under sections 66 and 6015 in a CDP hearing are governed in all respects by the provisions of sections 66 and section 6015 and the regulations and procedures thereunder.

(3) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (e) as follows:

Q–E1. What factors will Appeals consider in making its determination?

A–E1. Appeals will consider the following matters in making its determination:

(i) Whether the IRS met the requirements of any applicable law or administrative procedure.

(ii) Any issues appropriately raised by the taxpayer relating to the unpaid tax.

(iii) Any appropriate spousal defenses raised by the taxpayer.

(iv) Any challenges made by the taxpayer to the appropriateness of the NFTL filing.

(v) Any offers by the taxpayer for collection alternatives.

(vi) Whether the continued existence of the filed NFTL represents a balance between the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.

Q–E2. When is a taxpayer entitled to challenge the existence or amount of the tax liability specified in the CDP Notice?

A–E2. A taxpayer is entitled to challenge the existence or amount of the tax liability specified in the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for such liability or did not otherwise have an opportunity to dispute such liability. Receipt of a statutory notice of deficiency for this purpose means receipt in time to petition the Tax Court for a redetermination of the deficiency asserted in the notice of deficiency. An opportunity to dispute a liability includes a prior opportunity for a conference with Appeals that was offered either before or after the assessment of the liability.

Q–E3. Are spousal defenses subject to the limitations imposed under section 6330(c)(2)(B) on a taxpayer's right to challenge the tax liability specified in the CDP Notice at a CDP hearing?

A–E3. The limitations imposed under section 6330(c)(2)(B) do not apply to spousal defenses. When a taxpayer asserts a spousal defense, the taxpayer is not disputing the amount or existence of the liability itself, but asserting a defense to the liability which may or may not be disputed. A spousal defense raised under section 66 or section 6015 is governed by section 66 or section 6015 and the regulations and procedures thereunder. Any limitation under those sections, regulations, and procedures therefore will apply.

Q–E4. May a taxpayer raise at a CDP hearing a spousal defense under section 66 or section 6015 if that defense was raised and considered administratively and the Commissioner has issued a statutory notice of deficiency or final determination letter addressing the spousal defense?

A–E4. No. A taxpayer is precluded from raising a spousal defense at a CDP hearing when the Commissioner has made a final determination under section 66 or section 6015 in a final determination letter or statutory notice of deficiency. However, a taxpayer may raise spousal defenses in a CDP hearing when the taxpayer has previously raised spousal defenses, but the Commissioner has not yet made a final determination regarding this issue.

Q–E5. May a taxpayer raise at a CDP hearing a spousal defense under section 66 or section 6015 if that defense was raised and considered in a prior judicial proceeding that has become final?

A–E5. No. A taxpayer is precluded by the doctrine of res judicata and by the specific limitations under section 66 or section 6015 from raising a spousal defense in a CDP hearing under these circumstances.

Q–E6. What collection alternatives are available to the taxpayer?

A–E6. Collection alternatives would include, for example, a proposal to withdraw the NFTL in circumstances that will facilitate the collection of the tax liability, an installment agreement, an offer-in-compromise, the posting of a bond, or the substitution of other assets.

Q–E7. What issues may a taxpayer raise in a CDP hearing under section 6320 if the taxpayer previously received a notice under section 6330 with respect to the same tax and tax period and did not request a CDP hearing with respect to that notice?

A–E7. The taxpayer may raise appropriate spousal defenses, challenges to the appropriateness of the NFTL filing, and offers of collection alternatives. The existence or amount of the tax liability for the tax and tax period specified in the CDP Notice may be challenged only if the taxpayer did not already have an opportunity to dispute that tax liability. Where the taxpayer previously received a CDP Notice under section 6330 with respect to the same tax and tax period and did not request a CDP hearing with respect to that earlier CDP Notice, the taxpayer already had an opportunity to dispute the existence or amount of the underlying tax liability.

Q–E8. How will Appeals issue its determination?

A–E8. (i) Taxpayers will be sent a dated Notice of Determination by certified or registered mail. The Notice of Determination will set forth Appeals' findings and decisions. It will state whether the IRS met the requirements of any applicable law or administrative procedure; it will resolve any issues appropriately raised by the taxpayer relating to the unpaid tax; it will include a decision on any appropriate spousal defenses raised by the taxpayer; it will include a decision on any challenges made by the taxpayer to the appropriateness of the NFTL filing; it will respond to any offers by the taxpayer for collection alternatives; and it will address whether the continued existence of the filed NFTL represents a balance between the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary. The Notice of Determination will also set forth any agreements that Appeals reached with the taxpayer, any relief given the taxpayer, and any actions the taxpayer or the IRS are required to take. Lastly, the Notice of Determination will advise the taxpayer of the taxpayer's right to seek judicial review within 30 days of the date of the Notice of Determination.

(ii) Because taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax or filing the NFTL, certain matters that might have been raised at a CDP hearing may be resolved without the need for Appeals consideration. Unless, as a result of these discussions, the taxpayer agrees in writing to withdraw the request that Appeals conduct a CDP hearing, Appeals will still issue a Notice of Determination. The taxpayer can, however, waive in writing Appeals' consideration of some or all of the matters it would otherwise consider in making its determination.

Q–E9. Is there a period of time within which Appeals must conduct a CDP hearing or issue a Notice of Determination?

A–E9. No. Appeals will, however, attempt to conduct a CDP hearing and issue a Notice of Determination as expeditiously as possible under the circumstances.

Q–E10. Why is the Notice of Determination and its date important?

A–E10. The Notice of Determination will set forth Appeals' findings and decisions with respect to the matters set forth in A–E1 of this paragraph (e)(3). The 30-day period within which the taxpayer is permitted to seek judicial review of Appeals' determination commences the day after the date of the Notice of Determination.

Q–E11. If an Appeals officer considers the merits of a taxpayer's liability in a CDP hearing when the taxpayer had previously received a statutory notice of deficiency or otherwise had an opportunity to dispute the liability prior to the NFTL, will the Appeals officer's determination regarding those liability issues be considered part of the Notice of Determination?

A–E11. No. An Appeals officer may consider the existence and amount of the underlying tax liability as a part of the CDP hearing only if the taxpayer did not receive a statutory notice of deficiency for the tax liability in question or otherwise have a prior opportunity to dispute the tax liability. Similarly, an Appeals officer may not consider any other issue if the issue was raised and considered at a previous hearing under section 6330 or in any other previous administrative or judicial proceeding in which the person seeking to raise the issue meaningfully participated. In the Appeals officer's sole discretion, however, the Appeals officer may consider the existence or amount of the underlying tax liability, or such other precluded issues, at the same time as the CDP hearing. Any determination, however, made by the Appeals officer with respect to such a precluded issue shall not be treated as part of the Notice of Determination issued by the Appeals officer and will not be subject to any judicial review. Because any decisions made by the Appeals officer with respect to such precluded issues are not properly a part of the CDP hearing, such decisions are not required to appear in the Notice of Determination issued following the hearing. Even if a decision concerning such precluded issues is referred to in the Notice of Determination, it is not reviewable by a district court or the Tax Court because the precluded issue is not properly part of the CDP hearing.

(4) *Examples.* The following examples illustrate the principles of this paragraph (e):

Example 1. The IRS sends a statutory notice of deficiency to the taxpayer at his last known address asserting a deficiency for the tax year 1995. The taxpayer receives the notice of deficiency in time to petition the Tax Court for a redetermination of the asserted deficiency. The taxpayer does not timely file a petition with the Tax Court. The taxpayer is precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

Example 2. Same facts as in *Example 1,* except the taxpayer does not receive the notice of deficiency in time to petition the Tax Court and did not have another prior opportunity to dispute the tax liability. The taxpayer is not precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

Example 3. The IRS properly assesses a trust fund recovery penalty against the taxpayer. The IRS offers the taxpayer the opportunity for a conference with Appeals at which the taxpayer would have the opportunity to dispute the assessed liability. The taxpayer declines the opportunity to participate in such a conference. The taxpayer is precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

(f) *Judicial review of Notice of Determination*—(1) *In general.* Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, Appeals is required to issue a Notice of Determination in all cases where a taxpayer has timely requested a CDP hearing. The taxpayer may appeal such determinations made by Appeals within the 30-day period commencing the day after the date of the Notice of Determination to the Tax Court or a district court of the United States, as appropriate.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (f) as follows:

Q–F1. What must a taxpayer do to obtain judicial review of a Notice of Determination?

A–F1. Subject to the jurisdictional limitations described in A–F2, the taxpayer must, within the 30-day period commencing the day after the date of the Notice of Determination, appeal the determination by Appeals to the Tax Court or to a district court of the United States.

Q–F2. With respect to the relief available to the taxpayer under section 6015, what is the time frame within which a taxpayer may seek Tax Court review of Appeals' determination following a CDP hearing?

A–F2. If the taxpayer seeks Tax Court review not only of Appeals' denial of relief under section 6015, but also of relief requested with respect to other issues raised in the CDP hearing, the taxpayer should request Tax Court review within the 30-day period commencing the day after the date of the Notice of Determination. If the taxpayer only seeks Tax Court review of Appeals' denial of relief under section 6015, then the taxpayer should request Tax Court review, as provided by section 6015(e), within 90 days of Appeals' determination. If a request for Tax Court review is filed after the 30-day period for seeking judicial review under section 6320, then only the taxpayer's section 6015 claims may be reviewable by the Tax Court.

Q–F3. Where should a taxpayer direct a request for judicial review of a Notice of Determination?

A–F3. If the Tax Court would have jurisdiction over the type of tax specified in the CDP Notice (for example, income and estate taxes), then the taxpayer must seek judicial review by the Tax Court. If the tax liability arises from a type of tax over which the Tax Court would not have jurisdiction, then the taxpayer must seek judicial review by a district court of the United States in accordance with Title 28 of the United States Code.

Q–F4. What happens if the taxpayer timely appeals Appeals' determination to the incorrect court?

A–F4. If the court to which the taxpayer directed a timely appeal of the Notice of Determination determines that the appeal was to the incorrect court (because of jurisdictional, venue or other reasons), the taxpayer will have 30 days after the court's determination to that effect within which to file an appeal to the correct court.

Q–F5. What issue or issues may the taxpayer raise before the Tax Court or before a district court if the taxpayer disagrees with the Notice of Determination?

A–F5. In seeking Tax Court or district court review of Appeals' Notice of Determination, the taxpayer can only request that the court consider an issue that was raised in the taxpayer's CDP hearing.

(g) *Effect of request for CDP hearing and judicial review on periods of limitation and collection activity*—(1) *In general.* The periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended until the date the IRS receives the taxpayer's written withdrawal of the request for a CDP hearing by Appeals or the determination resulting from the CDP hearing becomes final by expiration of the time for seeking judicial review or the exhaustion of any rights to appeals following judicial review. In no event shall any of these periods of limitation expire before the 90th day after the date on which the IRS receives the taxpayer's written withdrawal of the request that Appeals conduct a CDP hearing or the determination with respect to such hearing becomes final upon either the expiration of the time for seeking judicial review or upon exhaustion of any rights to appeals following judicial review.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (g) as follows:

Q–G1. For what period of time will the periods of limitation under sections 6502, 6531, and 6532 remain suspended if the taxpayer timely requests a CDP hearing concerning the filing of a NFTL?

A–G1. The suspension period commences on the date the IRS receives the taxpayer's written request for a CDP hearing. The suspension period continues until the IRS receives a written withdrawal by the taxpayer of the request for a CDP hearing or the Notice of Determination resulting from the CDP hearing becomes final. In no event shall any of these periods of limitation expire before the 90th day after the day on which the IRS receives the taxpayer's written withdrawal of the request that Appeals conduct a CDP hearing or there is a final determination with respect to such hearing. The periods of limitation that are suspended under section 6320 are those which apply to the taxes and the tax period or periods to which the CDP Notice relates.

Q–G2. For what period of time will the periods of limitation under sections 6502, 6531, and 6532 be suspended if the taxpayer does not request a CDP hearing concerning the filing of a NFTL, or the taxpayer requests a CDP hearing, but his request is not timely?

A–G2. Under either of these circumstances, section 6320 does not provide for a suspension of the periods of limitation.

Q–G3. What, if any, enforcement actions can the IRS take during the suspension period?

A–G3. Section 6330(e), made applicable to section 6320 CDP hearings by section 6320(c), provides for the suspension of the periods of limitation discussed in paragraph (g)(1) of these regulations. Section 6330(e) also provides that levy actions that are the subject of the requested CDP hearing under that section shall be suspended during the same period. Levy actions, however, are not the subject of a CDP hearing under section 6320. The IRS may levy for tax periods and taxes covered by the CDP Notice under section 6320 and for other taxes and periods if the CDP requirements under section 6330 for those taxes and periods have been satisfied. The IRS also may file NFTLs for tax periods or taxes not covered by the CDP Notice, may file a NFTL for the same tax and tax period stated on the CDP Notice at another recording office, and may take other non-levy collection actions such as initiating judicial proceedings to collect the tax shown on the CDP Notice or offsetting overpayments from other periods, or of other taxes, against the tax shown on the CDP Notice. Moreover, the provisions in section 6330 do not apply when the IRS levies for the tax and tax period shown on the CDP Notice to collect a state tax refund due the taxpayer, or determines that collection of the tax is in jeopardy. Finally, section 6330 does not prohibit the IRS from accepting any voluntary payments made for the tax and tax period stated on the CDP Notice.

(3) *Examples.* The following examples illustrate the principles of this paragraph (g):

Example 1. The period of limitation under section 6502 with respect to the taxpayer's tax period listed in the NFTL will expire on August 1, 1999. The IRS sent a CDP Notice to the taxpayer on April 30, 1999. The taxpayer timely requested a CDP hearing. The IRS received this request on May 15, 1999. Appeals sends the taxpayer its determination on June 15, 1999. The taxpayer timely seeks judicial review of that determination. The period of limitation under section 6502 would be suspended from May 15, 1999, until the determination resulting from that hearing becomes final by expiration of the time for seeking review or reconsideration before the appropriate court, plus 90 days.

Example 2. Same facts as in *Example 1,* except the taxpayer does not seek judicial review of Appeals' determination. Because the taxpayer requested the CDP hearing when fewer than 90 days remained on the period of limitation, the period of limitation will be extended to October 13, 1999 (90 days from July 15, 1999).

(h) *Retained jurisdiction of Appeals*—(1) *In general.* The Appeals office that makes a determination under section 6320 retains jurisdiction over that determination, including any subsequent administrative hearings that may be requested by the taxpayer regarding the NFTL and any collection actions taken or proposed with respect to Appeals' determination. Once a taxpayer has exhausted his other remedies, Appeals' retained jurisdiction permits it to consider whether a change in the taxpayer's circumstances affects its original determination. Where a taxpayer alleges a change in circumstances that affects Appeals' original determination, Appeals may consider whether changed circumstances warrant a change in its earlier determination.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (h) as follows:

Q–H1. Are the periods of limitation suspended during the course of any subsequent Appeals consideration of the matters raised by a taxpayer when the taxpayer invokes the retained jurisdiction of Appeals under section 6330(d)(2)(A) or (d)(2)(B)?

A–H1. No. Under section 6320(b)(2), a taxpayer is entitled to only one CDP hearing under section 6320 with respect to the tax and tax period or periods specified in the CDP Notice. Any subsequent consideration by Appeals pursuant to its retained jurisdiction is not a continuation of the original CDP hearing and does not suspend the periods of limitation.

Q–H2. Is a decision of Appeals resulting from a retained jurisdiction hearing appealable to the Tax Court or a district court?

A–H2. No. As discussed in A–H1, a taxpayer is entitled to only one CDP hearing under section 6320 with respect to the tax and tax period or periods specified in the CDP Notice. Only determinations resulting from CDP hearings are appealable to the Tax Court or a district court.

(i) *Equivalent hearing*—(1) *In general.* A taxpayer who fails to make a timely request for a CDP hearing is not entitled to a CDP hearing. Such a taxpayer may nevertheless request an administrative hearing with Appeals, which is referred to herein as an ''equivalent hearing.'' The equivalent hearing will be held by Appeals and generally will follow Appeals' procedures for a CDP hearing. Appeals will not, however, issue a Notice of Determination. Under such circumstances, Appeals will issue a Decision Letter.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (i) as follows:

Q–I1. What issues will Appeals consider at an equivalent hearing?

A–I1. In an equivalent hearing, Appeals will consider the same issues that it would have considered at a CDP hearing on the same matter.

Q–I2. Are the periods of limitation under sections 6502, 6531, and 6532 suspended if the taxpayer does not timely request a CDP hearing and is subsequently given an equivalent hearing?

A–I2. No. The suspension period provided for in section 6330(e) relates only to hearings requested within the 30-day period that commences on the day after the end of the five business day period following the filing of the NFTL, that is, CDP hearings.

Q–I3. Will collection action, including the filing of additional NFTLs, be suspended if a taxpayer requests and receives an equivalent hearing?

A–I3. Collection action is not required to be suspended. Accordingly, the decision to take collection action during the pendency of an equivalent hearing will be determined on a case-by-case basis. Appeals may request the IRS office with responsibility for collecting the taxes to suspend all or some collection action or to take other appropriate action if it determines that such action is appropriate or necessary under the circumstances.

Q–I4. What will the Decision Letter state?

A–I4. The Decision Letter will generally contain the same information as a Notice of Determination.

Q–I5. Will a taxpayer be able to obtain court review of a decision made by Appeals with respect to an equivalent hearing?

A–I5. Section 6320 does not authorize a taxpayer to appeal the decision of Appeals with respect to an equivalent hearing. A taxpayer may under certain circumstances be able to seek Tax Court review of Appeals' denial of relief under section 6015. Such review must be sought within 90 days of the issuance of Appeals' determination on those issues, as provided by section 6015(e).

(j) *Effective date.* This section is applicable with respect to any filing of a NFTL on or after January 19, 1999.

§ 301.6320–1T [Removed]

Par. 3. Section 301.6320–1T is removed.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Mark A. Weinberger,

Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the District of Columbia Code

AGENCY: United States Parole Commission, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The U.S. Parole Commission is amending its rules of procedure that govern the revocation process for District of Columbia parolees who are arrested and held in the District of Columbia on warrants charging them with violations of parole. The amended rules implement a decision of the U.S. District Court for the District of Columbia, in *Long* v. *Gaines*, Civ. Action No. 01–0010 (EGS), dated November 21, 2001, which obliges the Commission to promulgate amendments to its regulations so as to conform them to the requirements of constitutional due process as interpreted by the Court. The amended rules impose new deadlines for making determinations of probable cause (five days from arrest), for holding the final revocation hearing (sixty-five days from arrest), and for issuing final decisions as to revocation (eighty-six days after arrest). The amended rules also include other procedures designed to comply with the court's order.

DATES: This interim rule will take effect on February 19, 2002. Comments must be received by March 19, 2002.

ADDRESSES: Send comments to Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: In *Long* v. *Gaines*, 167 F. Supp. 2d 75 (D.D.C. 2001), the U.S. District Court for the District of Columbia held that the Parole Commission's rules governing the revocation process for District of Columbia parolees are unconstitutional with respect to the applicable time deadlines for making determinations of probable cause and completing the revocation process. Under the Commission's current rules, a parolee who is arrested on a warrant charging a violation of parole is entitled to a prompt preliminary interview, normally conducted by a parole officer other than the officer who supervised the parolee. The Commission must make a determination of probable cause ''as expeditiously as possible'' if the interviewing officer recommends a finding of ''no probable cause,'' and within 21 days of the interview if the interviewing officer recommends that probable cause be found. A local revocation hearing must be held within 60 days of the probable cause determination if the parolee denies violating parole and has not been convicted of a new crime. Thereafter, the Commission must issue a final decision within 21 days of the revocation hearing, excluding weekends and holidays. See 28 CFR 2.101 through 2.105 (2001). Because the Commission customarily holds preliminary interviews within three to five days of arrest, these rules provide for an outside limit of 86 days from arrest for the

revocation hearing to be held, and 107 days from arrest for the final decision to be issued. (Parolees who are convicted of new crimes are only entitled to revocation hearings within 90 days of arrest; the rules governing such offenders are not changed by these amendments.)

However, in *Long* v. *Gaines* the court has held that the due process clause of the U.S. Constitution requires that the Commission make determinations of probable cause no later than five days from arrest, that revocation hearings be held not later than 65 days from arrest, and that final decisions be issued no later than 86 days from arrest. Except in the case of parolees convicted of new crimes, the Commission has now been enjoined to operate within these deadlines. The court also held that the Commission must ensure that: (1) The parolee is given notice of the time and purpose of the probable cause hearing and the charged violations; (2) prior to the revocation hearing, the parolee is provided with disclosure of the evidence to be relied upon by the Commission in determining whether parole was violated and, if so, whether to revoke parole; and (3) the ultimate decisionmaker is informed of all the parolee's arguments and evidence prior to rendering a final decision.

The amended rules implement these requirements. Although not all of the court's requirements necessitate departures from the Commission's current practice, the amended rules significantly differ from the Commission's current practice by adopting the court's new deadlines, and by requiring that Commission hearing examiners conduct probable cause hearings in the District of Columbia within five days of the parolee's arrest. The Commission has delegated to these examiners the authority to make a probable cause decision at the conclusion of each hearing. The examiner will also have the authority to order the release of the parolee if no probable cause is found, and to set a date for the revocation hearing if probable cause is found.

Implementation

The Commission's regulations at 28 CFR 2.98 through 2.105, as amended by this publication, will be followed by the Commission in the case of all District of Columbia Code parolees who are arrested and held in the District of Columbia on warrants charging a violation or violations of parole, until the taking effect of final rules promulgated by the Commission. However, these interim amendments will also retain the status of proposed rules for the purposes of the public comment requirement of 5 U.S.C. 553 (b). The Commission will withhold promulgation of final rules until completion of the comment and objection process accorded to the plaintiffs in *Long* v. *Gaines*. These regulations do not supersede or replace any representation made by the defendants in the Compliance Plan approved by the district court on November 21, 2001.

Regulatory Assessment Requirements

The U.S. Parole Commission has determined that these interim regulations do not constitute a significant rule within the meaning of Executive Order 12866. The amended rules will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b), and are deemed by the Commission to be rules of agency practice that do not substantially affect the rights or obligations of non-agency parties pursuant to Section 804(3)(C) of the Congressional Review Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Amended Rules

Accordingly, the U.S. Parole Commission is adopting the following amendments to 28 CFR Part 2.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Section 2.98 is amended as follows:

a. Amend paragraph (a)(1) by removing ''preliminary interview'' and adding in its place ''probable cause hearing''.

b. Revise paragraph (f) to read as follows:

§ 2.98 Summons to appear or warrant for retaking of parolee.

* * * * *

(f) A summons or warrant issued pursuant to this section shall be accompanied by a warrant application (or other notice) stating:

(1) The charges against the parolee;

(2) The specific reports and other documents upon which the Commission intends to rely in determining whether a violation occurred and whether to revoke parole;

(3) Notice of the Commission's intent, if the parolee is arrested within the District of Columbia, to hold a probable cause hearing within five days of the parolee's arrest;

(4) A statement of the purpose of the probable cause hearing;

(5) The days of the week on which the Commission regularly holds its dockets of probable cause hearings at the Central Detention Facility;

(6) The parolee's procedural rights in the revocation process; and

(7) The possible actions that the Commission may take.

* * * * *

3. Section 2.99 is amended as follows:

a. Revise paragraph (b) to read as set forth below.

b. Amend paragraph (e) by removing ''preliminary interview'' and adding in its place ''probable cause hearing''.

§ 2.99 Execution of warrant and service of summons.

* * * * *

(b) Upon the arrest of the parolee, the officer executing the warrant shall deliver to the parolee a copy of the warrant application (or other notice provided by the Commission) containing the information described in § 2.98 (f).

* * * * *

4. Section 2.101 is revised to read as follows:

§ 2.101 Probable cause hearing and determination.

(a) Hearing. A parolee who is retaken and held in custody in the District of Columbia on a warrant issued by the Commission (or by the Board of Parole of the District of Columbia), and who has not been convicted of a new crime, shall, no later than five days from the date of such retaking, be given a probable cause hearing by an examiner of the Commission. The purpose of the probable cause hearing is to determine whether there is probable cause to believe that the parolee has violated parole as charged, and if so, whether a local or institutional revocation hearing should be conducted.

(b) Notice and opportunity to postpone hearing. Prior to the commencement of each docket of probable cause hearings, a list of the parolees who are scheduled for probable cause hearings, together with a copy of the warrant application for each parolee, shall be sent to the DC Public Defender Service. At or before the probable cause hearing, the parolee (or the parolee's attorney) may submit a written request that the hearing be postponed for any period up to thirty days, and the Commission shall ordinarily grant such requests. Prior to the commencement of

the probable cause hearing, the examiner shall advise the parolee that the parolee may accept representation by the attorney from the DC Public Defender Service who is assigned to that docket, waive the assistance of an attorney at the probable cause hearing, or have the probable cause hearing postponed in order to obtain another attorney and/or witnesses on his behalf. In addition, the parolee may request the Commission to require the attendance of adverse witnesses (i.e., witnesses who have given information upon which revocation may be based) at a postponed probable cause hearing. Such adverse witnesses may be required to attend either a postponed probable cause hearing, or a combined postponed probable cause and local revocation hearing, provided the parolee meets the requirements of § 2.102(a) for a local revocation hearing. The parolee shall also be given notice of the time and place of any postponed probable cause hearing.

(c) Review of the charges. At the beginning of the probable cause hearing, the examiner shall ascertain that the notice required by § 2.99 (b) has been given to the parolee. The examiner shall then review the violation charges with the parolee and shall apprise the parolee of the evidence that has been submitted in support of the charges. The examiner shall ascertain whether the parolee admits or denies each charge listed on the warrant application (or other notice of charges), and shall offer the parolee an opportunity to rebut or explain the allegations contained in the evidence giving rise to each charge. The examiner shall also receive the statements of any witnesses and documentary evidence that may be presented by the parolee. At a postponed probable cause hearing, the examiner shall also permit the parolee to confront and cross-examine any adverse witnesses in attendance, unless good cause is found for not allowing confrontation. Whenever a probable cause hearing is postponed to secure the appearance of adverse witnesses, the Commission will ordinarily order a combined probable cause and local revocation hearing as provided in paragraph (i) of this section.

(d) Probable cause determination. At the conclusion of the probable cause hearing, the examiner shall determine whether probable cause exists to believe that the parolee has violated parole as charged, and shall so inform the parolee. The examiner shall then take either of the following actions:

(1) If the examiner determines that no probable cause exists for any violation charge, the examiner shall order that the parolee be released from the custody of the warrant and either reinstated to parole, or discharged from supervision if the parolee's sentence has expired.

(2) If the hearing examiner determines that probable cause exists on any violation charge, and the parolee has requested (and is eligible for) a local revocation hearing in the District of Columbia as provided by § 2.102 (a), the examiner shall schedule a local revocation hearing for a date that is within 65 days of the parolee's arrest. After the probable cause hearing, the parolee (or the parolee's attorney) may submit a written request for a postponement. Such postponements will normally be granted if the request is received no later than fifteen days before the date of the revocation hearing. A request for a postponement that is received by the Commission less than fifteen days before the scheduled date of the revocation hearing will be granted only for a compelling reason. The parolee (or the parolee's attorney) may also request, in writing, a hearing date that is earlier than the date scheduled by the examiner, and the Commission will accommodate such request if practicable.

(e) Institutional revocation hearing. If the parolee is not eligible for a local revocation hearing as provided by § 2.102 (a), or has requested to be transferred to an institution for his revocation hearing, the Commission will request the Bureau of Prisons to designate the parolee to an appropriate institution, and an institutional revocation hearing shall be scheduled for a date that is within ninety days of the parolee's retaking.

(f) Digest of the probable cause hearing. At the conclusion of the probable cause hearing, the examiner shall prepare a digest summarizing the evidence presented at the hearing, the responses of the parolee, and the examiner's findings as to probable cause.

(g) Release notwithstanding probable cause. Notwithstanding a finding of probable cause, the Commission may order the parolee's reinstatement to supervision or release pending further proceedings, if it determines that:

(1) Continuation of revocation proceedings is not warranted despite the finding of probable cause; or

(2) Incarceration pending further revocation proceedings is not warranted by the frequency or seriousness of the alleged violation(s), and the parolee is neither likely to fail to appear for further proceedings, nor is a danger to himself or others.

(h) Conviction as probable cause. Conviction of any crime committed subsequent to release by a parolee shall constitute probable cause for the purposes of this section, and no probable cause hearing shall be conducted unless a hearing is needed to consider additional violation charges that may be determinative of the Commission's decision whether to revoke parole.

(i) Combined probable cause and local revocation hearing. A postponed probable cause hearing may be conducted as a combined probable cause and local revocation hearing, provided such hearing is conducted within 65 days of the parolee's arrest and the parolee has been notified that the postponed probable cause hearing will constitute his final revocation hearing. The Commission's policy is to conduct a combined probable cause and local revocation hearing whenever adverse witnesses are required to appear and give testimony with respect to contested charges.

(j) Late received charges. If the Commission is notified of an additional charge after probable cause has been found to proceed with a revocation hearing, the Commission may:

(1) Remand the case for a supplemental probable cause hearing if the new charge may be contested by the parolee and possibly result in the appearance of witness(es) at the revocation hearing;

(2) Notify the parolee that the additional charge will be considered at the revocation hearing without conducting a supplemental probable cause hearing; or

(3) Determine that the new charge shall not be considered at the revocation hearing.

5. Section 2.102 (f) is revised to read as follows:

§ 2.102 Place of revocation hearing.

* * * * *

(f) A local revocation hearing shall be held not later than sixty-five days from the retaking of the parolee on the parole violation warrant. An institutional revocation hearing shall be held within ninety days of the retaking of the parolee on the parole violation warrant. If the parolee requests and receives any postponement, or consents to any postponement, or by his actions otherwise precludes the prompt completion of revocation proceedings in his case, the above-stated time limits shall be correspondingly extended.

6. Section 2.103 is amended by revising paragraph (d) and adding paragraphs (f) and (g) to read as follows:

§ 2.103 Revocation hearing procedure.

* * * * *

(d) All evidence upon which a finding of violation may be based shall be disclosed to the alleged violator before the revocation hearing. Such evidence shall include the Community Supervision Officer's letter summarizing the parolee's adjustment to parole and requesting the warrant, all other documents describing the charged violation or violations of parole, and any additional evidence upon which the Commission intends to rely in determining whether the charged violation or violations, if sustained, would warrant revocation of parole. If the parolee is represented by an attorney, the attorney shall be provided, prior to the revocation hearing, with a copy of the parolee's presentence investigation report, if such report is available to the Commission. If disclosure of any information would reveal the identity of a confidential informant or result in harm to any person, that information may be withheld from disclosure, in which case a summary of the withheld information shall be disclosed to the parolee prior to the revocation hearing.

* * * * *

(f) At a local revocation hearing, the Commission shall secure the presence of the parolee's Community Supervision Officer, or a substitute Community Supervision Officer, who shall bring the parolee's supervision file, if the parolee's Community Supervision Officer is not available. At the request of the hearing examiner, such officer shall provide testimony at the hearing concerning the parolee's adjustment to parole.

(g) After the revocation hearing, the hearing examiner shall prepare a summary of the hearing that includes a description of the evidence against the parolee and the evidence submitted by the parolee in defense or mitigation of the charges, a summary of the arguments against revocation presented by the parolee, and the examiner's recommended decision. The hearing examiner's summary, together with the parolee's file (including any documentary evidence and letters submitted on behalf of the parolee), shall be given to another examiner for review. When two hearing examiners concur in a recommended disposition, that recommendation, together with the parolee's file and the hearing examiner's summary of the hearing, shall be submitted to the Commission for decision.

* * * * *

7. Section 2.104 (a)(1) is amended by removing ''preliminary interview'' and adding in its place ''probable cause hearing''.

8. Section 2.105 (c) is revised to read as follows:

§ 2.105 Revocation decisions.

* * * * *

(c) Decisions under this section shall be made upon the concurrence of two Commissioner votes, except that a decision to override an examiner panel recommendation shall require the concurrence of three Commissioner votes. The final decision following a local revocation hearing shall be issued within 86 days of the retaking of the parolee on the parole violation warrant. The final decision following an institutional revocation hearing shall be issued within 21 days of the hearing, excluding weekends and holidays.

* * * * *

Dated: January 10, 2002.

Edward F. Reilly, Jr.,

Chairman, Parole Commission.

[FR Doc. 02–1308 Filed 1–17–01; 8:45 am]

BILLING CODE 4410–31–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 160

[USCG–2001–10689]

RIN 2115–AG24

Temporary Requirements for Notification of Arrival in U.S. Ports

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments; correction.

SUMMARY: This document corrects the temporary final rule with request for comments published in the **Federal Register** on October 4, 2001. That rule temporarily changed notification requirements for vessels bound for or departing from U.S. ports. The rule temporarily lengthened the usual notification period from 24 to 96 hours prior to port entry, required submission of reports to a central national clearinghouse, suspended exemptions for vessels operating in compliance with the Automated Mutual Assistance Vessel Rescue System, for some vessels operating on the Great Lakes, and required submission of information about persons onboard these vessels.

DATES: The temporary final rule published in the **Federal Register** (66 FR 50565) was effective on October 4, 2001 to June 15, 2002. These corrections to that rule are effective on January 18, 2002.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call LTJG Marcus A. Lines, Coast Guard, at telephone 202–267–6854. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at telephone 202–366–5149.

SUPPLEMENTARY INFORMATION

Need for Correction

As published, the temporary final rule contains an error that inadvertently delays an existing effective date of a reporting requirement for certain vessels to include International Safety Management (ISM) Code (Chapter IX of SOLAS) Notice information in the notice of arrival report.

Correction

In the temporary final rule FR Doc. 01–24984, beginning on page 50565 in the issue of October 4, 2001, make the following corrections:

§ 160.T208 [Amended]

1. In § 160.T208 in paragraph (f)(2) on page 50573, in the first column, remove the date ''July 1, 2002,'' and add in its place the date ''January 1, 2002,''.

Dated: January 11, 2002.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 02–1370 Filed 1–17–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles—Long Beach 01–011]

RIN 2115–AA97

Security Zones; Port of Los Angeles and Catalina Island

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a moving and fixed security zone 100 yards around all cruise ships that enter, are moored in, or depart from the Port of Los Angeles, and while anchored at Catalina Island. These security zones are needed for national security reasons to protect the public and ports from potential subversive acts. Entry into these zones is prohibited, unless specifically authorized by the Capitan of the Port Los Angeles—Long Beach, or his designated representative.

DATES: The regulation is effective from 11:59 p.m. PST on November 1, 2001 to 11:59 p.m. PDT on May 1, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket COTP Los Angeles—Long Beach 01–011 and are available for inspection or copying at Coast Guard Marine Safety Office Los Angeles—Long Beach, 1001 South Seaside Avenue, Building 20, San Pedro, California, 90731, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Rob Griffiths, Waterways Management, at (310) 732–2020.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM, which would incorporate a comment period before a final rule was issued, would be contrary to the public interest since immediate action is needed to protect the public, ports, and waterways of the United States. For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard will issue a broadcast notice to mariners advising of these new regulations.

Background and Purpose

Based on the September 11, 2001, terrorist attacks on the World Trade Center in New York and the Pentagon in Arlington, Virginia, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Port of Los Angeles or Catalina Island, against cruise ships entering, departing, or moored within the port of Los Angeles and against cruise ships anchored at Catalina Island. The terrorist acts against the United States on September 11, 2001, have increased the need for safety and security measures on U.S. ports and waterways.

In response to these terrorist acts, and in order to prevent similar occurrences, the Coast Guard has established a security zone around cruise ships to protect persons, transiting vessels, adjacent waterfront facilities, and the adjacent land of the Port of Los Angeles and Catalina Island. These security zones are necessary to prevent damage or injury to any vessel or waterfront facility, and to safeguard ports, harbors, or waters of the United States near Los Angeles and Catalina Island, California.

These security zones are established pursuant to the authority of The Magnuson Act regulations promulgated by the President under 50 U.S.C. 191, including Subparts 6.01 and 6.04 of Part 6 of Title 33 of the Code of Federal Regulations. Vessels or person violating this section are subject to the penalties set forth in 50 U.S.C. 192: Seizure and forfeiture of the vessel, a monetary penalty of not more than $10,000, and imprisonment for not more than 10 years.

This regulation will be enforced by the Captain of the Port Los Angeles—Long Beach, who may also enlist the aid and cooperation of any Federal, State, county, municipal, and private agencies to assist in the enforcement of this regulation. Initially, Coast Guard and local police department patrol vessels will be on scene to monitor traffic through these areas.

This security zone prohibits all vessels and people from approaching cruise ships that are underway or moored near Los Angeles, California, and while anchored at Catalina Island. Specifically, no vessel or person may close to within 100 yards of a cruise ship that is entering, moored, or departing the Port of Los Angeles, or while anchored at Catalina Island.

A security zone is automatically activated when a cruise ship passes the Los Angeles sea buoy while entering port and remains in effect while the vessel is moored within in the Port of Los Angeles, California. Additionally, a security zone is automatically activated when a cruise ship is anchored at Catalina Island. When activated, these security zones will encompass a portion of the waterway described as a 100-yard radius around a cruise ship in the Port of Los Angeles, and at Catalina Island. These security zones are automatically deactivated when the cruise ship passes the Los Angeles sea buoy on its departure from port, or weighs anchor from Catalina Island. Vessels and people may be allowed to enter an established security zone on a case-by-case basis with authorization from the Captain of the Port.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979) because these zones will encompass a small portion of the waterway for limited periods of time.

Small Entities

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

For the same reasons stated in the section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or

impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that it is categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add a new temporary § 165.T11–058 to read as follows:

§ 165.T11–058 Security Zones; Port of Los Angeles and Catalina Island.

(a) *Regulated area.* Temporary moving security zones are established 100 yards around all cruise ships while entering or departing the Port of Los Angeles. These moving security zones are activated when the cruise ship passes the Los Angeles sea buoy while entering the Port of Los Angeles. Temporary fixed security zones are established 100 yards around all cruise ships docked in the Port of Los Angeles, California, and while anchored at Catalina Island. These security zones are deactivated when the cruise ship passes the sea buoy on its departure from the Port of Los Angeles or weighs anchor at Catalina Island.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33, the following rules apply to security zones established by this section:

(i) No person or vessel may enter or remain in a security zone without the permission of the Captain of the Port;

(ii) Each person and vessel in a security zone shall obey any direction or order of the Captain of the Port;

(iii) The Captain of the Port may take possession and control of any vessel in a security zone;

(iv) The Captain of the Port may remove any person, vessel, article, or thing from a security zone;

(v) No person may board, or take or place any article or thing on board, any vessel in a security zone without the permission of the Captain of the Port; and

(vi) No person may take or place any article or thing upon any waterfront facility in a security zone without the permission of the Captain of the Port.

(2) The Captain of the Port will notify the public via broadcast and published notice to mariners.

(3) Nothing in this section shall be construed as relieving the owner or person in charge of any vessel from complying with the rules of the road and safe navigation practice.

(4) The regulations of this section will be enforced by the Captain of the Port Los Angeles-Long Beach, or his authorized representative, and the Los Angeles Port Police.

(c) *Effective dates.* This section becomes effective at 11:59 p.m. PST on November 1, 2001, and will terminate at 11:59 p.m. PDT on May 1, 2002.

Dated: November 1, 2001.

J. M. Holmes,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach.

[FR Doc. 02–1369 Filed 1–17–02; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 053–REC; FRL–7122–8]

Corrections to the California State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the deletion of various local rules from the California State Implementation Plan (SIP) that were incorporated into the SIP in error. These primarily include rules concerning local fees, enforcement authorities, New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP). EPA has determined that the continued presence of these rules in the SIP is potentially confusing and thus harmful to affected sources, local agencies and to EPA. The intended effect of this final action is to delete these rules and make the SIP consistent with the Clean Air Act as amended in 1990 (CAA or the Act). This

action also reinserts a paragraph into the compilation of federal regulations that was deleted in error in the **Federal Register** on November 10, 1982 and redesignates another paragraph published in the **Federal Register** on June 23, 1982.

EFFECTIVE DATE: This rule is effective on February 19, 2002.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office, 75 Hawthorne Street, San Francisco, CA 94105, during normal business hours. You may also see copies of the rules at the locations listed in **SUPPLEMENTARY INFORMATION** under ''Public Inspection.''

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947–4126. Email: rose.julie@EPA.gov

SUPPLEMENTARY INFORMATION:

Public Inspection

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Amador County Air Pollution Control District, 500 Argonaut Lane, Jackson, CA 95642.

Antelope Valley Air Pollution Control District, 43301 Division Street, Suite 206, Lancaster, CA 93539–4409.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

Butte County Air Quality Management District, 2525 Dominic Drive, Suite J, Chico, CA 95928–7184.

Calaveras County Air Pollution Control District, 891 Mountain Ranch Road, San Andreas, CA 95249–9709.

Colusa County Air Pollution Control District, 100 Sunrise Blvd. Suite F, Colusa, CA 95932–3246.

El Dorado County Air Pollution Control District, 2850 Fairlane Court, Building C, Placerville, CA 95667–4100.

Feather River Air Quality Management District, 938–14th Street, Marysville, CA 95901–4149.

Glenn County Air Pollution Control District, 720 North Colusa Street, Willows, CA 95988–0351.

Great Basin Unified Air Pollution Control District, 157 Short Street, Suite 6, Bishop, CA 93514.

Imperial County Air Pollution Control District, 150 South Ninth Street, El Centro, CA 92243–2801.

Kern County (Southeast Desert) Air Pollution Control District, 2700 M. Street, Suite 302, Bakersfield, CA 93301–2370.

Lake County Air Quality Management District, 883 Lakeport Blvd., Lakeport, CA 95453–5405.

Lassen County Air Pollution Control District, 175 Russell Avenue, Susanville, CA 96130–4215.

Mariposa County Air Pollution Control District, 5110 Bullion Street, Mariposa, CA 95338.

Mendocino County Air Quality Management District, 306 E. Gobbi Street, Ukiah, CA 95482.

Modoc County Air Pollution Control District, 202 W. Fourth Street, Alturas, CA 96101.

Mojave Desert Air Quality Management District, 14306 Park Avenue, Victorville, CA 92392–2310.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Ct., Monterey, CA 93940–6536.

North Coast Unified Air Quality Management District, 2300 Myrtle Avenue, Eureka, CA 95501–3327.

Northern Sierra Air Quality Management District, 200 Litton Drive, Suite 320, Grass Valley, CA 95945–2509.

Northern Sonoma County Air Pollution Control District, 150 Matheson Street, Healdsburg, CA 95448–4908.

Placer County Air Pollution Control District, 11464 B Avenue, Auburn, CA 95603.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg, Fresno, CA 93726.

San Luis Obispo County Air Pollution Control District, 3433 Roberto Court, San Luis Obispo, CA 93401–7126.

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, B–23, Goleta, CA 93117.

Shasta County Air Quality Management District, 1855 Placer Street, Suite 101, Redding, CA 96001–1759.

Siskiyou County Air Pollution Control District, 525 South Foothill Drive, Yreka, CA 96097–3036.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765.

Tehama County Air Pollution Control District, 1750 Walnut Street, Red Bluff, CA 96080.

Tuolumne County Air Pollution Control District, 22365 Airport, Columbia, CA 95310.

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003.

Yolo-Solano Air Quality Management District, 1947 Galileo Court, Suite 103, Davis, CA 95616.

Throughout this document wherever ''we,'' ''us,'' or ''our'' are used, we mean EPA.

Table of Contents

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II. Public comments and EPA responses.
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I. Proposed Action

On September 13, 2001 (66 FR 47603), EPA proposed to delete various rules from the California SIP, after determining that they had been approved into the SIP in error. Most of these rules fall into one of the following categories:

A. Various local fee provisions that are not economic incentive programs and are not designed to replace or relax a SIP emission limit. While it is appropriate for local agencies to implement fee provisions, for example, to recover costs for issuing permits, it is generally not appropriate to make local fee collection federally enforceable.

B. Various provisions describing local agency investigative or enforcement authority such as some rules titled enforcement, authority to inspect, authority to arrest, violation notices, and orders for abatement. States may need to adopt such rules to demonstrate adequate enforcement authority under section 110(a)(2) of the Act, but they should not be approved into the applicable SIP to avoid potential conflict with EPA's independent authorities provided in sections 113, 114, and elsewhere.

C. Local adoption of federal NSPS requirements either by reference or by adopting text identical or modified from the requirements found in 40 CFR Part 60. Since EPA has independent authority to implement 40 CFR Part 60, it is not appropriate to make parallel local authorities federally enforceable by approving them into the applicable SIP.

D. Local adoption of NESHAP requirements found in 40 CFR 61 as similarly discussed regarding NSPS.

A complete listing of each rule being deleted can be found in the proposed rule cited above.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received two public comment letters: a letter dated October 9, 2001 from Lawrence D. Odle, air pollution control officer of Butte County Air Quality Management District (BCAQMD), and a letter dated September 24, 2001 from Robert L. Reynolds, air pollution control officer of Lake County Air Quality Management District (LCAQMD). The commenter from BCAQMD expresses support for

the proposed action. The commenter from LCAQMD requests that LCAQMD rules proposed for deletion from the California SIP be retained on the grounds that administration of LCAQMD's air pollution control program relies on these rules, which relate to investigative and enforcement authorities, penalties, and fees.

EPA agrees that these rules are important for local administration of LCAQMD's program. However, removal of these rules from the SIP does not affect the authority LCAQMD has under State law to implement its program or enforce its rules. As explained above, provisions describing local agency investigative or enforcement authorities should not be approved into the SIP to avoid potential conflict with EPA's independent authorities provided in sections 113, 114, and elsewhere in the Act. Also, fee provisions that are not economic incentive programs and are not designed to replace or relax a SIP emission limit should not be approved into the SIP since doing so provides the basis for federal enforcement, i.e., by EPA or a citizen, which is inappropriate for local fee collection provisions. While, for the reasons stated, these types of provisions should not be approved into the SIP, some were erroneously approved into the California SIP, and the purpose of this action is to remove them.

The commenter also requests that certain LCAQMD rules be updated in the SIP to reflect the most recent version of these rules. EPA cannot take action on revisions to these rules because they have not been submitted as official revisions to the California SIP by the California Air Resources Board, but more importantly, for the reasons discussed above, these rules, whether or not they are the most recent versions, are not the types of rules that are appropriate for approval into a SIP.

III. EPA Action

No comments were submitted that change our assessment that the rules listed in the proposed rule are appropriate for deletion from the SIP. Therefore, as authorized in section 110(k)(6) of the Act, EPA is deleting all these rules from the California SIP.

In this action, EPA is also reinserting a paragraph listing EPA-approved rules of the California SIP that were inadvertently deleted from Title 40 of the Code of Federal Regulations, part 52, § 52.220 in other actions. On November 10, 1982, at 47 FR 50864, EPA published a final rulemaking action approving changes to rules of sixteen air pollution districts submitted by the California Air Resources Board as revisions to the California SIP. This action inadvertently deleted paragraph (B) from 40 CFR 52.220(c)(89)(iii). The rules listed in paragraph (B) of 52.220(c)(89)(iii) had previously been incorporated into the California SIP on April 12, 1982, at 47 FR 15585, and were not among the rules that were the subject of the action taken by EPA on November 10, 1982. This action corrects this inadvertent deletion by reinserting paragraph (B) to 40 CFR 52.220(c)(89)(iii).

Section 553 of the Administrative Procedure Act, 5 U.S.C 553(b)(B), provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making (the portion of) today's rule (that relates to technical corrections to the CFR) final without prior proposal and opportunity for comment because EPA is correcting inadvertent deletions of rules duly approved into a state implementation plan. The affected regulations were codified at 40 CFR part 52, subpart F, § 52.220(c)(89)(iii)(B) prior to their inadvertent deletion, and were previously subject to notice and comment prior to EPA approval. Thus, notice and public procedures are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

EPA is also correcting the letter designation of a paragraph in Title 40 of the Code of Federal Regulations, part 52, section 52.220. On June 23, 1982, at 47 FR 27068, EPA added a second paragraph (B) to 40 CFR 52.220 (c)(51)(xiv). However, a paragraph (B) citing different local rules had already been added to 40 CFR 52.220 (c)(51)(xiv) on May 27, 1982, at 47 FR 23159. Today's action redesignates the material in the second paragraph (B) published on June 23, 1982 to paragraph (C). For the same reasons as provided above for the inadvertent deletion of SIP rules, EPA has determined that there is good cause for making this technical correction to the CFR final without prior proposal and opportunity for comment.

Lastly, our proposed rule published on September 13, 2001 indicated that EPA was proposing to delete Fresno County Air Pollution Control District (APCD) rule 111 (Arrests and Notice to Appear) from the California SIP. The State of California submitted a number of local rules, including Fresno County APCD rule 111, to EPA on June 4, 1986 for incorporation into the California SIP. On April 10, 1989, at 54 FR 14224, EPA approved Fresno County APCD rule 111 into the California SIP through a direct final rulemaking. This approval was subsequently withdrawn on June 23, 1989, at 54 FR 26373, in response to receipt of adverse comment on our direct final approval. On June 22, 1989, at 54 FR 262211, in anticipation of our withdrawal notice of June 23, 1989, we proposed to approve Fresno County APCD rule 111 into the California SIP, but the approval was never finalized. Therefore, Fresno County APCD rule 111 is not in the California SIP and is no longer a part of this action.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 32111, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In this action, EPA is not developing or adopting a technical standard. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 19, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: December 12, 2001.

Sally Seymour,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended:

a. By adding paragraphs: (b)(1)(ii), (b)(2)(ii), (b)(4)(ii), (b)(6) through (b)(11), (c)(6)(ii)(B), (c)(6)(iii)(B), (c)(6)(iv)(B), (c)(6)(v)(B), (c)(6)(vi)(B), (c)(6)(vii)(B), (c)(6)(x)(B), (c)(6)(xi)(B), (c)(6)(xii)(B), (c)(6)(xiii)(B), (c)(6)(xiv)(B), (c)(6)(xvi)(B), (c)(6)(xvii)(B), (c)(6)(xix)(B), (c)(6)(xx) to (c)(6)(xxii), (c)(21)(ix)(D), (c)(21)(xviii)(B), (c)(24)(vi)(D), (c)(25)(vii)(B), (c)(26)(ii)(D), (c)(26)(iv)(D) and (E), (c)(26)(xvii)(D), (c)(27)(vii)(D), (c)(27)(viii)(D), (c)(28)(viii)(B), (c)(29)(vi)(C), (c)(30)(v)(B), (c)(30)(vi)(B), (c)(31)(i)(G), (c)(31)(iii)(B), (c)(31)(vi)(E), (c)(31)(xviii)(F), (c)(32)(ii)(C), (c)(32)(iii)(F), (c)(35)(iii)(D), (c)(35)(v)(C), (c)(35)(xii)(H), (c)(35)(xiii)(D), (c)(35)(xv)(F), (c)(37)(iv)(E), (c)(37)(v)(D), (c)(39)(iii)(G), (c)(39)(iv)(G), (c)(39)(vii)(D), (c)(39)(x)(D), (c)(41)(ix)(D), (c)(41)(x)(D) through (G), (c)(42)(i)(F), (c)(42)(iii)(D), (c)(42)(viii)(B), (c)(42)(x)(C), (c)(42)(xiv)(D), (c)(44)(iv)(D), (c)(51)(xi)(B), (c)(51)(xiii)(C), (c)(51)(xiv)(D), (c)(51)(xviii)(B), (c)(51)(xx)(C), (c)(52)(ii)(C), (c)(52)(iv)(F), (c)(52)(xi)(C), (c)(52)(xv)(D), (c)(52)(xvi)(C), (c)(54)(vi)(B), (c)(70)(iv)(B), (c)(85)(vi)(C), (c)(85)(vii)(B), (c)(85)(x)(B), (c)(89)(iii)(B) and (C), (c)(92)(iv)(B), (c)(93)(iii)(C), (c)(93)(iv)(D), (c)(96)(iii)(C), (c)(98)(i)(E), (c)(101)(ii)(G), (c)(103)(xi)(B), (c)(103)(xiii)(C), (c)(103)(xiv)(C), (c)(103)(xvii)(C), (c)(119)(i)(D), (c)(124)(ii)(B), (c)(125)(iv)(C), (c)(125)(v)(C), (c)(126)(ii)(B), (c)(127)(v)(C), (c)(127)(vii)(F) and (G), (c)(137)(i)(C), (c)(137)(ii)(E), (c)(138)(i)(C), (c)(138)(ii)(E), (c)(138)(iii)(B), (c)(138)(iv)(B), (c)(138)(v)(E), (c)(140)(i)(D), (c)(140)(iii)(C), (c)(148)(ii)(C), (c)(153)(ii)(D), (c)(154)(i)(D), (c)(155)(v)(C), (c)(156)(ii)(B), (c)(158)(i)(C), (c)(159)(iii)(D), (c)(164)(i)(A)(*2*), (c)(164)(i)(B)(*3*), (c)(168)(i)(A)(*5*), (c)(168)(i)(C)(*3*), (c)(173)(i)(B)(*2*), (c)(173)(i)(D)(*2*), (c)(177)(i)(D)(*3*), (c)(179)(i)(B)(*2*), (c)(179)(i)(E)(*4*), (c)(246)(i)(A)(*3*); and

b. By redesignating the second paragraph (c)(51)(xiv)(B) as (c)(51)(xiv)(C).

The additions read as follows:

§ 52.220 Identification of plan.

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(b) * * *

(1) * * *

(ii) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Part X, Paragraph 3.

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(2) * * *

(ii) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Rules 40 and 42.

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(4) * * *

(ii) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Regulation 3, Rules 40, 42, 43, and 44.

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(6) Lassen County APCD.

(i) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Rules 1.4, 3.2, 3.3 (Schedules 1–6), 3.4, and 3.5.

(7) Nevada County APCD.

(i) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Rule 41.

(8) Orange County APCD.

(i) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Rule 120.

(9) Sierra County APCD.

(i) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Rules 46 and 50.

(10) Siskiyou County APCD.

(i) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Rules 3.1, 3.2, and 3.3.

(11) Yolo-Solano AQMD.

(i) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Rules 1.7 and 2.18.

(c) * * *

(6) * * *

(ii) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rule 109.

(iii) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rules 1.4, 2.13, 6.11 and 6.12.

(iv) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rules 104, 105, 107, 109, 303, and 304.

(v) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rules 151 and 153.

(vi) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of

this section and now deleted without replacement, Rules 107, 109, 303, and 304.

(vii) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rule 109.

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(x) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rules 107, 301 (Paragraphs c to g, i, and j), 303, and 304.

(xi) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rule 1.4.

(xii) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rules 107 and 109.

(xiii) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rule 107.

(xiv) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rules 107 and 109.

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(xvi) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rules 42 and 100.

(xvii) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rules 43, 44, and Rule 120.

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(xix) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rules 43 and 44 (Mojave Desert AQMD only).

(xx) Mariposa County APCD.

(A) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rule 17.

(xxi) Plumas County APCD.

(A) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rules 3, 4, and 40.

(xxii) Sutter County APCD.

(A) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rule 2.20.

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(21) * * *

(ix) * * *

(D) Previously approved on August 22, 1977 in paragraph (c)(21)(ix)(A) of this section and now deleted without replacement, Rule 107.

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(xviii) * * *

(B) Previously approved on September 8, 1978 in paragraph (c)(21)(xviii)(A) of this section and now deleted without replacement, Rule 45.

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(24) * * *

(vi) * * *

(D) Previously approved on August 22, 1977 in paragraph (c)(24)(vi)(A) of this section and now deleted without replacement, Rule 3.7.

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(25) * * *

(vii) * * *

(B) Previously approved on October 27, 1977 in paragraph (c)(25)(vii)(A) of this section and now deleted without replacement, Rules 302 and 303.

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(26) * * *

(ii) * * *

(D) Previously approved on May 11, 1977 in paragraph (c)(26)(ii)(B) of this section and now deleted without replacement, Regulation 7.

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(iv) * * *

(D) Previously approved on May 11, 1977 in paragraph (c)(26)(iv)(A) of this section and now deleted without replacement, Rule 155.

(E) Previously approved on August 22, 1977 in paragraph (c)(26)(iv)(A) of this section and now deleted without replacement, Rule 3.1.

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(xvii) * * *

(D) Previously approved on June 14, 1978 in paragraph (c)(26)(xvii)(A) of this section and now deleted without replacement, Rule 105.

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(27) * * *

(vii) * * *

(D) Previously approved on June 14, 1978 in paragraph (c)(27)(vii)(A) of this section and now deleted without replacement, Rules 105, 601, and 602.

(viii) * * *

(D) Previously approved on June 14, 1978 in paragraph (c)(27)(viii)(A) of this section and now deleted without replacement, Rules 323, 601, and 602.

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(28) * * *

(viii) * * *

(B) Previously approved on August 22, 1977 in paragraph (c)(28)(viii)(A) of this section and now deleted without replacement, Rules 422 and 423.

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(29) * * *

(vi) * * *

(C) Previously approved on August 15, 1977 in paragraph (c)(29)(vi)(A) of this section and now deleted without replacement, Rule 72 (72–72.8).

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(30) * * *

(v) * * *

(B) Previously approved on August 22, 1977 in paragraph (c)(30)(v)(A) of this section and now deleted without replacement, Rules 422 and 423.

(vi) * * *

(B) Previously approved on August 22, 1977 in paragraph (c)(30)(vi)(A) of this section and now deleted without replacement, Rules 422 and 423.

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(31) * * *

(i) * * *

(G) Previously approved on June 6, 1977 in paragraph (c)(31)(i)(B) of this section and now deleted without replacement, Rules 105, 302, and 303.

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(iii) * * *

(B) Previously approved on May 11, 1977 in paragraph (c)(31)(iii)(A) of this section and now deleted without replacement, Rule 5.

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(vi) * * *

(E) Previously approved on June 14, 1978 in paragraph (c)(31)(vi)(B) of this section and now deleted without replacement, Rule 105.

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(xviii) * * *

(F) Previously approved on June 14, 1978 in paragraph (c)(31)(xvii)(B) of this section and now deleted without replacement, Rule 105.

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(32) * * *

(ii) * * *

(C) Previously approved on August 22, 1977 in paragraph (c)(32)(ii)(A) of this section and now deleted without replacement, Rules 104, 105, 112, 422, and 423.

(iii) * * *

(F) Previously approved on June 14, 1978 in paragraph (c)(32)(iii)(C) of this section and now deleted without replacement, Rule 302.

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(35) * * *

(iii) * * *

(D) Previously approved on August 15, 1977 in paragraph (c)(35)(iii)(B) of this section and now deleted without

replacement, Rules 72 (72.9–72.10) and 73.

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(v) * * *

(C) Previously approved on October 4, 1977 in paragraph (c)(35)(v)(A) of this section and now deleted without replacement, Rules 104, 105, and 112.

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(xii) * * *

(H) Previously approved on August 4, 1978 in paragraph (c)(35)(xii)(A) of this section and now deleted without replacement, Rules 110 and 111.

(xiii) * * *

(D) Previously approved on March 22, 1978 in paragraph (c)(35)(xiii)(A) of this section and now deleted without replacement, Rule 104.

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(xv) * * *

(F) Previously approved on November 7, 1978 in paragraph (c)(35)(xv)(C) of this section and now deleted without replacement, Rules 340.

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(37) * * *

(iv) * * *

(E) Previously approved on August 4, 1978 in paragraph (c)(37)(iv)(B) of this section and now deleted without replacement, Rules 531, 901, and 1500.

(v) * * *

(D) Previously approved on December 6, 1979 in paragraph (c)(37)(v)(B) of this section and now deleted without replacement, Rules 216, 323, and 324.

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(39) * * *

(iii) * * *

(G) Previously approved on September 8, 1978 in paragraph (c)(39)(iii)(C) of this section and now deleted without replacement, Rules 42 and 105.

(iv) * * *

(G) Previously approved on September 8, 1978 in paragraph (c)(39)(iv)(C) of this section and now deleted without replacement, Rules 42 and 301.

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(vii) * * *

(D) Previously approved on August 16, 1978 in paragraph (c)(39)(vii)(A) of this section and now deleted without replacement, Rules 216 and 402.

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(x) * * *

(D) Previously approved on September 14, 1978 in paragraph (c)(39)(x)(A) of this section and now deleted without replacement, Rule 402.

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(41) * * *

(ix) * * *

(D) Previously approved on November 7, 1978 in paragraph (c)(41)(ix)(A) of this section and now deleted without replacement, Rules 216, 324, 402, 602, 603, and 604.

(x) * * *

(D) Previously approved on November 15, 1978 in paragraph (c)(41)(x)(A) of this section and now deleted without replacement, Rule 402.

(E) Previously approved on November 15, 1978 in paragraph (c)(41)(x)(A) of this section and now deleted without replacement, Rules 801 to 804 (Lake Tahoe Air Basin).

(F) Previously approved on November 15, 1978 in paragraph (c)(41)(x)(A) of this section and now deleted without replacement, Rules 801, 802, 803 (paragraphs B and C), and 804 (Mountain Counties Air Basin).

(G) Previously approved on November 15, 1978 in paragraph (c)(41)(x)(A) of this section and now deleted without replacement, Rules 603, 604, 605, and 801 to 804 (Sacramento Valley Air Basin).

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(42) * * *

(i) * * *

(F) Previously approved on August 11, 1978 in paragraph (c)(42)(i)(A) of this section and now deleted without replacement, Rules 104, 106, and 303.

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(iii) * * *

(D) Previously approved on August 4, 1978 in paragraph (c)(42)(iii)(A) of this section and now deleted without replacement, Rules 104 and 110.

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(viii) * * *

(B) Previously approved on September 14, 1978 in paragraph (c)(42)(viii)(A) of this section and now deleted without replacement, Rules 152 and 154.

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(x) * * *

(C) Previously approved on November 6, 1978 in paragraph (c)(42)(x)(A) of this section and now deleted without replacement, Rules 216, 324, and 402.

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(xiv) * * *

(D) Previously approved on December 21, 1978 in paragraph (c)(42)(xiv)(A) of this section and now deleted without replacement, Rule 105 (Mojave Desert AQMD only).

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(44) * * *

(iv) * * *

(D) Previously approved on January 29, 1979 in paragraph (c)(44)(iv)(A) of this section and now deleted without replacement, Rule 1.4.

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(51) * * *

(xi) * * *

(B) Previously approved on January 27, 1981 in paragraph (c)(51)(xi)(A) of this section and now deleted without replacement, Rule 660.

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(xiii) * * *

(C) Previously approved on May 18, 1981 in paragraph (c)(51)(xiii)(A) of this section and now deleted without replacement, Rule 402.

(xiv) * * *

(D) Previously approved on May 18, 1981 in paragraph (c)(51)(xiv)(A) of this section and now deleted without replacement, Rules 801 to 804.

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(xviii) * * *

(B) Previously approved on January 25, 1982 in paragraph (c)(51)(xviii)(A) of this section and now deleted without replacement, Rule 618.

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(xx) * * *

(C) Previously approved on June 18, 1982 in paragraph (c)(51)(xx)(A) of this section and now deleted without replacement, Rule 9.

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(52) * * *

(ii) * * *

(C) Previously approved on January 27, 1981 in paragraph (c)(52)(ii)(B) of this section and now deleted without replacement, Rules 304 and 706.

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(iv) * * *

(F) Previously approved on December 9, 1981 in paragraph (c)(52)(iv)(B) of this section and now deleted without replacement, Rule 301.

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(xi) * * *

(C) Previously approved on May 18, 1981 in paragraph (c)(52)(xi)(A) of this section and now deleted without replacement, Rules 103, 402, and 601 to 604.

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(xv) * * *

(D) Previously approved on December 9, 1981 in paragraph (c)(52)(xv)(B) of this section and now deleted without replacement, Rule 302.

(xvi) * * *

(C) Previously approved on January 26, 1982 in paragraph (c)(52)(xvi)(A) of this section and now deleted without replacement, Rules 7.0, 7.1, and 8.1.

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(54) * * *

(vi) * * *

(B) Previously approved on January 26, 1982 in paragraph (c)(54)(vi)(A) of this section and now deleted without replacement, Rule 1.4.

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(70) * * *

(iv) * * *

(B) Previously approved on May 27, 1982 in paragraph (c)(70)(iv)(A) of this section and now deleted without replacement, Rules 601 to 613.

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(85) * * *

(vi) * * *

(C) Previously approved on April 12, 1982 in paragraph (c)(85)(vi)(A) of this section and now deleted without replacement, Rules 1.3 and 2.9.

(vii) * * *

(B) Previously approved on June 18, 1982 in paragraph (c)(85)(vii)(A) of this section and now deleted without replacement, Rule 210.

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(x) * * *

(B) Previously approved on July 6, 1982 in paragraph (c)(85)(x)(A) of this section and now deleted without replacement, Rule 110.

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(89) * * *

(iii) * * *

(B) New or amended rules 1.3, 3.0–3.7, 3.9, 3.10, 3.13, 4.0–4.5, 4.7 to 4.10, 4.12, 5.4, 6.0, 8.0, 8.2, 9.0–9.5, 9.7, and 9.8.

(C) Previously approved on April 12, 1982 in paragraph (c)(89)(iii)(B) of this section and now deleted without replacement, Rules 8.0, 8.2 and 9.0 to 9.4.

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(92) * * *

(iv) * * *

(B) Previously approved on April 13, 1982 in paragraph (c)(92)(iv)(A) of this section and now deleted without replacement, Rule 300.

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(93) * * *

(iii) * * *

(C) Previously approved on June 18, 1982 in paragraph (c)(93)(iii)(B) of this section and now deleted without replacement, Rule 509.

(iv) * * *

(D) Previously approved on June 18, 1982 in paragraph (c)(93)(iv)(B) of this section and now deleted without replacement, Rule 509.

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(96) * * *

(iii) * * *

(C) Previously approved on January 26, 1982 in paragraph (c)(96)(iii)(A) of this section and now deleted without replacement, Rule 3.

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(98) * * *

(i) * * *

(E) Previously approved on April 12, 1982 in paragraph (c)(98)(i)(B) of this section and now deleted without replacement, Rules 8.0 to 8.2 and 9.0 and 9.4.

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(101) * * *

(ii) * * *

(G) Previously approved on July 6, 1982 in paragraph (c)(101)(ii)(B) of this section and now deleted without replacement, Rules 301 and 302 (including Southeast Desert).

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(103) * * *

(xi) * * *

(B) Previously approved on April 13, 1982 in paragraph (c)(103)(xi)(A) of this section and now deleted without replacement, Rule 301.

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(xiii) * * *

(C) Previously approved on May 27, 1982 in paragraph (c)(103)(xiii)(A) of this section and now deleted without replacement, Rules 318 and 319.

(xiv) * * *

(C) Previously approved on May 27, 1982 in paragraph (c)(103)(xiv)(A) of this section and now deleted without replacement, Rules 301, 302, 306, and 307.

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(xvii) * * *

(C) Previously approved on May 27, 1982 in paragraph (c)(103)(xvii)(A) of this section and now deleted without replacement, Rule 509.

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(119) * * *

(i) * * *

(D) Previously approved on May 27, 1982 in paragraph (c)(119)(i)(A) of this section and now deleted without replacement, Rule 509.

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(124) * * *

(ii) * * *

(B) Previously approved on November 10, 1982 in paragraph (c)(124)(ii)(A) of this section and now deleted without replacement, Rules 660.1, 660.2, and 660.3.

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(125) * * *

(iv) * * *

(C) Previously approved on November 10, 1982 in paragraph (c)(125)(iv)(A) of this section and now deleted without replacement, Rule 2:11.

(v) * * *

(C) Previously approved on November 10, 1982 in paragraph (c)(125)(v)(A) of this section and now deleted without replacement, Rule 104.

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(126) * * *

(ii) * * *

(B) Previously approved on June 1, 1983 in paragraph (c)(126)(ii)(A) of this section and now deleted without replacement, Rule 210D.

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(127) * * *

(v) * * *

(C) Previously approved on August 9, 1985 in paragraph (c)(127)(v)(B) of this section and now deleted without replacement, Rule 301.

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(vii) * * *

(F) Previously approved on November 18, 1983 in paragraph (c)(127)(vii)(A) of this section and now deleted without replacement for implementation in the Antelope Valley Air Pollution Control District and the South Coast Air Quality Management District, Rule 302.

(G) Previously approved on October 19, 1984 in paragraph (c)(127)(vii)(C) of this section and now deleted without replacement for implementation in the Antelope Valley Air Pollution Control District and the South Coast Air Quality Management District, Rule 304.

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(137) * * *

(i) * * *

(C) Previously approved on February 1, 1984 in paragraph (c)(137)(i)(A) of this section and now deleted without replacement, Rules 301.1 and 302 (including Southeast Desert).

(ii) * * *

(E) Previously approved on February 1, 1984 in paragraph (c)(137)(ii)(A) of this section and now deleted without replacement, Rules 104, 113, and 301 (paragraphs a, b, and h).

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(138) * * *

(i) * * *

(C) Previously approved on November 18, 1983 in paragraph (c)(138)(i)(A) of this section and now deleted without replacement, Rules 4–2, 4–11, and 5–3.

(ii) * * *

(E) Previously approved on November 18, 1983 in paragraph (c)(138)(ii)(A) of this section and now deleted without replacement, Rules 609 to 612 (Mountain Counties Air Basin).

(iii) * * *

(B) Previously approved on November 18, 1983 in paragraph (c)(138)(iii)(A) of this section and now deleted without replacement, Rule 301.

(iv) * * *

(B) Previously approved on November 18, 1983 in paragraph (c)(138)(iv)(A) of this section and now deleted without replacement, Rules 900 and 902.

(v) * * *

(E) Previously approved on November 18, 1983 in paragraph (c)(138)(v)(A) of this section and now deleted without replacement, Rules 105, 108, 111, and 301 to 304.

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(140) * * *

(i) * * *

(D) Previously approved on May 3, 1984 in paragraph (c)(140)(i)(A) of this section and now deleted without replacement, Regulation 3: Rules 3–100 through 3–103, 3–200 through 3–211, 3–300, 3–302 through 3–313, and 3–400 through 3–409.

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(iii) * * *

(C) Previously approved on May 3, 1984 in paragraph (c)(140)(iii)(A) of this section and now deleted without replacement, Rule 109.

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(148) * * *

(ii) * * *

(C) Previously approved on May 3, 1984 in paragraph (c)(148)(ii)(A) of this section and now deleted without replacement, Rule 226.

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(153) * * *

(ii) * * *

(D) Previously approved on December 5, 1984 in paragraph (c)(153)(ii)(A) of this section and now deleted without replacement, Rules 500 and 520.

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(154) * * *

(i) * * *

(D) Previously approved on December 5, 1984 in paragraph (c)(154)(i)(A) of this section and now deleted without replacement, Rules 500, 520, and Regulation 2: Rule 502.1.

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(155) * * *

(v) * * *

(C) Previously approved on January 29, 1985 in paragraph (c)(155)(v)(A) of this section and now deleted without replacement, Regulation 2: Rule 502.

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(156) * * *

(ii) * * *

(B) Previously approved on January 29, 1985 in paragraph (c)(156)(ii)(A) of this section and now deleted without replacement, Rule 112.

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(158) * * *

(i) * * *

(C) Previously approved on May 9, 1985 in paragraph (c)(158)(i)(A) of this section and now deleted without replacement, Rule 2–502.2.

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(159) * * *

(iii) * * *

(D) Previously approved on July 13, 1987 in paragraph (c)(159)(iii)(A) of this section and now deleted without replacement, Rule 104.

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(164) * * *

(i) * * *

(A) * * *

(*2*) Previously approved on April 17, 1987 in paragraph (c)(164)(i)(A)(*1*) of this section and now deleted without replacement, Rules 318, 319, and 509.

(B) * * *

(*3*) Previously approved on April 17, 1987 in paragraph (c)(164)(i)(B)(*1*) of this section and now deleted without replacement, Rules 500 and 520.

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(168) * * *

(i) * * *

(A) * * *

(*5*) Previously approved on February 3, 1987 in paragraph (c)(168)(i)(A)(*1*) of this section and now deleted without replacement, Rules 701, 702, 703, and 902.

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(C) * * *

(*3*) Previously approved on February 3, 1987 in paragraph (c)(168)(i)(C)(*1*) of this section and now deleted without replacement, Rule 803.

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(173) * * *

(i) * * *

(B) * * *

(*2*) Previously approved on February 3, 1989 in paragraph (c)(173)(i)(B)(*1*) of this section and now deleted without replacement, Rules 105 and 108.

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(D) * * *

(*2*) Previously approved on February 3, 1989 in paragraph (c)(173)(i)(D)(*1*) of this section and now deleted without replacement, Rule 110.

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(177) * * *

(i) * * *

(D) * * *

(*3*) Previously approved on April 16, 1991 in paragraph (c)(177)(i)(D)(*1*) of this section and now deleted without replacement, Rule 112.

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(179) * * *

(i) * * *

(B) * * *

(*2*) Previously approved on November 27, 1990 in paragraph (c)(179)(i)(B)(*1*) of this section and now deleted without replacement, Rule 105.

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(E) * * *

(*4*) Previously approved on November 4, 1996 in paragraph (c)(179)(i)(E)(*1*) of this section and now deleted without replacement, Rule 1.4.

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(246) * * *

(i) * * *

(A) * * *

(*3*) Previously approved on September 16, 1997 in paragraph (c)(246)(i)(A)(*1*) of this section and now deleted without replacement, Rule 223.

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[FR Doc. 02–189 Filed 1–17–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301204; FRL–6817–6]

RIN 2070–AB78

Imidacloprid; Reestablishment of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation reestablishes a time-limited tolerance for the combined residues of the insecticide imidacloprid (1-[6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent in or on blueberries at 1.0 part per million (ppm) for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2003. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on blueberries. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation is effective January 18, 2002. Objections and requests for hearings, identified by docket control number OPP–301204, must be received by EPA on or before March 19, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301204 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection

Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9367; and e-mail address: ertman.andrew@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,'' ''Regulations and Proposed Rules,'' 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/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301204. The official record consists of the documents specifically referenced in this action, 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 Mall #2, 1921 Jefferson Davis Hwy., 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.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of July 21, 1999 (64 FR 39041) (FRL–6088–3), which announced that on its own initiative under section 408 of FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established a time-limited tolerance for the combined residues of imidacloprid (1-[6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent in or on blueberries at 1.0 ppm, with an expiration date of June 30, 2001. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of imidacloprid on blueberries for this year's growing season due to the continuing emergency with beetles and aphids on blueberries in New Jersey and Michigan. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of imidacloprid on blueberries for control of oriental beetles and blueberry aphids in New Jersey and Japanese beetle grubs in Michigan.

EPA assessed the potential risks presented by residues of imidacloprid in or on blueberries. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of July 21, 1999 (64 FR 39041). Based on that data and information considered, the Agency reaffirms that reestablishment of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is reestablished for an additional 2–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on December 31, 2003, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on blueberries after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA,

you must identify docket control number OPP–301204 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 19, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential 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. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301204, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule reestablishes a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not

alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 7, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.472 [Amended]

2. In § 180.472, amend the table in paragraph (b) by revising the date ''6/1/01'' to read ''12/31/03'' for blueberries.

[FR Doc. 02–1246 Filed 1–17–02; 8:45 am]

BILLING CODE 6560–50–S

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–44 and 102–37

[FPMR Amendment H–210]

RIN 3090–AH20

Donation of Surplus Personal Property

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is revising the Federal Property Management Regulations (FPMR) by moving coverage on donation of surplus personal property into the Federal Management Regulation (FMR). A cross-reference is added to the FPMR to direct readers to the coverage in the FMR. The FMR is written in plain language to provide agencies with updated regulatory material that is easy to read and understand.

EFFECTIVE DATE: January 18, 2002.

FOR FURTHER INFORMATION CONTACT: Peter B. Zuidema, Acting Director, Personal Property Management Policy Division (MTP), 202–501–3846.

SUPPLEMENTARY INFORMATION:

A. Background

The purpose of this final rule is to update, streamline, and clarify FPMR part 101–44 and move it into the Federal Management Regulation (FMR) as FMR part 102–37. This rule is written in a plain language question and answer format. In this format, a question and its answer combine to establish a rule. This means the employee and the agency (Federal holding agency, State Agency for Surplus Property (SASP), public airport, etc.) must follow the language contained in both the question and its answer.

This final rule includes the following changes:

1. The establishment of a uniform dollar threshold ($500) for recipients to report overages or shortages of donated property, in addition to a shortened timeframe (30 days) for reporting such discrepancies to GSA.
2. The removal of the provision that prohibits a SASP from recovering reimbursable costs from the sales proceeds of nondonable property that has been in its inventory for more than 2 years.
3. The change of definition of ''museum'' to provide SASPs with more concrete guidance for making eligibility determinations for museum applicants.
4. The reinstatement of a requirement that SASPs update donee eligibility files at 3-year intervals, plus the addition of a requirement for such updates to include a review of donee screener records.
5. GSA approval of all Red Cross donations made under 40 U.S.C. 484(l).
6. The shift in responsibility from GSA to the Federal Aviation Administration to issue screening credentials for public airports.
7. The consolidation of the Federal and donation screening periods.

A proposed rule was published in the **Federal Register** on April 13, 2000 (65 FR 20014). All public comments received were considered in the formulation of this final rule.

B. Executive Order 12866

GSA has determined that this final rule is not a significant rule for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

A regulatory flexibility analysis is not required under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because there is no requirement that this final rule be published in the **Federal Register** for notice and comment.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose information collection requirements that require the approval of the Office of Management and Budget (OMB).

E. Small Business Regulatory Enforcement Fairness Act

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

List of Subjects in 41 CFR Parts 101–44 and 102–37

Government property management, Homeless, Reporting and recordkeeping requirements, Surplus Government property.

For the reasons set forth in the preamble, GSA amends 41 CFR chapters 101 and 102 as follows:

1. Part 101–44 is revised to read as follows:

PART 101–44 DONATION OF SURPLUS PERSONAL PROPERTY

Authority: 40 U.S.C. 486(c); Sec. 205(c), 63 Stat. 390.

§ 101–44.000 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102–1 through 102–220).

For information on donation of surplus personal property previously contained in this part, see FMR part 102–37 (41 CFR part 102–37).

2. Part 102–37 is added to subchapter B to read as follows:

PART 102–37—DONATION OF SURPLUS PERSONAL PROPERTY

Subpart A—General Provisions

Sec.
102–37.5 What does this part cover?
102–37.10 What is the primary governing authority for this part?
102–37.15 Who must comply with the provisions of this part?
102–37.20 How do we request a deviation from this part and who can approve it?

Definitions

102–37.25 What definitions apply to this part?

Donation Overview

102–37.30 When does property become available for donation?
102–37.35 Who handles the donation of surplus property?
102–37.40 What type of surplus property is available for donation?
102–37.45 How long is property available for donation screening?
102–37.50 What is the general process for requesting surplus property for donation?
102–37.55 Who pays for transportation and other costs associated with a donation?
102–37.60 How much time does a transferee have to pick up or remove surplus property from holding agency premises?
102–37.65 What happens to surplus property that has been approved for transfer when the prospective transferee decides it cannot use the property and declines to pick it up?
102–37.70 How should a transferee account for the receipt of a larger or smaller number of items than approved by GSA on the SF 123?
102–37.75 What should be included in a shortage report?
102–37.80 What happens to surplus property that isn't transferred for donation?
102–37.85 Can surplus property being offered for sale be withdrawn and approved for donation?

Subpart B—General Services Administration (GSA)

102–37.90 What are GSA's responsibilities in the donation of surplus property?
102–37.95 How will GSA resolve competing requests?
102–37.100 What factors will GSA consider in allocating surplus property among SASPs?
102–37.105 Is GSA required to compile any reports concerning the donation program?

Subpart C—Holding Agency

102–37.110 What are a holding agency's responsibilities in the donation of surplus property?
102–37.115 May a holding agency be reimbursed for costs incurred incident to a donation?
102–37.120 May a holding agency donate surplus property directly to eligible non-Federal recipients without going through GSA?
102–37.125 What are some donations that do not require GSA's approval?

Subpart D—State Agency for Surplus Property (SASP)

102–37.130 What are a SASP's responsibilities in the donation of surplus property?
102–37.135 How does a SASP become eligible to distribute surplus property to donees?

State Plan of Operation

102–37.140 What is a State plan of operation?
102–37.145 Who is responsible for developing, certifying, and submitting the plan?
102–37.150 What must a State legislature include in the plan?
102–37.155 When does a plan take effect?
102–37.160 Must GSA approve amendments or modifications to the plan?
102–37.165 Do plans or major amendments require public notice?
102–37.170 What happens if a SASP does not operate in accordance with its plan?

Screening and Requesting Property

102–37.175 How does a SASP find out what property is potentially available for donation?
102–37.180 Does a SASP need special authorization to screen property at Federal facilities?
102–37.185 How does a SASP obtain screening authorization for itself or its donees?
102–37.190 What records must a SASP maintain on authorized screeners?
102–37.195 Does a SASP have to have a donee in mind to request surplus property?
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Authority: 40 U.S.C. 486(c); Sec. 205(c), 63 Stat. 390.

Subpart A—General Provisions

§ 102–37.5 What does this part cover?

This part covers the donation of surplus Federal personal property located within a State, including foreign excess personal property returned to a State for handling as surplus property. For purposes of this part, the term State includes any of the 50 States, as well as the District of Columbia, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.

§ 102–37.10 What is the primary governing authority for this part?

Subsection 203(j)(1) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(j)(1)), as amended (the Property Act), gives the General Services Administration (GSA) discretionary authority to prescribe the necessary regulations for, and to execute the surplus personal property donation program.

§ 102–37.15 Who must comply with the provisions of this part?

You must comply with this part if you are a holding agency or a recipient of Federal surplus personal property approved by GSA for donation (e.g., a State agency for surplus property (SASP) or a public airport).

§ 102–37.20 How do we request a deviation from this part and who can approve it?

See §§ 102–2.60 through 102–2.110 of this chapter to request a deviation from the requirements of this part.

Definitions

§ 102–37.25 What definitions apply to this part?

The following definitions apply to this part:

Cannibalization means to remove serviceable parts from one item of equipment in order to install them on another item of equipment.

Donee means any of the following entities that receive Federal surplus personal property through a SASP:

(1) A service educational activity (SEA).

(2) A public agency (as defined in appendix C of this part) which uses surplus personal property to carry out or promote one or more public purposes. (Public airports are an exception and are only considered donees when they elect to receive surplus property through a SASP, but not when they elect to receive surplus property through the Federal Aviation Administration as discussed in subpart F of this part.)

(3) An eligible nonprofit tax-exempt educational or public health institution (including a provider of assistance to homeless or impoverished families or individuals).

(4) A State or local government agency, or a nonprofit organization or institution, that receives funds appropriated for a program for older individuals.

Holding agency means the executive agency having accountability for, and generally possession of, the property involved.

Period of restriction means the period of time for keeping donated property in use for the purpose for which it was donated.

Property Act means the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended (codified as amended in scattered sections of titles 40 and 41 of the United States Code), the law that centralized Federal property management and disposal functions under the GSA.

Screening means the process of physically inspecting property or reviewing lists or reports of property to determine whether property is usable or needed for donation purposes.

Service educational activity (SEA) means any educational activity designated by the Secretary of Defense as being of special interest to the armed forces; e.g., maritime academies or military, naval, Air Force, or Coast Guard preparatory schools.

Standard Form (SF) 123, Transfer Order Surplus Personal Property means the document used to request and document the transfer of Federal surplus personal property for donation purposes.

State means one of the 50 States, the District of Columbia, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.

State agency for surplus property (SASP) means the agency designated under State law to receive Federal surplus personal property for distribution to eligible donees within the State as provided for in subsection 203(j) of the Property Act (40 U.S.C. 484(j)).

Surplus personal property (surplus property) means excess personal property (as defined in § 102–36.40 of this chapter) not required for the needs of any Federal agency, as determined by GSA.

Surplus release date means the date on which Federal utilization screening of excess personal property has been completed, and the property is available for donation.

Transferee means a public airport receiving surplus property from a holding agency through the Federal Aviation Administration, or a SASP.

You, when used in subparts D and E of this part, means SASP, unless otherwise specified.

Donation Overview

§ 102–37.30 When does property become available for donation?

Excess personal property becomes available for donation the day following the surplus release date. This is the point at which the screening period has been completed without transfer to a Federal agency or other eligible recipient, and the GSA has determined the property to be surplus.

§ 102–37.35 Who handles the donation of surplus property?

(a) The SASPs handle the donation of most surplus property to eligible donees in their States in accordance with this part.

(b) The GSA handles the donation of surplus property to public airports under a program administered by the Federal Aviation Administration (FAA) (see subpart F of this part). The GSA may also donate to the American National Red Cross surplus property that was originally derived from or through the Red Cross (see subpart G of this part).

(c) Holding agencies may donate surplus property that they would otherwise abandon or destroy directly to public bodies in accordance with subpart H of this part.

§ 102–37.40 What type of surplus property is available for donation?

All surplus property (including property held by working capital funds established under 10 U.S.C. 2208 or in similar funds) is available for donation to eligible recipients, except for property in the following categories:

(a) Agricultural commodities, food, and cotton or woolen goods determined from time to time by the Secretary of Agriculture to be commodities requiring special handling with respect to price support or stabilization.

(b) Property acquired with trust funds (e.g., Social Security Trust Funds).

(c) Non-appropriated fund property.

(d) Naval vessels of the following categories: Battleships, cruisers, aircraft carriers, destroyers, and submarines.

(e) Vessels of 1500 gross tons or more which the Maritime Administration determines to be merchant vessels or capable of conversion to merchant use.

(f) Records of the Federal Government.

(g) Property that requires reimbursement upon transfer (such as abandoned or other unclaimed property that is found on premises owned or leased by the Government).

(h) Controlled substances.

(i) Items as may be specified from time to time by the GSA Office of Governmentwide Policy.

§ 102–37.45 How long is property available for donation screening?

Entities authorized to participate in the donation program may screen property, concurrently with Federal agencies, as soon as the property is reported as excess up until the surplus release date. The screening period is normally 21 calendar days, except as noted in § 102–36.95 of this chapter.

§ 102–37.50 What is the general process for requesting surplus property for donation?

The process for requesting surplus property for donation varies, depending on who is making the request.

(a) Donees should submit their requests for property directly to the appropriate SASP.

(b) SASPs and public airports should submit their requests to the appropriate GSA regional office. Requests must be submitted on a Standard Form (SF) 123, Transfer Order Surplus Personal Property, or its electronic equivalent. Public airports must have FAA certify their transfer requests prior to

submission to GSA for approval. GSA may ask SASPs or public airports to submit any additional information required to support and justify transfer of the property.

(c) The American National Red Cross should submit requests to GSA as described in subpart G of this part.

(d) Public bodies, when seeking to acquire property that is being abandoned or destroyed, should follow rules and procedures established by the donor agency (see subpart H of this part).

§ 102–37.55 Who pays for transportation and other costs associated with a donation?

The receiving organization (the transferee) is responsible for any packing, shipping, or transportation charges associated with the transfer of surplus property for donation. Those costs, in the case of SASPs, may be passed on to donees that receive the property.

§ 102–37.60 How much time does a transferee have to pick up or remove surplus property from holding agency premises?

The transferee (or the transferee's agent) must remove property from the holding agency premises within 15 calendar days after being notified that the property is available for pickup, unless otherwise coordinated with the holding agency. If the transferee decides prior to pickup or removal that it no longer needs the property, it must notify the GSA regional office that approved the transfer request.

§ 102–37.65 What happens to surplus property that has been approved for transfer when the prospective transferee decides it cannot use the property and declines to pick it up?

When a prospective transferee decides it cannot use surplus property that has already been approved for transfer and declines to pick it up, the GSA regional office will advise any other SASP or public airport known to be interested in the property to submit a transfer request. If there is no transfer interest, GSA will release the property for other disposal.

§ 102–37.70 How should a transferee account for the receipt of a larger or smaller number of items than approved by GSA on the SF 123?

When the quantity of property received doesn't agree with that approved by GSA on the SF 123, the transferee should handle the overage or shortage as follows:

If . . .	And . . .	Then . . .
(a) More property is received than was approved by GSA for transfer.	The known or estimated acquisition cost of the line item(s) involved is $500 or more.	Submit a SF 123 for the difference to GSA (Identify the property as an overage and include the original transfer order number.) [1]
(b) Less property is received than was approved by GSA for transfer.	The acquisition cost of the missing item(s) is $500 or more.	Submit a shortage report to GSA, with a copy to the holding agency.[1]
(c) The known or estimated acquisition cost of the property is less than $500		Annotate on your receiving and inventory records, a description of the property, its known or estimated acquisition cost, and the name of the holding agency.

[1] Submit the SF 123 or shortage report to the GSA approving office within 30 calendar days of the date of transfer.

§ 102–37.75 What should be included in a shortage report?

The shortage report should include:

(a) The name and address of the holding agency;

(b) All pertinent GSA and holding agency control numbers, in addition to the original transfer order number; and

(c) A description of each line item of property, the condition code, the quantity and unit of issue, and the unit and total acquisition cost.

§ 102–37.80 What happens to surplus property that isn't transferred for donation?

Surplus property not transferred for donation is generally offered for sale under the provisions of part 101–45 of this title. Under the appropriate circumstances (see § 102–36.305 of this chapter), such property might be abandoned or destroyed.

§ 102–37.85 Can surplus property being offered for sale be withdrawn and approved for donation?

Yes, surplus property being offered for sale may be withdrawn for donation if approved by GSA. GSA will not approve requests for the withdrawal of property that has been advertised or listed on a sales offering if that withdrawal would be harmful to the overall outcome of the sale. GSA will only grant such requests prior to sales award, since an award is binding.

Subpart B—General Services Administration (GSA)

§ 102–37.90 What are GSA's responsibilities in the donation of surplus property?

The General Services Administration (GSA) is responsible for supervising and directing the disposal of surplus personal property. In addition to issuing regulatory guidance for the donation of such property, GSA:

(a) Determines when property is surplus to the needs of the Government;

(b) Allocates and transfers surplus property on a fair and equitable basis to State agencies for surplus property (SASPs) for further distribution to eligible donees;

(c) Oversees the care and handling of surplus property while it is in the custody of a SASP;

(d) Approves all transfers of surplus property to public airports, pursuant to the appropriate determinations made by the Federal Aviation Administration (see subpart F of this part);

(e) Donates to the American National Red Cross property (generally blood plasma and related medical materials) originally provided by the Red Cross to a Federal agency, but that has subsequently been determined surplus to Federal needs (see subpart G of this part);

(f) Approves, after consultation with the holding agency, foreign excess

personal property to be returned to the United States for donation purposes;

(g) Coordinates and controls the level of SASP and donee screening at Federal installations;

(h) Imposes appropriate conditions on the donation of surplus property having characteristics that require special handling or use limitations (see § 102–37.455); and

(i) Keeps track of and reports on Federal donation programs (see § 102–37.105).

§ 102–37.95 How will GSA resolve competing transfer requests?

In case of requests from two or more SASPs, GSA will use the allocating criteria in § 102–37.100. When competing requests are received from public airports and SASPs, GSA will transfer property fairly and equitably, based on such factors as need, proposed use, and interest of the holding agency in having the property donated to a specific public airport.

§ 102–37.100 What factors will GSA consider in allocating surplus property among SASPs?

GSA allocates property among the SASPs on a fair and equitable basis using the following factors:

(a) Extraordinary needs caused by disasters or emergency situations.

(b) Requests from the Department of Defense (DOD) for DOD-generated property to be allocated through a SASP for donation to a specific service educational activity.

(c) Need and usability of property, as reflected by requests from SASPs. GSA will also give special consideration to requests transmitted through the SASPs by eligible donees for specific items of property. (Requests for property to be used as is will be given preference over cannibalization requests.)

(d) States in greatest need of the type of property to be allocated where the need is evidenced by a letter of justification from the intended donee.

(e) Whether a SASP has already received similar property in the past, and how much.

(f) Past performance of a SASP in effecting timely pickup or removal of property approved for transfer and making prompt distribution of property to eligible donees.

(g) The property's condition and its original acquisition cost.

(h) Relative neediness of each State based on the State's population and per capita income.

§ 102–37.105 Is GSA required to compile any reports concerning the donation program?

Yes, biennially, GSA must compile a report containing:

(a) A full and independent evaluation of the operation of programs for the donation of surplus property;

(b) Statistical information on the amount of surplus property approved for transfer to the SASPs and donated to eligible non-Federal organizations during the report period (as well as the amount of excess personal property transferred to Federal agencies and provided to grantees and non-Federal organizations); and

(c) Any recommendations GSA wishes to make on the donation program.

Subpart C—Holding Agency

§ 102–37.110 What are a holding agency's responsibilities in the donation of surplus property?

Your donation responsibilities as a holding agency begin when you determine that property is to be declared excess. You must then:

(a) Let GSA know if you have a donee in mind for foreign gift items or airport property, as provided for in § 102–37.525 and § 102–42.95(h) of this chapter;

(b) Cooperate with all entities authorized to participate in the donation program and their authorized representatives in locating, screening, and inspecting excess or surplus property for possible donation;

(c) Set aside surplus property selected by a screener pending GSA approval of the transfer;

(d) Upon receipt of a GSA-approved transfer document, promptly ship or release property to the transferee (or the transferee's designated agent) in accordance with pickup or shipping instructions on the transfer document;

(e) Notify the approving GSA regional office if surplus property to be picked up is not removed within 15 calendar days after you notify the transferee (or its agent) of its availability. (GSA will advise you of further disposal instructions.); and

(f) Perform and bear the cost of care and handling of surplus property pending its disposal, except as provided in § 102–37.115.

§ 102–37.115 May a holding agency be reimbursed for costs incurred incident to a donation?

Yes, you, as a holding agency, may charge the transferee for the direct costs you incurred incident to a donation transfer, such as your packing, handling, crating, and transportation expenses. However, you may not include overhead or administrative costs in these charges.

§ 102–37.120 May a holding agency donate surplus property directly to eligible non-Federal recipients without going through GSA?

Generally, a holding agency may not donate surplus property directly to eligible non-Federal recipients without going through GSA, except for the situations listed in § 102–37.125.

§ 102–37.125 What are some donations that do not require GSA's approval?

(a) Some donations of surplus property that do not require GSA's approval are:

(1) Donations of condemned, obsolete, or other specified material by a military department or the Coast Guard to recipients eligible under 10 U.S.C. 2572, 10 U.S.C. 7306, 10 U.S.C. 7541, 10 U.S.C. 7545, and 14 U.S.C. 641a (see Appendix A of this part for details). However, such property must first undergo excess Federal and surplus donation screening as required in this part and part 102–36 of this chapter;

(2) Donations by holding agencies to public bodies under subpart H of this part;

(3) Donations by the Small Business Administration to small disadvantaged businesses under 13 CFR part 124; and

(4) Donations by holding agencies of law enforcement canines to their handlers under 40 U.S.C. 484(r).

(b) You may also donate property directly to eligible non-Federal recipients under other circumstances if you have statutory authority to do so. All such donations must be included on your annual report to GSA under § 102–36.300 of this chapter.

Subpart D—State Agency for Surplus Property (SASP)

§ 102–37.130 What are a SASP's responsibilities in the donation of surplus property?

As a SASP, your responsibilities in the donation of surplus property are to:

(a) Determine whether or not an entity seeking to obtain surplus property is eligible for donation as a:

(1) Public agency;

(2) Nonprofit educational or public health institution; or

(3) Program for older individuals.

(b) Distribute surplus property fairly, equitably, and promptly to eligible donees in your State based on their relative needs and resources, and ability to use the property, and as provided in your State plan of operation.

(c) Enforce compliance with the terms and conditions imposed on donated property.

§ 102–37.135 How does a SASP become eligible to distribute surplus property to donees?

In order to receive transfers of surplus property, a SASP must:

(a) Have a GSA-approved State plan of operation; and

(b) Provide the certifications and agreements as set forth in §§ 102–37.200 and 102–37.205.

State Plan of Operation

§ 102–37.140 What is a State plan of operation?

A State plan of operation is a document developed under State law and approved by GSA in which the State sets forth a plan for the management and administration of the SASP in the donation of property.

§ 102–37.145 Who is responsible for developing, certifying, and submitting the plan?

The State legislature must develop the plan. The chief executive officer of the State must submit the plan to the Administrator of General Services for acceptance and certify that the SASP is authorized to:

(a) Acquire and distribute property to eligible donees in the State;

(b) Enter into cooperative agreements; and

(c) Undertake other actions and provide other assurances as are required by subsection 203(j)(4) of the Property Act (40 U.S.C. 484(j)) and set forth in the plan.

§ 102–37.150 What must a State legislature include in the plan?

The State legislature must ensure the plan conforms to the provisions of subsection 203(j)(4) of the Property Act (40 U.S.C. 484(j)) and includes the information and assurances set forth in Appendix B of this part. It may also include in the plan other provisions not inconsistent with the purposes of the Property Act and the requirements of this part.

§ 102–37.155 When does a plan take effect?

The plan takes effect on the date GSA notifies the chief executive officer of the State that the plan is approved.

§ 102–37.160 Must GSA approve amendments or modifications to the plan?

Yes, GSA must approve amendments or modifications to the plan.

§ 102–37.165 Do plans or major amendments require public notice?

Yes, proposed plans and major amendments to existing plans require general notice to the public for comment. A State must publish a general notice of the plan or amendment at least 60 calendar days in advance of filing the proposal with GSA and provide interested parties at least 30 calendar days to submit comments before filing the proposal.

§ 102–37.170 What happens if a SASP does not operate in accordance with its plan?

If a SASP does not operate in accordance with its plan, GSA may withhold allocation and transfer of surplus property until the nonconformance is corrected.

Screening and Requesting Property

§ 102–37.175 How does a SASP find out what property is potentially available for donation?

A SASP may conduct onsite screening at various Federal facilities, contact or submit want lists to GSA, or use GSA's or other agencies' computerized inventory system to electronically search for property that is potentially available for donation (see § 102–36.90 for information on GSA's system, FEDS).

§ 102–37.180 Does a SASP need special authorization to screen property at Federal facilities?

Yes, SASP personnel or donee personnel representing a SASP must have a valid screener-identification card (GSA Optional Form 92, Screener's Identification, or other suitable identification approved by GSA) before screening and selecting property at holding agencies. However, SASP or donee personnel do not need a screener-ID card to inspect or remove property previously set aside or approved by GSA for transfer.

§ 102–37.185 How does a SASP obtain screening authorization for itself or its donees?

(a) To obtain screening authorization for itself or donees, a SASP must submit an Optional Form 92 (with the signature and an affixed passport-style photograph of the screener applicant) and a written request to the GSA regional office serving the area in which the intended screener is located. The request must:

(1) State the prospective screener's name and the name and address of the organization he or she represents;

(2) Specify the period of time and location(s) in which screening will be conducted; and

(3) Certify that the applicant is qualified to screen property.

(b) If the request is approved, GSA will complete the Optional Form 92 and return it to the SASP for issuance to the screener.

§ 102–37.190 What records must a SASP maintain on authorized screeners?

You must maintain a current record of all individuals authorized to screen for your SASP, including their names, addresses, telephone numbers, qualifications to screen, and any additional identifying information such as driver's license or social security numbers. In the case of donee screeners, you should place such records in the donee's eligibility file and review for currency each time a periodic review of the donee's file is undertaken.

§ 102–37.195 Does a SASP have to have a donee in mind to request surplus property?

Generally yes, you should have a firm requirement or an anticipated demand for any property that you request.

§ 102–37.200 What certifications must a SASP make when requesting surplus property for donation?

When requesting or applying for property, you must certify that:

(a) You are the agency of the State designated under State law that has legal authority under subsection 203(j) of the Property Act (40 U.S.C. 484(j)) and GSA regulations, to receive property for distribution within the State to eligible donees as defined in this part.

(b) No person with supervisory or managerial duties in your State's donation program is debarred, suspended, ineligible, or voluntarily excluded from participating in the donation program.

(c) The property is usable and needed within the State by:

(1) A public agency for one or more public purposes.

(2) An eligible nonprofit organization or institution which is exempt from taxation under section 501 of the Internal Revenue Code (26 U.S.C. 501), for the purpose of education or public health (including research for any such purpose).

(3) An eligible nonprofit activity for programs for older individuals.

(4) A service educational activity (SEA), for DOD-generated property only.

(d) When property is picked up by, or shipped to, your SASP, you have adequate and available funds, facilities, and personnel to provide accountability, warehousing, proper maintenance, and distribution of the property.

(e) When property is distributed by your SASP to a donee, or when delivery is made directly from a holding agency to a donee pursuant to a State distribution document, you have determined that the donee acquiring the property is eligible within the meaning of the Property Act and GSA

regulations, and that the property is usable and needed by the donee.

§ 102–37.205 What agreements must a SASP make?

With respect to surplus property picked up by or shipped to your SASP, you must agree to the following:

(a) You will make prompt statewide distribution of such property, on a fair and equitable basis, to donees eligible to acquire property under section 203(j) of the Property Act (40 U.S.C. 484(j)) and GSA regulations. You will distribute property only after such eligible donees have properly executed the appropriate certifications and agreements established by your SASP and/or GSA.

(b) Title to the property remains in the United States Government although you have taken possession of it. Conditional title to the property will pass to the eligible donee when the donee executes the required certifications and agreements and takes possession of the property.

(c) You will:

(1) Promptly pay the cost of care, handling, and shipping incident to taking possession of the property.

(2) During the time that title remains in the United States Government, be responsible as a bailee for the property from the time it is released to you or to the transportation agent you have designated.

(3) In the event of any loss of or damage to any or all of the property during transportation or storage at a place other than a place under your control, take the necessary action to obtain restitution (fair market value) for the Government. In the event of loss or damage due to negligence or willful misconduct on your part, repair, replace, or pay to the GSA the fair market value of any such property, or take such other action as the GSA may direct.

(d) You may retain property to perform your donation program functions, but only when authorized by GSA in accordance with the provisions of a cooperative agreement entered into with GSA.

(e) When acting under an interstate cooperative distribution agreement (see § 102–37.335) as an agent and authorized representative of an adjacent State, you will:

(1) Make the certifications and agreements required in § 102–37.200 and this section on behalf of the adjacent SASP.

(2) Require the donee to execute the distribution documents of the State in which the donee is located.

(3) Forward copies of the distribution documents to the corresponding SASP.

(f) You will not discriminate on the basis of race, color, national origin, sex, age, or handicap in the distribution of property, and will comply with GSA regulations on nondiscrimination as set forth in part 101–6, subpart 101–6.2, and part 101–8 of this title.

(g) You will not seek to hold the United States Government liable for consequential or incidental damages or the personal injuries, disabilities, or death to any person arising from the transfer, donation, use, processing, or final disposition of this property. The Government's liability in any event is limited in scope to that provided for by the Federal Tort Claims Act (28 U.S.C. 2671, *et seq.*).

§ 102–37.210 Must a SASP make a drug-free workplace certification when requesting surplus property for donation?

No, you must certify that you will provide a drug-free workplace only as a condition for retaining surplus property for SASP use. Drug-free workplace certification requirements are found at part 105–68, subpart 105–68.6, of this title.

§ 102–37.215 When must a SASP make a certification regarding lobbying?

You are subject to the anti-lobbying certification and disclosure requirements in part 105–69 of this title when all of the following conditions apply:

(a) You have entered into a cooperative agreement with GSA that provides for your SASP to retain surplus property for use in performing donation functions or any other cooperative agreement.

(b) The cooperative agreement was executed after December 23, 1989.

(c) The fair market value of the property requested under the cooperative agreement is more than $100,000.

Justifying Special Transfer Requests

§ 102–37.220 Are there special types of surplus property that require written justification when submitting a transfer request?

Yes, a SASP must obtain written justification from the intended donee, and submit it to GSA along with the transfer request, prior to allocation of:

(a) Aircraft and vessels covered by § 102–37.455;

(b) Items requested specifically for cannibalization;

(c) Foreign gifts and decorations (see part 102–42 of this chapter);

(d) Items containing 50 parts per million or greater of polychlorinated biphenyl (see part 101–42 of this title);

(e) Firearms as described in part 101–42 of this title; and

(f) Any item on which written justification will assist GSA in making allocation to States with the greatest need.

§ 102–37.225 What information or documentation must a SASP provide when requesting a surplus aircraft or vessel?

(a) For each SF 123 that you submit to GSA for transfer of a surplus aircraft or vessel covered by § 102–37.455 include:

(1) A letter of intent, signed and dated by the authorized representative of the proposed donee setting forth a detailed plan of utilization for the property (see § 102–37.230 for information a donee has to include in the letter of intent); and

(2) A letter, signed and dated by you, confirming and certifying the applicant's eligibility and containing an evaluation of the applicant's ability to use the aircraft or vessel for the purpose stated in its letter of intent and any other supplemental information concerning the needs of the donee which supports making the allocation.

(b) For each SF 123 that GSA approves, you must include:

(1) Your distribution document, signed and dated by the authorized donee representative; and

(2) A conditional transfer document, signed by you and the intended donee, and containing the special terms and conditions prescribed by GSA.

§ 102–37.230 What must a letter of intent for obtaining surplus aircraft or vessels include?

A letter of intent for obtaining surplus aircraft or vessels must provide:

(a) A description of the aircraft or vessel requested. If the item is an aircraft, the description must include the manufacturer, date of manufacture, model, and serial number. If the item is a vessel, it must include the type, name, class, size, displacement, length, beam, draft, lift capacity, and the hull or registry number, if known;

(b) A detailed description of the donee's program and the number and types of aircraft or vessels it currently owns;

(c) A detailed description of how the aircraft or vessel will be used, its purpose, how often and for how long. If an aircraft is requested for flight purposes, the donee must specify a source of pilot(s) and where the aircraft will be housed. If an aircraft is requested for cannibalization, the donee must provide details of the cannibalization process (time to complete the cannibalization process, how recovered parts are to be used, method of accounting for usable parts,

disposition of unsalvageable parts, etc.) If a vessel is requested for waterway purposes, the donee must specify a source of pilot(s) and where the vessel will be docked. If a vessel is requested for permanent docking on water or land, the donee must provide details of the process, including the time to complete the process; and

(d) Any supplemental information (such as geographical area and population served, number of students enrolled in educational programs, etc.) supporting the donee's need for the aircraft or vessel.

§ 102–37.235 What type of information must a SASP provide when requesting surplus property for cannibalization?

When a donee wants surplus property to cannibalize, include the following statement on the SF 123: ''Line Item Number(s)_____requested for cannibalization.''. In addition to including this statement, provide a detailed justification concerning the need for the components or accessories and an explanation of the effect removal will have on the item. GSA will approve requests for cannibalization only when it is clear from the justification that disassembly of the item for use of its component parts will provide greater potential benefit than use of the item in its existing form.

§ 102–37.240 How must a transfer request for surplus firearms be justified?

To justify a transfer request for surplus firearms, the requesting SASP must obtain and submit to GSA a letter of intent from the intended donee that provides:

(a) Identification of the donee applicant, including its legal name and complete address and the name, title, and telephone number of its authorized representative;

(b) The number of compensated officers with the power to apprehend and to arrest;

(c) A description of the firearm(s) requested;

(d) Details on the planned use of the firearm(s); and

(e) The number and types of donated firearms received during the previous 12 months through any other Federal program.

Custody, Care, and Safekeeping

§ 102–37.245 What must a SASP do to safeguard surplus property in its custody?

To safeguard surplus property in your custody, you must provide adequate protection of property in your custody, including protection against the hazards of fire, theft, vandalism, and weather.

§ 102–37.250 What actions must a SASP take when it learns of damage to or loss of surplus property in its custody?

If you learn that surplus property in your custody has been damaged or lost, you must always notify GSA and notify the appropriate law enforcement officials if a crime has been committed.

§ 102–37.255 Must a SASP insure surplus property against loss or damage?

No, you are not required to carry insurance on Federal surplus property in your custody. However, if you elect to carry insurance and the insured property is lost or damaged, you must submit a check made payable to GSA for any insurance proceeds received in excess of your actual costs of acquiring and rehabilitating the property prior to its loss, damage, or destruction.

Distribution of Property

§ 102–37.260 How must a SASP document the distribution of surplus property?

All SASPs must document the distribution of Federal surplus property on forms that are prenumbered, provide for donees to indicate the primary purposes for which they are acquiring property, and include the:

(a) Certifications and agreements in §§ 102–37.200 and 102–37.205; and

(b) Period of restriction during which the donee must use the property for the purpose for which it was acquired.

§ 102–37.265 May a SASP distribute surplus property to eligible donees of another State?

Yes, you may distribute surplus property to eligible donees of another State, if you and the other SASP determine that such an arrangement will be of mutual benefit to you and the donees concerned. Where such determinations are made, an interstate distribution cooperative agreement must be prepared as prescribed in § 102–37.335 and submitted to the appropriate GSA regional office for approval. When acting under an interstate distribution cooperative agreement, you must:

(a) Require the donee recipient to execute the distribution documents of its home SASP; and

(b) Forward copies of executed distribution documents to the donee's home SASP.

§ 102–37.270 May a SASP retain surplus property for its own use?

Yes, you can retain surplus property for use in operating the donation program, but only if you have a cooperative agreement with GSA that allows you to do so. You must obtain prior GSA approval before using any surplus property in the operation of the SASP. Make your needs known by submitting a listing of needed property to the appropriate GSA regional office for approval. GSA will review the list to ensure that it is of the type and quantity of property that is reasonably needed and useful in performing SASP operations. GSA will notify you within 30 calendar days whether you may retain the property for use in your operations. Title to any surplus property GSA approves for your retention will vest in your SASP. You must maintain separate records for such property.

Service and Handling Charges

§ 102–37.275 May a SASP accept personal checks and non-official payment methods in payment of service charges?

No, service charge payments must readily identify the donee institution as the payer (or the name of the parent organization when that organization pays the operational expenses of the donee). Personal checks, personal cashier checks, personal money orders, and personal credit cards are not acceptable.

§ 102–37.280 How may a SASP use service charge funds?

Funds accumulated from service charges may be deposited, invested, or used in accordance with State law to:

(a) Cover direct and reasonable indirect costs of operating the SASP;

(b) Purchase necessary equipment for the SASP;

(c) Maintain a reasonable working capital reserve;

(d) Rehabilitate surplus property, including the purchase of replacement parts;

(e) Acquire or improve office or distribution center facilities; or

(f) Pay for the costs of internal and external audits.

§ 102–37.285 May a SASP use service charge funds to support non-SASP State activities and programs?

No, except as provided in § 102–37.495, you must use funds collected from service charges, or from other sources such as proceeds from sale of undistributed property or funds collected from compliance cases, solely for the operation of the SASP and the benefit of participating donees.

Disposing of Undistributed Property

§ 102–37.290 What must a SASP do with surplus property it cannot donate?

(a) As soon as it becomes clear that you cannot donate the surplus property, you should first determine whether or not the property is usable.

(1) If you determine that the undistributed surplus property is not usable, you should seek GSA approval

to abandon or destroy the property in accordance with § 102–37.320.

(2) If you determine that the undistributed surplus property is usable, you should immediately offer it to other SASPs. If other SASPs cannot use the property, you should promptly report it to GSA for redisposal (i.e., disposition through retransfer, sale, or other means).

(b) Normally, any property not donated within a 1-year period should be processed in this manner.

§ 102–37.295 Must GSA approve a transfer between SASPs?

Yes, the requesting SASP must submit a SF 123, Transfer Order Surplus Personal Property, to the GSA regional office in which the releasing SASP is located. GSA will approve or disapprove the request within 30 calendar days of receipt of the transfer order.

§ 102–37.300 What information must a SASP provide GSA when reporting unneeded usable property for disposal?

When reporting unneeded usable property that is not required for transfer to another SASP, provide GSA with the:

(a) Best possible description of each line item of property, its current condition code, quantity, unit and total acquisition cost, State serial number, demilitarization code, and any special handling conditions;

(b) Date you received each line item of property listed; and

(c) Certification of reimbursement requested under § 102–37.315.

§ 102–37.305 May a SASP act as GSA's agent in selling undistributed surplus property (either as usable property or scrap)?

Yes, you may act as GSA's agent in selling undistributed surplus property (either as usable property or scrap) if an established cooperative agreement with GSA permits such an action. You must notify GSA each time you propose to conduct a sale under the cooperative agreement. You may request approval to conduct a sale when reporting the property to GSA for disposal instructions. If no formal agreement exists, you may submit such an agreement at that time for approval.

§ 102–37.310 What must a proposal to sell undistributed surplus property include?

(a) Your request to sell undistributed surplus property must include:

(1) The proposed sale date;

(2) A listing of the property;

(3) Location of the sale;

(4) Method of sale; and

(5) Proposed advertising to be used.

(b) If the request is approved, the GSA regional sales office will provide the necessary forms and instructions for you to use in conducting the sale.

§ 102–37.315 What costs may a SASP recover if undistributed surplus property is retransferred or sold?

(a) When undistributed surplus property is transferred to a Federal agency or another SASP, or disposed of by public sale, you are entitled to recoup:

(1) Direct costs you initially paid to the Federal holding agency, including but not limited to, packing, preparation for shipment, and loading. You will not be reimbursed for actions following receipt of the property, including unloading, moving, repairing, preserving, or storage.

(2) Transportation costs you incurred, but were not reimbursed by a donee, for initially moving the property from the Federal holding agency to your distribution facility or other point of receipt. You must document and certify the amount of reimbursement requested for these costs.

(b) Reimbursable arrangements should be made prior to transfer of the property. In the case of a Federal transfer, GSA will secure agreement of the Federal agency to reimburse your authorized costs, and annotate the amount of reimbursement on the transfer document. You must coordinate and make arrangements for reimbursement when property is transferred to another SASP. If you and the receiving SASP cannot agree on an appropriate reimbursement charge, GSA will determine appropriate reimbursement. The receiving SASP must annotate the reimbursement amount on the transfer document prior to its being forwarded to GSA for approval.

(c) When undistributed property is disposed of by public sale, GSA must approve the amount of sales proceeds you may receive to cover your costs. Generally, this will not exceed 50 percent of the total sales proceeds.

§ 102–37.320 Under what conditions may a SASP abandon or destroy undistributed surplus property?

(a) You may abandon or destroy undistributed surplus property when you have made a written finding that the property has no commercial value or the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale. The abandonment or destruction finding must be sent to the appropriate GSA regional office for approval. You must include in the finding:

(1) The basis for the abandonment or destruction;

(2) A detailed description of the property, its condition, and total acquisition cost;

(3) The proposed method of destruction (burning, burying, etc.) or the abandonment location;

(4) A statement confirming that the proposed abandonment or destruction will not be detrimental or dangerous to public health or safety and will not infringe on the rights of other persons; and

(5) The signature of the SASP director requesting approval for the abandonment or destruction.

(b) GSA will notify you within 30 calendar days whether you may abandon or destroy the property. GSA will provide alternate disposition instructions if it disapproves your request for abandonment or destruction. If GSA doesn't reply to you within 30 calendar days of notification, the property may be abandoned or destroyed.

Cooperative Agreements

§ 102–37.325 With whom and for what purpose(s) may a SASP enter into a cooperative agreement?

Section 203(n) of the Property Act (40 U.S.C. 484(n)) allows GSA, or Federal agencies designated by GSA, to enter into cooperative agreements with SASPs to carry out the surplus property donation program. Such agreements allow GSA, or the designated Federal agencies, to use the SASP's property, facilities, personnel, or services or to furnish such resources to the SASP. For example:

(a) Regional GSA personal property management offices, or designated Federal agencies, may enter into a cooperative agreement to assist a SASP in distributing surplus property for donation. Assistance may include:

(1) Furnishing the SASP with available GSA or agency office space and related support such as office furniture and information technology equipment needed to screen and process property for donation.

(2) Permitting the SASP to retain items of surplus property transferred to the SASP that are needed by the SASP in performing its donation functions (see § 102–37.270).

(b) Regional GSA personal property management offices may help the SASP to enter into agreements with other GSA or Federal activities for the use of Federal telecommunications service or federally-owned real property and related personal property.

(c) A SASP may enter into a cooperative agreement with GSA to conduct sales of undistributed property on behalf of GSA (see § 102–37.305).

§ 102–37.330 Must the costs of providing support under a cooperative agreement be reimbursed by the parties receiving such support?

The parties to a cooperative agreement must decide among themselves the extent to which the costs of the services they provide must be reimbursed. Their decision should be reflected in the cooperative agreement itself. As a general rule, the Economy Act (31 U.S.C. 1535) would require a Federal agency receiving services from a SASP to reimburse the SASP for those services. Since SASPs are not Federal agencies, the Economy Act would not require them to reimburse Federal agencies for services provided by such agencies. In this situation, the Federal agencies would have to determine whether or not their own authorities would permit them to provide services to SASPs without reimbursement. If a Federal agency is reimbursed by a SASP for services provided under a cooperative agreement, it must credit that payment to the fund or appropriation that incurred the related costs.

§ 102–37.335 May a SASP enter into a cooperative agreement with another SASP?

Yes, with GSA's concurrence and where authorized by State law, a SASP may enter into an agreement with an adjacent State to act as its agent and authorized representative in disposing of surplus Federal property. Interstate cooperative agreements may be considered when donees, because of their geographic proximity to the property distribution centers of the adjoining State, could be more efficiently and economically serviced by surplus property facilities in the adjacent State. You and the other SASP must agree to the payment or reimbursement of service charges by the donee and you also must agree to the requirements of § 102–37.205(e).

§ 102–37.340 When may a SASP terminate a cooperative agreement?

You may terminate a cooperative agreement with GSA 60-calendar days after providing GSA with written notice. For other cooperative agreements with other authorized parties, you or the other party may terminate the agreement as mutually agreed. You must promptly notify GSA when such other agreements are terminated.

Audits and Reviews

§ 102–37.345 When must a SASP be audited?

For each year in which a SASP receives $300,000 or more a year in surplus property or other Federal assistance, it must be audited in accordance with the Single Audit Act (31 U.S.C. 7501–7507) as implemented by Office of Management and Budget (OMB) Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations'' (for availability see 5 CFR 1310.3). GSA's donation program should be identified by Catalog of Federal Domestic Assistance number 39.003 when completing the required schedule of Federal assistance.

§ 102–37.350 Does coverage under the single audit process in OMB Circular A–133 exempt a SASP from other reviews of its program?

No, although SASPs are covered under the single audit process in OMB Circular A–133, from time to time the General Accounting Office (GAO), GSA, or other authorized Federal activities may audit or review the operations of a SASP. GSA will notify the chief executive officer of the State of the reasons for a GSA audit. When requested, you must make available financial records and all other records of the SASP for inspection by representatives of GSA, GAO, or other authorized Federal activities.

§ 102–37.355 What obligations does a SASP have to ensure that donees meet Circular A–133 requirements?

SASPs, if they donate $300,000 or more in Federal property to a donee in a fiscal year, must ensure that the donee has an audit performed in accordance with Circular A–133. If a donee receives less than $300,000 in donated property, the SASP is not expected to assume responsibility for ensuring the donee meets audit requirements, beyond making sure the donee is aware that the requirements do exist. It is the donee's responsibility to identify and determine the amount of Federal assistance it has received and to arrange for audit coverage.

Reports

§ 102–37.360 What reports must a SASP provide to GSA?

(a) *Quarterly report on donations.* Submit a GSA Form 3040, State Agency Monthly Donation Report of Surplus Personal Property, to the appropriate GSA regional office by the 25th day of the month following the quarter being reported. (OMB Control Number 3090–0112 has been assigned to this form.) Forms and instructions for completing the form are available from your servicing GSA office.

(b) *Additional reports.* Make other reports GSA may require to carry out its discretionary authority to transfer surplus personal property for donation and to report to the Congress on the status and progress of the donation program.

Liquidating a SASP

§ 102–37.365 What steps must a SASP take if the State decides to liquidate the agency?

Before suspending operations, a SASP must submit to GSA a liquidation plan that includes:

(a) Reasons for the liquidation;

(b) A schedule for liquidating the agency and the estimated date of termination;

(c) Method of disposing of property on hand under the requirements of this part;

(d) Method of disposing of the agency's physical and financial assets;

(e) Retention of all available records of the SASP for a 2-year period following liquidation; and

(f) Designation of another governmental entity to serve as the agency's successor in function until continuing obligations on property donated prior to the closing of the agency are fulfilled.

§ 102–37.370 Do liquidation plans require public notice?

Yes, a liquidation plan constitutes a major amendment of a SASP's plan of operation and, as such, requires public notice.

Subpart E—Donations to Public Agencies, Service Educational Activities (SEAs), and Eligible Nonprofit Organizations

§ 102–37.375 How is the pronoun ''you'' used in this subpart?

The pronoun ''you,'' when used in this subpart, refers to the State agency for surplus property (SASP).

§ 102–37.380 What is the statutory authority for donations of surplus Federal property made under this subpart?

The following statutes provide the authority to donate surplus Federal property to different types of recipients:

(a) Subsection 203(j)(2) of the Property Act (40 U.S.C. 484(j)(2)) authorizes surplus property under the control of the Department of Defense (DOD) to be donated, through SASPs, to educational activities which are of special interest to the armed services (referred to in this part 102–37 as service educational activities or SEAs).

(b) Subsection 203(j)(3) of the Property Act (40 U.S.C. 484(j)(3)) authorizes SASPs to donate surplus property to public agencies and to nonprofit educational or public health institutions, such as:

(1) Medical institutions.

(2) Hospitals.
(3) Clinics.
(4) Health centers.
(5) Drug abuse or alcohol treatment centers.
(6) Providers of assistance to homeless individuals.
(7) Providers of assistance to impoverished families and individuals.
(8) Schools.
(9) Colleges.
(10) Universities.
(11) Schools for the mentally disabled.
(12) Schools for the physically disabled.
(13) Child care centers.
(14) Radio and television stations licensed by the Federal Communications Commission as educational radio or educational television stations.
(15) Museums attended by the public.
(16) Libraries, serving free all residents of a community, district, State or region.

(c) Section 213 of the Older Americans Act of 1965, as amended (42 U.S.C. 3020d), authorizes donations of surplus property to State or local government agencies, or nonprofit organizations or institutions, that receive Federal funding to conduct programs for older individuals.

Donee Eligibility

§ 102–37.385 Who determines if a prospective donee applicant is eligible to receive surplus property under this subpart?

(a) For most public and nonprofit activities, the SASP determines if an applicant is eligible to receive property as a public agency, a nonprofit educational or public health institution, or for a program for older individuals. A SASP may request GSA assistance or guidance in making such determinations.

(b) For applicants that offer courses of instruction devoted to the military arts and sciences, the Defense Department will determine eligibility to receive surplus property through the SASP as a service educational activity or SEA.

§ 102–37.390 What basic criteria must an applicant meet before a SASP can qualify it for eligibility?

To qualify for donation program eligibility through a SASP, an applicant must:

(a) Conform to the definition of one of the categories of eligible entities listed in § 102–37.380 (see appendix C of this part for definitions);

(b) Demonstrate that it meets any approval, accreditation, or licensing requirements for operation of its program;

(c) Prove that it is a public agency or a nonprofit and tax-exempt organization under section 501 of the Internal Revenue Code;

(d) Certify that it is not debarred, suspended, or excluded from any Federal program, including procurement programs; and

(e) Operate in compliance with applicable Federal nondiscrimination statutes.

§ 102–37.395 How can a SASP determine whether an applicant meets any required approval, accreditation, or licensing requirements?

A SASP may accept the following documentation as evidence that an applicant has met established standards for the operation of its educational or health program:

(a) A certificate or letter from a nationally recognized accrediting agency affirming the applicant meets the agency's standards and requirements.

(b) The applicant's appearance on a list with other similarly approved or accredited institutions or programs when that list is published by a State, regional, or national accrediting authority.

(c) Letters from State or local authorities (such as a board of health or a board of education) stating that the applicant meets the standards prescribed for approved or accredited institutions and organizations.

(d) In the case of educational activities, letters from three accredited or State-approved institutions that students from the applicant institution have been and are being accepted.

(e) In the case of public health institutions, licensing may be accepted as evidence of approval, provided the licensing authority prescribes the medical requirements and standards for the professional and technical services of the institution.

(f) The awarding of research grants to the institution by a recognized authority such as the National Institutes of Health, the National Institute of Education, or by similar national advisory council or organization.

§ 102–37.400 What type of eligibility information must a SASP maintain on donees?

In general, you must maintain the records required by your State plan to document donee eligibility (see appendix B of this part). For SEAs, you must maintain separate records that include:

(a) Documentation verifying that the activity has been designated as eligible by DOD to receive surplus DOD property.

(b) A statement designating one or more donee representative(s) to act for the SEA in acquiring property.

(c) A listing of the types of property that are needed or have been authorized by DOD for use in the SEA's program.

§ 102–37.405 How often must a SASP update donee eligibility records?

You must update donee eligibility records as needed, but no less than every 3 years, to ensure that all documentation supporting the donee's eligibility is current and accurate. Annually, you must update files for nonprofit organizations whose eligibility depends on annual appropriations, annual licensing, or annual certification. Particular care must be taken to ensure that all records relating to the authority of donee representatives to receive and receipt for property, or to screen property at Federal facilities, are current.

§ 102–37.410 What must a SASP do if a donee fails to maintain its eligibility status?

If you determine that a donee has failed to maintain its eligibility status, you must terminate distribution of property to that donee, recover any usable property still under Federal restriction (as outlined in § 102–37.465), and take any other required compliance actions.

§ 102–37.415 What should a SASP do if an applicant appeals a negative eligibility determination?

If an applicant appeals a negative eligibility determination, forward complete documentation on the appeal request, including your comments and recommendations, to the applicable GSA regional office for review and coordination with GSA headquarters. GSA's decision will be final.

Conditional Eligibility

§ 102–37.420 May a SASP grant conditional eligibility to applicants who would otherwise qualify as eligible donees, but have been unable to obtain approval, accreditation, or licensing because they are newly organized or their facilities are not yet constructed?

You may grant conditional eligibility to such an applicant provided it submits a statement from any required approving, accrediting, or licensing authority confirming it will be approved, accredited, or licensed.

§ 102–37.425 May a SASP grant conditional eligibility to a not-for-profit organization whose tax-exempt status is pending?

No, under no circumstances may you grant conditional eligibility prior to receiving from the applicant a copy of

a letter of determination by the Internal Revenue Service stating that the applicant is exempt from Federal taxation under section 501 of the Internal Revenue Code.

§ 102–37.430 What property can a SASP make available to a donee with conditional eligibility?

You may only make available surplus property that the donee can use immediately. You may not make available property that will only be used at a later date, for example, after the construction of the donee's facility has been completed.

Terms and Conditions of Donation

§ 102–37.435 For what purposes may donees acquire and use surplus property?

A donee may acquire and use surplus property only for the following authorized purposes:

(a) *Public purposes.* A public agency that acquires surplus property through a SASP must use such property to carry out or to promote one or more public purposes for the people it serves.

(b) *Educational and public health purposes, including related research.* A nonprofit educational or public health institution must use surplus property for education or public health, including research for either purpose and assistance to the homeless or impoverished. While this does not preclude the use of donated surplus property for a related or subsidiary purpose incident to the institution's overall program, the property may not be used for a nonrelated or commercial purpose.

(c) *Programs for older individuals.* An entity that conducts a program for older individuals must use donated surplus property to provide services that are necessary for the general welfare of older individuals, such as social services, transportation services, nutrition services, legal services, and multipurpose senior centers.

§ 102–37.440 May donees acquire property for exchange?

No, a donee may not acquire property with the intent to sell or trade it for other assets.

§ 102–37.445 What certifications must a donee make before receiving property?

Prior to a SASP releasing property to a donee, the donee must certify that:

(a) It is a public agency or a nonprofit organization meeting the requirements of the Property Act and/or regulations of GSA;

(b) It is acquiring the property for its own use and will use the property for authorized purposes;

(c) Funds are available to pay all costs and charges incident to the donation;

(d) It will comply with the nondiscrimination regulations issued under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4), section 606 of title VI of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 476), as amended, section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1688), as amended, and section 303 of the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107); and

(e) It isn't currently debarred, suspended, declared ineligible, or otherwise excluded from receiving the property.

§ 102–37.450 What agreements must a donee make?

Before a SASP may release property to a donee, the donee must agree to the following conditions:

(a) The property is acquired on an ''as is, where is'' basis, without warranty of any kind, and it will hold the Government harmless from any or all debts, liabilities, judgments, costs, demands, suits, actions, or claims of any nature arising from or incident to the donation of the property, its use, or final disposition.

(b) It will return to the SASP, at its own expense, any donated property:

(1) That is not placed in use for the purposes for which it was donated within 1 year of donation; or

(2) Which ceases to be used for such purposes within 1 year after being placed in use.

(c) It will comply with the terms and conditions imposed by the SASP on the use of any item of property having a unit acquisition cost of $5,000 or more and any passenger motor vehicle or other donated item. (Not applicable to SEAs.)

(d) It agrees that, upon execution of the SASP distribution document, it has conditional title only to the property during the applicable period of restriction. Full title to the property will vest in the donee only after the donee has met all of the requirements of this part.

(e) It will comply with conditions imposed by GSA, if any, requiring special handling or use limitations on donated property.

(f) It will use the property for an authorized purpose during the period of restriction.

(g) It will obtain permission from the SASP before selling, trading, leasing, loaning, bailing, cannibalizing, encumbering or otherwise disposing of property during the period of restriction, or removing it permanently for use outside the State.

(h) It will report to the SASP on the use, condition, and location of donated property, and on other pertinent matters as the SASP may require from time to time.

(i) If an insured loss of the property occurs during the period of restriction, GSA or the SASP (depending on which agency has imposed the restriction) will be entitled to reimbursement out of the insurance proceeds of an amount equal to the unamortized portion of the fair market value of the damaged or destroyed item.

Special Handling or Use Conditions

§ 102–37.455 On what categories of surplus property has GSA imposed special handling conditions or use limitations?

GSA has imposed special handling or processing requirements on the property discussed in this section. GSA may, on a case-by-case basis, prescribe additional restrictions for handling or using these items or prescribe special processing requirements on items in addition to those listed in this section.

(a) *Aircraft and vessels.* The requirements of this section apply to the donation of any fixed- or rotary-wing aircraft and donable vessels that are 50 feet or more in length, having a unit acquisition cost of $5,000 or more, regardless of the purpose for which donated. Such aircraft or vessels may be donated to public agencies and eligible nonprofit activities provided the aircraft or vessel is not classified for reasons of national security and any lethal characteristics are removed. The following table provides locations of other policies and procedures governing aircraft and vessels:

For. . .	See. . .
(1) Policies and procedures governing the donation of aircraft parts	Part 101–37, subpart 101–37.6, of this title.

For. . .	See. . .
(2) Documentation needed by GSA to process requests for aircraft or vessels	§ 102–37.225.
(3) Special terms, conditions, and restrictions imposed on aircraft and vessels	§ 102–37.460.
(4) Guidelines on preparing letters of intent for aircraft or vessels	§ 102–37.230.

(b) *Alcohol.* (1) When tax-free or specially denatured alcohol is requested for donation, the donee must have a special permit issued by the Assistant Regional Commissioner of the appropriate regional office, Bureau of Alcohol, Tobacco, and Firearms (BATF), Department of the Treasury, in order to acquire the property. Include the BATF use-permit number on the SF 123, Transfer Order Surplus Personal Property.

(2) You may not store tax-free or specially denatured alcohol in SASP facilities. You must make arrangements for this property to be shipped or transported directly from the holding agency to the designated donee.

(c) *Hazardous materials, firearms, and property with unsafe or dangerous characteristics.* For hazardous materials, firearms, and property with unsafe or dangerous characteristics, see part 101–42 of this title.

(d) *Franked and penalty mail envelopes and official letterhead.* Franked and penalty mail envelopes and official letterhead may not be donated without the SASP certifying that all Federal Government markings will be obliterated before use.

§ 102–37.460 What special terms and conditions apply to the donation of aircraft and vessels?

The following special terms and conditions apply to the donation of aircraft and vessels:

(a) There must be a period of restriction which will expire after the aircraft or vessel has been used for the purpose stated in the letter of intent (see § 102–37.230) for a period of 5 years, except that the period of restriction for a combat-configured aircraft is in perpetuity.

(b) The donee of an aircraft must apply to the FAA for registration of an aircraft intended for flight use within 30 calendar days of receipt of the aircraft. The donee of a vessel must, within 30 calendar days of receipt of the vessel, apply for documentation of the vessel under applicable Federal, State, and local laws and must record each document with the U.S. Coast Guard at the port of documentation. The donee's application for registration or documentation must include a fully executed copy of the conditional transfer document and a copy of its letter of intent. The donee must provide the SASP and GSA with a copy of the FAA registration (and a copy of its FAA Standard Airworthiness Certificate if the aircraft is to be flown as a civil aircraft) or Coast Guard documentation.

(c) The aircraft or vessel must be used solely in accordance with the executed conditional transfer document and the plan of utilization set forth in the donee's letter of intent, unless the donee has amended the letter, and it has been approved in writing by the SASP and GSA and a copy of the amendment recorded with FAA or the U.S. Coast Guard, as applicable.

(d) In the event any of the terms and conditions imposed by the conditional transfer document are breached, title may revert to the Government. GSA may require the donee to return the aircraft or vessel or pay for any unauthorized disposal, transaction, or use.

(e) If, during the period of restriction, the aircraft or vessel is no longer needed by the donee, the donee must promptly notify the SASP and request disposal instructions. A SASP may not issue disposal instructions without the prior written concurrence of GSA.

(f) Military aircraft previously used for ground instruction and/or static display (Category B aircraft, as designated by DOD) or that are combat-configured (Category C aircraft) may not be donated for flight purposes.

(g) For all aircraft donated for nonflight use, the donee must, within 30 calendar days of receipt of the aircraft, turn over to the SASP the remaining aircraft historical records (except the records of the major components/life limited parts; e.g., engines, transmissions, rotor blades, etc., necessary to substantiate their reuse). The SASP in turn must transmit the records to GSA for forwarding to the FAA.

Release of Restrictions

§ 102–37.465 May a SASP modify or release any of the terms and conditions of donation?

You may alter or grant releases from State-imposed restrictions, provided your State plan of operation sets forth the standards by which such actions will be taken. You may not grant releases from, or amendments or corrections to:

(a) The terms and conditions you are required by the Property Act to impose on the use of passenger motor vehicles and any item of property having a unit acquisition cost of $5,000 or more.

(b) Any special handling condition or use limitation imposed by GSA, except with the prior written approval of GSA.

(c) The statutory requirement that usable property be returned by the donee to the SASP if the property has not been placed in use for the purposes for which it was donated within 1 year of donation or ceases to be used by the donee for those purposes within 1 year of being placed in use, except that:

(1) You may grant authority to the donee to cannibalize property items subject to this requirement when you determine that such action will result in increased use of the property and that the proposed action meets the standards prescribed in your plan of operation.

(2) You may, with the written concurrence of GSA, grant donees:

(i) A time extension to place property into use if the delay in putting the property into use was beyond the control and without the fault or negligence of the donee.

(ii) Authority to trade in one donated item for one like item having similar use potential.

§ 102–37.470 At what point may restrictions be released on property that has been authorized for cannibalization?

Property authorized for cannibalization must remain under the period of restriction imposed by the transfer/distribution document until the proposed cannibalization is completed. Components resulting from the cannibalization, which have a unit acquisition cost of $5,000 or more, must remain under the restrictions imposed by the transfer/distribution document. Components with a unit acquisition cost of less than $5,000 may be released upon cannibalization from the additional restrictions imposed by the State. However, these components must continue to be used or be otherwise disposed of in accordance with this part.

§ 102–37.475 What are the requirements for releasing restrictions on property being considered for exchange?

GSA must consent to the exchange of donated property under Federal restrictions or special handling conditions. The donee must have used the donated item for its acquired purpose for a minimum of 6 months prior to being considered for exchange, and it must be demonstrated that the exchange will result in increased utilization value to the donee. As a condition of approval of the exchange, the item being exchanged must have remained in compliance with the terms and conditions of the donation. Otherwise, § 102–37.485 applies. The item acquired by the donee must be:

(a) Made subject to the period of restriction remaining on the item exchanged; and

(b) Of equal or greater value than the item exchanged.

Compliance and Utilization

§ 102–37.480 What must a SASP do to ensure that property is used for the purpose(s) for which it was donated?

You must conduct utilization reviews, as provided in your plan of operation, to ensure that donees are using surplus property during the period of restriction for the purposes for which it was donated. You must fully document your efforts and report all instances of noncompliance (misuse or mishandling of property) to GSA.

§ 102–37.485 What actions must a SASP take if a review or other information indicates noncompliance with donation terms and conditions?

If a review or other information indicates noncompliance with donation terms and conditions, you must:

(a) Promptly investigate any suspected failure to comply with the conditions of donated property;

(b) Notify GSA immediately where there is evidence or allegation of fraud, wrongdoing by a screener, or nonuse, misuse, or unauthorized disposal or destruction of donated property;

(c) Temporarily defer any further donations of property to any donee to be investigated for noncompliance allegations until such time as the investigation has been completed and:

(1) A determination made that the allegations are unfounded and the deferment is removed.

(2) The allegations are substantiated and the donee is proposed for suspension or debarment; and

(d) Take steps to correct the noncompliance or otherwise enforce the conditions imposed on use of the property if a donee is found to be in noncompliance. Enforcement of compliance may involve:

(1) Ensuring the property is used by the present donee for the purpose for which it was donated.

(2) Recovering the property from the donee for:

(i) Redistribution to another donee within the State;

(ii) Transfer through GSA to another SASP; or

(iii) Transfer through GSA to a Federal agency.

(3) Recovering fair market value or the proceeds of disposal in cases of unauthorized disposal or destruction.

(4) Recovering fair rental value for property in cases where the property has been loaned or leased to an ineligible user or used for an unauthorized purpose.

(5) Disposing of by public sale property no longer suitable, usable, or necessary for donation.

§ 102–37.490 When must a SASP coordinate with GSA on compliance actions?

You must coordinate with GSA before selling or demanding payment of the fair market or fair rental value of donated property that is:

(a) Subject to any special handling condition or use limitation imposed by GSA (see § 102–37.455); or

(b) Not properly used within 1 year of donation or which ceases to be properly used within 1 year of being placed in use.

§ 102–37.495 How must a SASP handle funds derived from compliance actions?

You must handle funds derived from compliance actions as follows:

(a) *Enforcement of Federal restrictions.* You must promptly remit to GSA any funds derived from the enforcement of compliance involving a violation of any Federal restriction, for deposit in the Treasury of the United States. You must also submit any supporting documentation indicating the source of the funds and essential background information.

(b) *Enforcement of State restrictions.* You may retain any funds derived from a compliance action involving violation of any State-imposed restriction and use such funds as provided in your State plan of operation.

Returns and Reimbursement

§ 102–37.500 May a donee receive reimbursement for its donation expenses when unneeded property is returned to the SASP?

When a donee returns unneeded property to a SASP, the donee may be reimbursed for all or part of the initial cost of any repairs required to make the property usable if:

(a) The property is transferred to a Federal agency or sold for the benefit of the U.S. Government;

(b) No breach of the terms and conditions of donation has occurred; and

(c) GSA authorizes the reimbursement.

§ 102–37.505 How does a donee apply for and receive reimbursement for unneeded property returned to a SASP?

If the donee has incurred repair expenses for property it is returning to a SASP and wishes to be reimbursed for them, it will inform the SASP of this. The SASP will recommend for GSA approval a reimbursement amount, taking into consideration the benefit the donee has received from the use of the property and making appropriate deductions for that use.

(a) If this property is subsequently transferred to a Federal agency, the receiving agency will be required to reimburse the donee as a condition of the transfer.

(b) If the property is sold, the donee will be reimbursed from the sales proceeds.

Special Provisions Pertaining to SEAs

§ 102–37.510 Are there special requirements for donating property to SEAs?

Yes, only DOD-generated property may be donated to SEAs. When donating DOD property to an eligible SEA, SASPs must observe any restrictions the sponsoring Military Service may have imposed on the types of property the SEA may receive.

§ 102–37.515 Do SEAs have a priority over other SASP donees for DOD property?

Yes, SEAs have a priority over other SASP donees for DOD property, but only if DOD requests GSA to allocate surplus DOD property through a SASP for donation to a specific SEA. In such cases, DOD would be expected to clearly identify the items in question and briefly justify the request.

Subpart F—Donations to Public Airports

§ 102–37.520 What is the authority for public airport donations?

The authority for public airport donations is 49 U.S.C. 47151. 49 U.S.C. 47151 authorizes executive agencies to give priority consideration to requests from a public airport (as defined in 41 U.S.C. 47102) for the donation of surplus property if the Department of Transportation (DOT) considers the property appropriate for airport

purposes and GSA approves the donation.

§ 102–37.525 What should a holding agency do if it wants a public airport to receive priority consideration for excess personal property it has reported to GSA?

A holding agency interested in giving priority consideration to a public airport should annotate its reporting document to make GSA aware of this interest. In an addendum to the document, include the name of the requesting airport, specific property requested, and a brief description of how the airport intends to use the property.

§ 102–37.530 What are FAA's responsibilities in the donation of surplus property to public airports?

In the donation of surplus property to public airports, the Federal Aviation Administration (FAA), acting under delegation from the DOT, is responsible for:

(a) Determining the property requirements of any State, political subdivision of a State, or tax-supported organization for public airport use;

(b) Setting eligibility requirements for public airports and making determinations of eligibility;

(c) Certifying that property listed on a transfer request is desirable or necessary for public airport use;

(d) Advising GSA of FAA officials authorized to certify transfer requests and notifying GSA of any changes in signatory authority;

(e) Determining and enforcing compliance with the terms and conditions under which surplus personal property is transferred for public airport use; and

(f) Authorizing public airports to visit holding agencies for the purpose of screening and selecting property for transfer. This responsibility includes:

(1) Issuing a screening pass or letter of authorization to only those persons who are qualified to screen.

(2) Maintaining a current record (to include names, addresses, and telephone numbers, and additional identifying information such as driver's license or social security numbers) of screeners operating under FAA authority and making such records available to GSA upon request.

(3) Recovering any expired or invalid screener authorizations.

§ 102–37.535 What information must FAA provide to GSA on its administration of the public airport donation program?

So that GSA has information on which to base its discretionary authority to approve the donation of surplus personal property, FAA must:

(a) Provide copies of internal instructions that outline the scope of FAA's oversight program for enforcing compliance with the terms and conditions of transfer; and

(b) Report any compliance actions involving donations to public airports.

Subpart G—Donations to the American National Red Cross

§ 102–37.540 What is the authority for donations to the American National Red Cross?

Subsection 203(l) of the Property Act (40 U.S.C. 484(l)) authorizes GSA to donate to the Red Cross, for charitable use, such property as was originally derived from or through the Red Cross.

§ 102–37.545 What type of property may the American National Red Cross receive?

The Red Cross may receive surplus gamma globulin, dried plasma, albumin, antihemophilic globulin, fibrin foam, surgical dressings, or other products or materials it processed, produced, or donated to a Federal agency.

§ 102–37.550 What steps must the American National Red Cross take to acquire surplus property?

Upon receipt of information from GSA regarding the availability of surplus property for donation, the Red Cross will:

(a) Have 21 calendar days to inspect the property or request it without inspection; and

(b) Be responsible for picking up property donated to it or arranging and paying for its shipment.

§ 102–37.555 What happens to property the American National Red Cross does not request?

Property the Red Cross declines to request will be offered to SASPs for distribution to eligible donees. If such property is transferred, GSA will require the SASP to ensure that all Red Cross labels or other Red Cross identifications are obliterated or removed from the property before it is used.

Subpart H—Donations to Public Bodies in Lieu of Abandonment/Destruction

§ 102–37.560 What is a public body?

A public body is any department, agency, special purpose district, or other instrumentality of a State or local government; any Indian tribe; or any agency of the Federal Government.

§ 102–37.565 What is the authority for donations to public bodies?

Subsection 202(h) of the Property Act (40 U.S.C. 483(h)) authorizes the abandonment, destruction, or donation to public bodies of property which has no commercial value or for which the estimated cost of continued care and handling would exceed the estimated proceeds from its sale.

§ 102–37.570 What type of property may a holding agency donate under this subpart?

Only that property a holding agency has made a written determination to abandon or destroy (see process in part 102–36 of this chapter) may be donated under this subpart. A holding agency may not donate property that requires destruction for health, safety, or security reasons. When disposing of hazardous materials and other dangerous property, a holding agency must comply with all applicable laws and regulations and any special disposal requirements in part 101–42 of this title.

§ 102–37.575 Is there a special form for holding agencies to process donations?

There is no special form for holding agencies to process donations. A holding agency may use any document that meets its agency's needs for maintaining an audit trail of the transaction.

§ 102–37.580 Who is responsible for costs associated with the donation?

The recipient public body is responsible for paying the disposal costs incident to the donation, such as packing, preparation for shipment, demilitarization (as defined in § 102–36.40 of this chapter), loading, and transportation to its site.

Appendix A—Miscellaneous Donation Statutes

The following is a listing of statutes which authorize donations which do not require GSA's approval:

Statute: 10 U.S.C. 2572.

Donor Agency: Any military department (Army, Navy, and Air Force) or the Coast Guard.

Type of Property: Books, manuscripts, works of art, historical artifacts, drawings, plans, models, and condemned or obsolete combat material.

Eligible Recipients: Municipal corporations; soldiers' monument associations; museums, historical societies, or historical institutions of a State or foreign nation; incorporated museums that are operated and maintained for educational purposes only and the charters of which denies them the right to operate for profit; posts of the Veterans of Foreign Wars of the United States or of the American Legion or a unit of any other recognized war veterans' association; local or national units of any war veterans' association of a foreign nation which is recognized by the national government of that nation or a principal subdivision of that nation; and posts of the Sons of Veterans Reserve.

Statute: 10 U.S.C. 7306.

Donor Agency: Department of the Navy.

Type of Property: Any vessel stricken from the Naval Vessel Register or any captured vessel in the possession of the Navy.

Eligible Recipients: States, Commonwealths, or possessions of the United States; the District of Columbia; and not-for-profit or nonprofit entities.

Statute: 10 U.S.C. 7541.

Donor Agency: Department of the Navy.

Type of Property: Obsolete material not needed for naval purposes.

Eligible Recipients: Sea scouts of the Boy Scouts of America; Naval Sea Cadet Corps; and the Young Marines of the Marine Corps League.

Statute: 10 U.S.C. 7545.

Donor Agency: Department of the Navy.

Type of Property: Captured, condemned, or obsolete ordnance material, books, manuscripts, works of art, drawings, plans, and models; other condemned or obsolete material, trophies, and flags; and other material of historic interest not needed by the Navy.

Eligible Recipients: States, territories, commonwealths, or possessions of the United States, or political subdivisions or municipal corporations thereof; the District of Columbia; libraries; historical societies; educational institutions whose graduates or students fought in World War I or World War II; soldiers' monument associations; State museums; museums operated and maintained for educational purposes only, whose charter denies it the right to operate for profit; posts of the Veterans of Foreign Wars of the United States; American Legion posts; recognized war veterans' associations; or posts of the Sons of Veterans Reserve.

Statute: 14 U.S.C. 641(a).

Donor Agency: Coast Guard.

Type of Property: Obsolete or other material not needed for the Coast Guard.

Eligible Recipients: Coast Guard Auxiliary; sea scout service of the Boy Scouts of America; and public bodies or private organizations not organized for profit.

Appendix B—Elements of a State Plan of Operation

The following is the information and assurances that must be included in a SASP's plan of operation:

STATE PLAN REQUIREMENTS

Regarding . . .	The plan must . . .
(a) Designation of a SASP	(1) Name the State agency that will be responsible for administering the plan. (2) Describe the responsibilities vested in the agency which must include the authorities to acquire, warehouse and distribute surplus property to eligible donees, carry out other requirements of the State plan, and provide details concerning the organization of the agency, including supervision, staffing, structure, and physical facilities. (3) Indicate the organizational status of the agency within the State governmental structure and the title of the State official who directly supervises the State agent.
(b) Operational authority	Include copies of existing State statutes and/or executive orders relative to the operational authority of the SASP. Where express statutory authority does not exist or is ambiguous, or where authority exists by virtue of executive order, the plan must include also the opinion of the State's Attorney General regarding the existence of such authority.
(c) Inventory control and accounting system.	(1) Require the SASP to use a management control and accounting system that effectively governs the utilization, inventory control, accountability, and disposal of property. (2) Provide a detailed explanation of the inventory control and accounting system that the SASP will use. (3) Provide that property retained by the SASP to perform its functions be maintained on separate records from those of donable property.
(d) Return of donated property	(1) Require the SASP to provide for the return of donated property from the donee, at the donee's expense, if the property is still usable as determined by the SASP; and (i) The donee has not placed the property into use for the purpose for which it was donated within 1 year of donation; or (ii) The donee ceases to use the property within 1 year after placing it in use. (2) Specify that return of property can be accomplished by: (i) Physical return to the SASP facility, if required by the SASP. (ii) Retransfer directly to another donee, SASP, or Federal agency, as required by the SASP. (iii) Disposal (by sale or other means) as directed by the SASP. (3) Set forth procedures to accomplish property returns to the SASP, retransfers to other organizations, or disposition by sale, abandonment, or destruction.
(e) Financing and service charges	(1) Set forth the means and methods for financing the SASP. When the State authorizes the SASP to assess and collect service charges from participating donees to cover direct and reasonable indirect costs of its activities, the method of establishing the charges must be set forth in the plan. (2) Affirm that service charges, if assessed, are fair and equitable and based on services performed (or paid for) by the SASP, such as screening, packing, crating, removal, and transportation. When the SASP provides minimal services in connection with the acquisition of property, except for document processing and other administrative actions, the State plan must provide for minimal charges to be assessed in such cases and include the bases of computation. (3) Provide that property made available to nonprofit providers of assistance to homeless individuals be distributed at a nominal cost for care and handling of the property. (4) Set forth how funds accumulated from service charges, or from other sources such as sales or compliance proceeds are to be used for the operation of the SASP and the benefit of participating donees. (5) Affirm, if service charge funds are to be deposited or invested, that such deposits or investments are permitted by State law and set forth the types of depositories and/or investments contemplated. (6) Cite State authority to use service charges to acquire or improve SASP facilities and set forth disposition to be made of any financial assets realized upon the sale or other disposal of the facilities. (7) Indicate if the SASP intends to maintain a working capital reserve. If one is to be maintained, the plan should provide the provisions and limitations for it.

STATE PLAN REQUIREMENTS—Continued

Regarding . . .	The plan must . . .
	(8) State if refunds of service charges are to be made to donees when there is an excess in the SASP's working capital reserve and provide details of how such refunds are to be made, such as a reduction in service charges or a cash refund, prorated in an equitable manner.
(f) Terms and conditions on donated property.	(1) Require the SASP to identify terms and conditions that will be imposed on the donee for any item of donated property with a unit acquisition cost of $5,000 or more and any passenger motor vehicle. (2) Provide that the SASP may impose reasonable terms and conditions on the use of other donated property. If the SASP elects to impose additional terms and conditions, it should list them in the plan. If the SASP wishes to provide for amending, modifying, or releasing any terms or conditions it has elected to impose, it must state in the plan the standards it will use to grant such amendments, modifications or releases. (3) Provide that the SASP will impose on the donation of property, regardless of unit acquisition cost, such conditions involving special handling or use limitations as GSA may determine necessary because of the characteristics of the property.
(g) Nonutilized or undistributed property.	Provide that, subject to GSA approval, property in the possession of the SASP which donees in the State cannot use will be disposed of by: (1) Transfer to another SASP or Federal agency. (2) Sale. (3) Abandonment or destruction. (4) Other arrangements.
(h) Fair and equitable distribution	(1) Provide that the SASP will make fair and equitable distribution of property to eligible donees in the State based on their relative needs and resources and ability to use the property. (2) Set forth the policies and detailed procedures for effecting a prompt, fair, and equitable distribution. (3) Require that the SASP, insofar as practicable, select property requested by eligible donees and, if requested by the donee, arrange for shipment of the property directly to the donee.
(i) Eligibility	(1) Set forth procedures for the SASP to determine the eligibility of applicants for the donation of surplus personal property. (2) Provide for donee eligibility records to include at a minimum: (i) Legal name and address of the donee. (ii) Status of the donee as a public agency or as an eligible nonprofit activity. (iii) Details on the scope of the donee's program. (iv) Proof of tax exemption under section 501 of the Internal Revenue Code if the donee is nonprofit. (v) Proof that the donee is approved, accredited, licensed, or meets any other legal requirement for operation of its program(s). (vi) Financial information. (vii) Written authorization by the donee's governing body or chief administrative officer designating at least one person to act for the donee in acquiring property. (viii) Assurance that the donee will comply with GSA's regulations on nondiscrimination. (ix) Types of property needed.
(j) Compliance and utilization	(1) Provide that the SASP conduct utilization reviews for donee compliance with the terms, conditions, reservations, and restrictions imposed by GSA and the SASP on property having a unit acquisition cost of $5,000 or more and any passenger motor vehicle. (2) Provide for the reviews to include a survey of donee compliance with any special handling conditions or use limitations imposed on items of property by GSA. (3) Set forth the proposed frequency of such reviews and provide adequate assurances that the SASP will take effective action to correct noncompliance or otherwise enforce such terms, conditions, reservations, and restrictions. (4) Require the SASP to prepare reports on utilization reviews and compliance actions and provide assurance that the SASP will initiate appropriate investigations of alleged fraud in the acquisition of donated property or misuse of such property.
(k) Consultation with advisory bodies and public and private groups.	(1) Provide for consultation with advisory bodies and public and private groups which can assist the SASP in determining the relative needs and resources of donees, the proposed utilization of surplus property by eligible donees, and how distribution of surplus property can be effected to fill existing needs of donees. (2) Provide details of how the SASP will accomplish such consultation.
(l) Audit	(1) Provide for periodic internal audits of the operations and financial affairs of the SASP. (2) Provide for compliance with the external audit requirements of Office of Management and Budget Circular No. A–133, ''Audits of States, Local Governments, and Non-Profit Organizations'' (available at www.whitehouse.gov/OMB), and make provisions for the SASP to furnish GSA with: (i) Two copies of any audit report made pursuant to the Circular, or with two copies of those sections that pertain to the Federal donation program. (ii) An outline of all corrective actions and scheduled completion dates for the actions. (3) Provide for cooperation in GSA or Comptroller General conducted audits.

STATE PLAN REQUIREMENTS—Continued

Regarding . . .	The plan must . . .
(m) Cooperative agreements	If the SASP wishes to enter into, renew, or revise cooperative agreements with GSA or other Federal agencies: (1) Affirm the SASP's intentions to enter into cooperative agreements. (2) Cite the authority for entering into such agreements.
(n) Liquidation	Provide for the SASP to submit a liquidation plan prior to termination of the SASP activities if the State decides to dissolve the SASP.
(o) Forms	Include copies of distribution documents used by the SASP.
(p) Records	Affirm that all official records of the SASP will be retained for a minimum of 3 years, except that: (1) Records involving property subject to restrictions for more than 2 years must be kept 1 year beyond the specified period of restriction. (2) Records involving property with perpetual restriction must be retained in perpetuity. (3) Records involving property in noncompliance status must be retained for at least 1 year after the noncompliance case is closed.

Appendix C—Glossary of Terms for Determining Eligibility of Public Agencies and Nonprofit Organizations

The following is a glossary of terms for determining eligibility of public agencies and nonprofit organizations:

Accreditation means the status of public recognition that an accrediting agency grants to an institution or program that meets the agency's standards and requirements.

Accredited means approval by a recognized accrediting board or association on a regional, State, or national level, such as a State board of education or health; the American Hospital Association; a regional or national accrediting association for universities, colleges, or secondary schools; or another recognized accrediting association.

Approved means recognition and approval by the State department of education, State department of health, or other appropriate authority where no recognized accrediting board, association, or other authority exists for the purpose of making an accreditation. For an educational institution or an educational program, approval must relate to academic or instructional standards established by the appropriate authority. For a public health institution or program, approval must relate to the medical requirements and standards for the professional and technical services of the institution established by the appropriate authority.

Child care center means a public or nonprofit facility where educational, social, health, and nutritional services are provided to children through age 14 (or as prescribed by State law) and that is approved or licensed by the State or other appropriate authority as a child day care center or child care center.

Clinic means an approved public or nonprofit facility organized and operated for the primary purpose of providing outpatient public health services and includes customary related services such as laboratories and treatment rooms.

College means an approved or accredited public or nonprofit institution of higher learning offering organized study courses and credits leading to a baccalaureate or higher degree.

Conservation means a program or programs carried out or promoted by a public agency for public purposes involving directly or indirectly the protection, maintenance, development, and restoration of the natural resources of a given political area. These resources include but are not limited to the air, land, forests, water, rivers, streams, lakes and ponds, minerals, and animals, fish and other wildlife.

Drug abuse or alcohol treatment center means a clinic or medical institution that provides for the diagnosis, treatment, or rehabilitation of alcoholics or drug addicts. These centers must have on their staffs, or available on a regular visiting basis, qualified professionals in the fields of medicine, psychology, psychiatry, or rehabilitation.

Economic development means a program(s) carried out or promoted by a public agency for public purposes to improve the opportunities of a given political area for the establishment or expansion of industrial, commercial, or agricultural plants or facilities and which otherwise assist in the creation of long-term employment opportunities in the area or primarily benefit the unemployed or those with low incomes.

Education means a program(s) to develop and promote the training, general knowledge, or academic, technical, and vocational skills and cultural attainments of individuals in a community or given political area. Public educational programs may include public school systems and supporting facilities such as centralized administrative or service facilities.

Educational institution means an approved, accredited, or licensed public or nonprofit institution, facility, entity, or organization conducting educational programs or research for educational purposes, such as a child care center, school, college, university, school for the mentally or physically disabled, or an educational radio or television station.

Educational radio or television station means a public or nonprofit radio or television station licensed by the Federal Communications Commission and operated exclusively for noncommercial educational purposes.

Health center means an approved public or nonprofit facility that provides public health services, including related facilities such as diagnostic and laboratory facilities and clinics.

Homeless individual means:

(1) An individual who lacks a fixed, regular, and adequate nighttime residence, or who has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(2) For purposes of this part, the term *homeless individual* does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

Hospital means an approved or accredited public or nonprofit institution providing public health services primarily for inpatient medical or surgical care of the sick and injured and includes related facilities such as laboratories, outpatient departments, training facilities, and staff offices.

Library means a public or nonprofit facility providing library services free to all residents of a community, district, State, or region.

Licensed means recognition and approval by the appropriate State or local authority approving institutions or programs in specialized areas. Licensing generally relates to established minimum public standards of safety, sanitation, staffing, and equipment as they relate to the construction, maintenance, and operation of a health or educational facility, rather than to the academic, instructional, or medical standards for these institutions.

Medical institution means an approved, accredited, or licensed public or nonprofit institution, facility, or organization whose primary function is the furnishing of public health and medical services to the public or promoting public health through the conduct of research, experiments, training, or demonstrations related to cause, prevention, and methods of diagnosis and treatment of

diseases and injuries. The term includes, but is not limited to, hospitals, clinics, alcohol and drug abuse treatment centers, public health or treatment centers, research and health centers, geriatric centers, laboratories, medical schools, dental schools, nursing schools, and similar institutions. The term does not include institutions primarily engaged in domiciliary care, although a separate medical facility within such a domiciliary institution may qualify as a *medical institution.*

Museum means a public or nonprofit institution that is organized on a permanent basis for essentially educational or aesthetic purposes and which, using a professional staff, owns or uses tangible objects, either animate or inanimate; cares for these objects; and exhibits them to the public on a regular basis (at least 1000 hours a year). As used in this part, the term *museum* includes, but is not limited to, the following institutions if they satisfy all other provisions of this definition: Aquariums and zoological parks; botanical gardens and arboretums; nature centers; museums relating to art, history (including historic buildings), natural history, science, and technology; and planetariums. For the purposes of this definition, an institution uses a professional staff if it employs at least one fulltime staff member or the equivalent, whether paid or unpaid, primarily engaged in the acquisition, care, or public exhibition of objects owned or used by the institution. This definition of *museum* does not include any institution that exhibits objects to the public if the display or use of the objects is only incidental to the primary function of the institution.

Nationally recognized accrediting agency means an accrediting agency that the Department of Education recognizes under 34 CFR part 600. (For a list of accrediting agencies, see the Department's web site at http://www.ed.gov/offices/OPE/accreditation/index.html)

Nonprofit means not organized for profit and exempt from Federal income tax under section 501 of the Internal Revenue Code (26 U.S.C. 501).

Parks and recreation means a program(s) carried out or promoted by a public agency for public purposes that involve directly or indirectly the acquisition, development, improvement, maintenance, and protection of park and recreational facilities for the residents of a given political area.

Program for older individuals means a program conducted by a State or local government agency or nonprofit activity that receives funds appropriated for services or programs for older individuals under the Older Americans Act of 1965, as amended, under title IV or title XX of the Social Security Act (42 U.S.C. 601 *et seq.*), or under titles VIII and X of the Economic Opportunity Act of 1964 (42 U.S.C. 2991 *et seq.*) and the Community Services Block Grant Act (42 U.S.C. 9901 *et seq.*).

Provider of assistance to homeless individuals means a public agency or a nonprofit institution or organization that operates a program which provides assistance such as food, shelter, or other services to homeless individuals.

Provider of assistance to impoverished families and individuals means a public or nonprofit organization whose primary function is to provide money, goods, or services to families or individuals whose annual incomes are below the poverty line (as defined in section 673 of the Community Services Block Grant Act) (42 U.S.C. 9902). Providers include food banks, self-help housing groups, and organizations providing services such as the following: Health care; medical transportation; scholarships and tuition assistance; tutoring and literacy instruction; job training and placement; employment counseling; child care assistance; meals or other nutritional support; clothing distribution; home construction or repairs; utility or rental assistance; and legal counsel.

Public agency means any State; political subdivision thereof, including any unit of local government or economic development district; any department, agency, or instrumentality thereof, including instrumentalities created by compact or other agreement between States or political subdivisions; multijurisdictional substate districts established by or pursuant to State law; or any Indian tribe, band, group, pueblo, or community located on a State reservation.

Public health means a program(s) to promote, maintain, and conserve the public's health by providing health services to individuals and/or by conducting research, investigations, examinations, training, and demonstrations. Public health services may include but are not limited to the control of communicable diseases, immunization, maternal and child health programs, sanitary engineering, sewage treatment and disposal, sanitation inspection and supervision, water purification and distribution, air pollution control, garbage and trash disposal, and the control and elimination of disease-carrying animals and insects.

Public health institution means an approved, accredited, or licensed public or nonprofit institution, facility, or organization conducting a public health program(s) such as a hospital, clinic, health center, or medical institution, including research for such programs, the services of which are available to the public.

Public purpose means a program(s) carried out by a public agency that is legally authorized in accordance with the laws of the State or political subdivision thereof and for which public funds may be expended. Public purposes include but are not limited to programs such as conservation, economic development, education, parks and recreation, public health, public safety, programs of assistance to the homeless or impoverished, and programs for older individuals.

Public safety means a program(s) carried out or promoted by a public agency for public purposes involving, directly or indirectly, the protection, safety, law enforcement activities, and criminal justice system of a given political area. Public safety programs may include, but are not limited to those carried out by:

(1) Public police departments.

(2) Sheriffs' offices.

(3) The courts.

(4) Penal and correctional institutions (including juvenile facilities).

(5) State and local civil defense organizations.

(6) Fire departments and rescue squads (including volunteer fire departments and rescue squads supported in whole or in part with public funds).

School (except schools for the mentally or physically disabled) means a public or nonprofit approved or accredited organizational entity devoted primarily to approved academic, vocational, or professional study and instruction, that operates primarily for educational purposes on a full-time basis for a minimum school year and employs a full-time staff of qualified instructors.

School for the mentally or physically disabled means a facility or institution operated primarily to provide specialized instruction to students of limited mental or physical capacity. It must be public or nonprofit and must operate on a full-time basis for the equivalent of a minimum school year prescribed for public school instruction for the mentally or physically disabled, have a staff of qualified instructors, and demonstrate that the facility meets the health and safety standards of the State or local government.

University means a public or nonprofit approved or accredited institution for instruction and study in the higher branches of learning and empowered to confer degrees in special departments or colleges.

Dated: January 2, 2002.

Stephen A. Perry,

Administrator of General Services.

[FR Doc. 02–880 Filed 1–17–02; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 447

[CMS–2134–F]

RIN 0938–AL05

Medicaid Program; Modification of the Medicaid Upper Payment Limit for Non-State Government-Owned or Operated Hospitals

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule modifies the Medicaid upper payment limit (UPL) provisions to remove the 150 percent UPL for inpatient hospital services and outpatient hospital services furnished by non-State government-owned or operated hospitals. This final rule is part of this Administration's efforts to restore fiscal integrity to the Medicaid program and reduce the opportunity for abusive funding practices based on

payments unrelated to actual covered Medicaid services.

EFFECTIVE DATE: These regulations are effective on March 19, 2002.

FOR FURTHER INFORMATION CONTACT: Marge Lee, (410) 786–4361.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1902(a)(30)(A) of the Social Security Act (the Act) requires that Medicaid State plans have methods and procedures relating to the payment for care and services to ensure that payments are consistent with efficiency, economy, and quality of care. This provision is implemented in regulations at 42 CFR part 447 that set upper payment limits (UPLs) for different types of items and services. For certain institutional providers, including hospitals, these upper payment limits apply in the aggregate to all payments to a particular class of providers, and are based on the estimated payment under Medicare payment principles.

In a final rule published on January 12, 2001 in the **Federal Register** (66 FR 3148), we revised the Medicaid UPL for inpatient and outpatient hospitals to require separate UPLs for State-owned or operated facilities, non-State government-owned or operated facilities, and privately owned and operated facilities. In that final rule, we also created an exception for payments to non-State government-owned or operated hospitals. That exception provided that the aggregate Medicaid payments to those hospitals may not exceed 150 percent of a reasonable estimate of the amount that would be paid for the services furnished by these hospitals under Medicare payment principles. At that time, we believed that payments to these public hospitals needed a higher UPL because of their important role in serving the Medicaid population.

Based on further analysis, we do not believe that a higher UPL is necessary to achieve the objective of assuring access for Medicaid patients to the services of public hospitals. Our rationale is partly based on the following:

- We believe that the 100 percent UPL is more than sufficient to ensure adequate access to services for Medicaid beneficiaries at public hospitals. Under this limit, States may pay public providers up to 100 percent of a reasonable estimate of what Medicare would have paid for services provided to Medicaid beneficiaries. States also retain some flexibility to make enhanced payments to selected public hospitals under the aggregate limit.
- We do not believe that the higher payments are necessarily being used to further the mission of these hospitals or their role in serving Medicaid patients. The OIG has issued several reports demonstrating that a portion of the enhanced payments made as part of the UPL process are being transferred directly back to the State via intergovernmental transfers and used for other purposes (which may include funding the State share of other Medicaid expenditures). In cases for which hospitals did retain UPL-related enhanced payments, the OIG found that these same hospitals either did not receive disproportionate share hospital (DSH) payments or if they did, typically returned the DSH payments directly back to the State through intergovernmental transfers. We believe that Medicaid provisions permitting enhanced payments to disproportionate share hospitals should be sufficient to ensure that Medicaid beneficiaries have access to the services of these hospitals.
- Many of the public safety net hospitals affected by this rule qualify as DSH hospitals. The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), enacted on December 21, 2000, provides additional funding to public hospitals by increasing the hospital-specific DSH limits originally set under the Omnibus Budget Reconciliation Act of 1993. States will have the ability to make Medicaid DSH payments to public hospitals up to 175 percent of a hospital's reasonable costs of treating the uninsured and Medicaid beneficiaries for a period of two State fiscal years beginning after September 30, 2002.
- We wish to restore payment equity among hospital providers and across other provider types.

Furthermore, the OIG stated in a report dated September 11, 2001 that the need for the higher UPL for non-State government-owned or operated hospitals has not been adequately supported through an analysis of these hospitals' financial operations. Since the public hospitals are not retaining all of the funds available under the UPL or DSH program, we believe the higher UPL is neither furthering their special mission nor ensuring continued access to these facilities for the Medicaid population. Instead, the main result is that the Federal government is effectively paying more than its share of State Medicaid expenditures.

II. Provisions of the Proposed Regulations

On November 23, 2001, we published a proposed rule in the **Federal Register** (66 FR 58694) proposing to lower the UPL for non-State government-owned or operated hospitals from 150 percent to 100 percent. The proposed rule is part of this Administration's efforts to promote fiscal integrity to the Medicaid program and restore the appropriate balance between the Federal Government and States with respect to funding the Medicaid program. In the November 2001 proposed rule, we proposed to revise §§ 447.272(c) and 447.321(c) to remove the exception in paragraph (c)(1) regarding payments to non-State government-owned or operated hospitals. In § 447.272(c), we proposed to redesignate the exceptions in paragraph (c)(2) to (c)(1) and (c)(3) to (c)(2) for payments to Indian Health Services and tribal facilities and disproportionate share hospitals (subject to a separate limit on payments to disproportionate share hospitals). We also proposed to revise the compliance dates described in §§ 447.272(d) and 447.321(d) to make clear that States would need to comply with the UPL for these non-State government-owned or operated hospitals as of the effective date of the final rule.

In addition to eliminating the higher UPL, we proposed conforming technical changes to §§ 447.272(b) and 447.321(b) that would clarify the single UPL standard generally applicable to aggregate payments to each group of facilities, including non-State government-owned or operated hospitals. This proposal would not change the substantive standard that aggregate payments would be limited to a reasonable estimate of the amount that would be paid for the services furnished by the group of facilities under Medicare payment principles. Except as permitted under the transition periods, payments under an approved State plan would need to be reduced to comply with this limit as of the effective date of the final rule. We stated in the preamble of the proposed rule that we would not approve any State plan amendments that would allow payments in excess of this limit as of the effective date of the final rule. And we referenced a letter to State Medicaid Directors issued November 20, 2001, in which we indicated that we did not intend to approve any amendments submitted after the publication date of the proposed rule that would provide for payments that exceed those permitted under this proposed rule because we did not believe that States should have any reasonable reliance that such plan amendments would be approved.

We did not propose any change to the standards for determining transition periods; thus there would be no change

in the State payment methodologies that qualified for a transition described in §§ 447.272(e) and 447.321(e). However, aggregate payments to non-State government-owned or operated hospitals during the transition period would need to be reduced to 100 percent of a reasonable estimate of the amount that would be paid for the services furnished by this group of facilities under Medicare payment principles rather than 150 percent as described in the final rule published on January 12, 2001. As noted above, we proposed a compliance provision at §§ 447.272(d) and 447.321(d) that would require that State payment methodologies that do not qualify for a transition period must be in compliance with the 100 percent UPL for non-State government-owned or operated hospitals as of the effective date of a subsequent final rule.

We also proposed some minor technical changes to §§ 447.272 and 447.321 redesignating paragraph (e)(2)(ii)(C)(*8*) regarding when a reduction begins as paragraph (e)(2)(iii). We also proposed to redesignate paragraph (e)(2)(iii) as (e)(2)(iv).

We also proposed to remove § 447.272(f)(1)(i) and (f)(1)(ii) and § 447.321(f)(1)(i) and (f)(1)(ii), which describe the reporting requirements for non-State government-owned or operated hospitals, and retain paragraph (f)(1) that describes the reporting requirements for payments made by States in excess of the amount described in paragraph (b) of this section during the transition periods. The reporting requirements for these States would not change.

III. Analysis of and Responses to Public Comments

We received approximately 200 timely comments in response to the November 23, 2001 proposed rule. We received letters from State government officials, county government organizations, beneficiary organizations, health care providers and provider organizations, and private citizens. We reviewed each comment and grouped like or related comments. The comments and our responses are summarized below.

Support for Eliminating the 150 Percent UPL

Comment: Several commenters expressed support for removing the 150 percent UPL for inpatient and outpatient hospital services furnished by non-State government-owned or operated facilities, stating that one group of providers should not have a financial benefit over another group of providers who provide the same type of services.

Response: We agree. Our intent in this rule is to treat all facilities equally, and apply the same aggregate UPL to each group of facilities, regardless of who owns or operates the facilities.

Support for Retaining the 150 Percent UPL

Comment: Several commenters urged us to retain the 150 percent UPL and not publish this final rule.

Response: We believe that the 150 percent provision is not being used to increase real payments to hospitals but instead to replace State funds with Federal funds. We have not accepted this comment because this rule is critical for maintaining the fiscal integrity of the Medicaid program and ensuring that all facilities are treated equally under Federal Medicaid UPL regulations.

Comment: One commenter urged us to withdraw the rule and submit a report to the Congress on how future changes would impact public hospitals.

Response: Reports from the OIG demonstrate that, in many cases, higher upper payment limits are not being used to support the mission of public hospitals. As a result, we believe that the impact of this rule will not be severe for many hospitals, as they have not kept all of the funds generated by the upper payment limits. Moreover, as noted elsewhere in this rule, we are not making any changes to Medicaid DSH payments, which are designed to be the primary vehicle for supporting hospitals that serve a large number of indigent or uninsured patients. The expected impact on hospitals is discussed more fully in the Regulatory Impact Analysis in section VI of this final rule.

Comment: Several commenters expressed concern about the effect of this rule on the health care safety net in specific States. They indicated that a reduction in funds resulting from this final rule would cause hospitals to cut services or close altogether. Further, commenters indicated this rule would cut access to critically needed health services for the uninsured, including immigrants and working families. One commenter pointed out that the reduction in reimbursement rates would produce a crisis in health care in one State, which would result in many more serious illnesses and deaths across that State. Another commenter expressed particular concern with the impact of the rule on children's hospitals.

Response: This rule would permit States to reimburse hospitals for 100 percent of their reasonable costs of providing care to Medicaid patients, based on a reasonable estimate of what Medicare would have paid for services provided to Medicaid patients. Although we previously believed a higher UPL was necessary to ensure the availability of safety net facilities, we have concluded that a 100 percent UPL will achieve that purpose because it is adequate to pay hospitals their reasonable costs of serving Medicaid patients. States also have the ability to pay additional Medicaid payments to safety-net hospitals and receive Federal funding under the Medicaid disproportionate share hospital program. The statutory authority for such payments permits States to recognize those hospitals that treat a high number of Medicaid and low-income patients by increasing Medicaid payments to those hospitals that qualify.

Comment: One commenter noted that the 150 percent UPL was adopted by us in the January 12, 2001 regulation to help mitigate the impact of reduced Federal Medicaid funding available to public hospitals. The commenter was concerned that this modification would withdraw Federal funds available to help States with the special problems facing these hospitals.

Response: For those States that have relied on Federal funds generated through UPL payments to assist public hospitals, relief can be sought from two sources. First, this rule does not remove the transition periods set forth in the January 12, 2001 final regulation for those States and hospitals that have relied on the funding available under the UPL for a number of years. Second, the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), enacted on December 21, 2000, provides additional funding to public hospitals by increasing the hospital-specific disproportionate share hospital limits originally set under the Omnibus Budget Reconciliation Act of 1993. States will have the ability to make Medicaid disproportionate share hospital payments to public hospitals up to 175 percent of a hospital's reasonable costs of treating the uninsured and Medicaid beneficiaries for a period of two State fiscal years beginning after September 30, 2002 and receive Federal matching funds for these higher DSH payments.

Comment: Several commenters pointed out that in the wake of September 11, 2001, rising unemployment will not only increase the number of Medicaid beneficiaries and indigents but will also reduce State tax revenues needed to finance Medicaid costs. Other commenters further added that the decrease is

inappropriate given the increased demands being made on hospitals since September 11, 2001. Another commenter voiced the opinion that issuing this rule is contrary to democratic views and will exacerbate the social problems of our highly diverse society.

Response: We recognize that the events of September 11, 2001 have affected many Americans and caused States to incur costs not otherwise anticipated. We want to stress that this rule addresses only the Federal responsibility to assist States to pay for health care services provided to Medicaid beneficiaries at public hospitals. This rule is not intended to have an adverse effect on reimbursement for Medicaid services provided to Medicaid beneficiaries. Under this rule, States will retain the flexibility to pay these facilities up to 100 percent of a reasonable estimate of what Medicare would have paid for services provided to Medicaid beneficiaries. If the number or severity of Medicaid beneficiaries increases for whatever reason, the payment that can be made consistent with the UPL will likewise increase commensurate with the reasonable cost of serving the Medicaid population in each State. While we understand the situation of States that are faced with reduced budgets and strained tax revenues in the current national economic climate, we want to point out that the Congress established the Medicaid program as a joint Federal and State partnership, where each party shares in the financial responsibility of providing care to Medicaid beneficiaries.

Comment: One commenter noted that this rule will have a significant negative impact on the State's continued ability to draw down Federal funds, and, therefore, will be detrimental to all health and human services.

Response: Under this rule, States will be able to receive Federal funding for hospital expenditures incurred on behalf of Medicaid-eligibles, as permitted under Federal law. While the rule will limit States' ability to receive Federal funding for excessive payments, we believe States will retain flexibility to set fair and appropriate payment rates to public hospitals.

Comment: Several commenters stated that the 150 percent UPL is part of an agreement between Congressional leaders, CMS, and the Office of Management and Budget (OMB). The agreement aimed to protect the fragile network of health care services for low-income individuals. It is neither prudent nor fair to change the rules so quickly and nullify an agreement that was supposed to help ensure health care for those in need.

Response: We have a responsibility to interpret and apply the provisions of the Medicaid statute, including the requirement at section 1902(a)(30)(A) of the Social Security Act that payments under State plans must be consistent with efficiency, economy and quality of care. Whether or not any particular individuals had an agreement in the past about how this requirement should apply is not at issue.

Comment: One commenter suggested that we add a requirement that public hospitals have a net gain of at least two-thirds of the additional Federal funds collected under hospital-based UPL plans in order to ensure that public hospitals are, in fact, primary beneficiaries of any UPL arrangements.

Response: It is not clear what the commenter believes would be the legal authority for CMS to limit a hospital's use of its own funds. Furthermore, while the suggested approach allows public hospitals to retain the Federal funds, it does not limit other public hospital revenues from being transferred from the hospital to the State government. Federal funds, once received by the hospital, are fungible. We do not believe this alternative would increase the net funding available to these hospitals, nor do we believe that this alternative would improve access to hospital services for Medicaid beneficiaries. We do not believe this alternative would decrease the Federal share of the Medicaid program expenditures for these hospitals. Therefore, we believe the reduction of the UPL from 150 percent to 100 percent will be sufficient to maintain the fiscal integrity of the Medicaid Program and ensure that all facilities are treated equally under Federal Medicaid UPL regulations.

Comment: One commenter noted that the Congress, in passing BIPA, in effect required us to retain the 150 percent UPL for non-State government-owned or operated hospitals. The new proposed rule lowering the UPL is clearly contrary to the intent of the Congress in passing section 705 of BIPA because the Congress clearly wanted to provide a transition period for States down to the 150 percent UPL without causing economic dislocations to non-State government-owned hospitals.

Response: We do not agree that the statute at section 705(a) of BIPA requires that we retain the 150 percent UPL forever simply because it was in the October 10, 2000 proposed rule. Section 705 of BIPA required that we publish a rule based on the proposed rule, but did not remove agency discretion as to the contents of the final rule except to the extent of requiring a transition period not specified in the proposed rule. We published that final rule, fulfilling those BIPA requirements. Section 705 of BIPA did not preclude the agency from revisiting and revising its rule.

Comment: Several commenters indicated that our timing could not be worse with this rule given the economic turndown, workforce downsizing, and Medicaid experiencing a financial deficit due to a rise in health care costs. One commenter expressed concern that this rule would make it difficult for hospitals to attract and keep quality workers.

Response: This rule allows States to pay hospitals up to 100 percent of the reasonable costs of serving Medicaid patients, based on a reasonable estimate of what Medicare would have paid for the services provided to Medicaid patients. Also, as noted in an earlier response, if the number or severity of Medicaid beneficiaries increases, for whatever reason, the payment that can be made consistent with the UPL will likewise increase commensurate with the reasonable cost of serving the Medicaid population in each State.

Comment: One commenter noted that President Bush wants more funding for the military, but, at the same time, is willing to slash the country's public health care system. The commenter viewed this policy as indicating a lack of compassion for the country's poor. Another commenter considers it irresponsible for the Department and the Administration to be considering a rule change that is sure to have inhumane and tragic results.

Response: This rule is not a statement of public policy on funding for this nation's health care system. This rule also does not intend to cut funds to care for the country's poor, but is intended to promote fiscal integrity and restore an appropriate balance between the Federal government and States with respect to funding the Medicaid program. Since the publication of the January 12, 2001 rule, many States have increased payments to non-State government-owned hospitals and requested hospitals transfer a portion of those payments back to the State, county, or local governments or used Federal monies to supplant State monies for these payments. Therefore, these enhanced payments are not being used by the hospital to provide additional services to Medicaid beneficiaries, but are being transferred back to the State government for purposes not necessarily related to providing Medicaid services to Medicaid beneficiaries.

Comment: One commenter recommended that we leave the 150 percent UPL intact for those States that transfer the Federal funds, through intergovernmental transfers, to the public hospitals and not back into the State general fund. Another commenter urged us to create an exception to the 100 percent UPL for those States that operate under cost-neutral waivers.

Response: Because of the administrative difficulty in identifying and tracking Federal funds once the State draws down the Federal share for Medicaid expenditures, it is unrealistic to consider implementing a regulation that permits the 150 percent UPL to remain for some States, but eliminates it for others. Furthermore, the reduction to a 100 percent UPL applies to all States, regardless of whether they operate under cost neutral waivers, except to the extent that the State is entitled to a transition period, discussed in detail below.

Comment: One commenter noted that the 150 percent limit should remain and that CMS has no basis for the exclusion of long term care facilities from consideration for a more flexible UPL. Additionally, this commenter requested that the 150 percent UPL be expanded to include Medicaid payments to nursing facilities.

Response: Modifying the upper payment limit for nursing home facilities is outside the scope of this rule and contrary to our intent to preserve the fiscal integrity of the Medicaid program. Therefore, we do not accept this comment.

Intergovernmental Transfers

Comment: One commenter pointed out that some States have used intergovernmental transfers (IGT) of funds to take advantage of the flexibility in past and current UPL rules to draw down excess Federal dollars. The commenter recommended that we should adopt rules that will prevent States from requiring hospitals to transfer a sizable portion of enhanced payments back to the State for other purposes. At the same time, the commenter pointed out that limiting a State's ability to finance its Medicaid program using IGT payments may result in reduced access to services for Medicaid beneficiaries. Other commenters noted that a regulation to require non-State government-owned or operated hospitals to retain their Medicaid funding would be more prudent.

Response: Under section 1903(w)(6)(A) of the Social Security Act, the Congress limited authority to regulate States' certain uses of IGTs. We have clear authority to limit the State payment levels that are not consistent with efficiency, economy, and quality of care because they exceed the amount appropriate for the Medicaid services being furnished. These limits are a reasonable measure to protect the overall fiscal integrity of the Federal Medicaid program.

Comment: The proposed rule, by lowering the UPL to 100 percent of what reasonable Medicare payments would be, effectively eliminates the use of intergovernmental transfers and thus permits the Secretary to do indirectly what section 1903(w)(6) of the Act prohibits the Secretary from doing directly.

Response: We are not restricting the States' use of funds transferred or certified from units of government. This reduction in the UPL restricts the States' payment to non-State government-owned or operated hospitals. The State still maintains control as to what government funding sources it may use to make Medicaid payments.

Transition Periods

Comment: One commenter noted that the transition periods permitted under previous rules should be eliminated or reduced.

Response: We are retaining the transition periods outlined in previously published rules in this final rule. We continue to believe that States that have had longstanding reliance on these funds need time to find other funding sources to replace the money generated by the UPL payment mechanisms. However, we want to reiterate our position with regard to States that have had payment methodologies in effect that provide for payments to non-State government-owned or operated hospitals up to the 150 percent UPL. These States were not previously entitled to a transition period and regardless of the effective date of such payment methodologies, we are not establishing a new transition period during which these States may make payments in excess of the 100 percent UPL. We have modified the regulation text at §§ 447.272(e) and 447.321(e) to clarify that States with payment methodologies that provide for payments to non-State government-owned or operated hospitals up to the 150 percent UPL do not qualify for a transition period. Such States must reduce such payments to comply with the 100 percent UPL as of the effective date of this rule.

Comment: Several commenters pointed out that States have already factored Medicaid monies gained through the 150 percent UPL into their State budgets for health care expenditures. Other commenters pointed out that at the very least States that relied on the final rule in developing their biennial budgets should be afforded a transition. Several commenters further noted that it is unfair to allow transition periods for some facilities to come into compliance with the 100 percent UPL, but not permit States that recently began using the 150 percent UPL to use similar transition periods. They believe it unfairly penalizes States that have more recently used the 150 percent UPL funds. Several commenters also noted that not allowing a transition period from the 150 percent UPL to the 100 percent UPL is arbitrary and capricious.

Response: Although we acknowledge that States may have established budgets based on the 150 percent UPL, the higher UPL has only been in effect since March 2001. The impact of the reduced funding available to public hospitals through the rule published on January 12, 2001 is mitigated by the transition periods contained in that rule, as well as those in the rule published on September 5, 2001. Furthermore, the transition periods contained in prior regulations apply equally to all States and all State payment methodologies. The transition periods are designed to mitigate the impact of the creation of new categories of providers subject to an aggregate 100 percent UPL. All States that meet the requirements of one or more transition periods will be able to reduce their payments gradually based on the schedules in the transition periods. However, as previously noted, the 150 percent UPL has only been in place since March 2001, and, therefore, States have not developed the same reasonable reliance on that higher UPL as they have on payments that were in place for several years. In the absence of any reasonable reliance on higher payment levels, we do not agree that additional modification of the transition periods is required.

Comment: One commenter requested that we clarify our intention in applying the 100 percent UPL to States that qualify for a transition period.

Response: For States that qualify for the 5 and 8 year transition periods, the maximum amount allowable during each transition period will be based on a percentage of the 100 percent UPL during each year. For example, during the 8-year transition period, for State FY 2006, a State may pay up to the 100 percent UPL for State FY 2006, plus 55 percent of the State's excess payment above 100 percent during the base year. Had we not published this rule, the State would be able to pay up to the 150

percent UPL for State FY 2006, plus 55 percent of the State's excess payment above 150 percent during the base year. For States that qualify for the 2-year transition period, payments must be reduced to the 100 percent UPL as of October 1, 2002.

Reporting Requirements

Comment: One commenter pointed out that the 150 percent UPL was put in place less than one year ago. When the higher UPL was established, we also created requirements for States to report to us how they were spending Medicaid funds under the 150 percent UPL. The commenter recommended that we delay implementing a reduction in the 150 percent UPL until we have evaluated those reports. Another commenter recommended that we allow more time to evaluate the effects of the January 12, 2001 final rule to allow a more balanced response to any legitimate concerns that might be found to exist.

Response: Our reporting requirements are not sufficiently detailed to allow us to evaluate State spending in the manner suggested by the commenters. Regardless, our decision to reduce the UPL for public hospitals to 100 percent is not based on the reporting requirements associated with the higher UPL. Based on a number of detailed reports by the OIG, it has become clear that Federal funding being claimed for excessive payments was not always being used by the public hospitals themselves; instead a portion of the Federal funding was being used to substitute for State funding. This is clearly inappropriate in the context of a joint Federal-State program and we do not see any reason to delay reducing the UPL to a level that would limit these abuses.

Comment: One commenter suggested that if additional reporting is required, the staffing for preparing the data and reports should be eligible for enhanced Federal match at 90 percent due to the extensive additional workload. Another commenter urged that the reporting requirements be strengthened to include the level of IGTs or other funds provided by or on behalf of health care providers in UPL arrangements.

Response: We have evaluated the impact of the reporting requirements in the regulatory impact section below. As noted in a previous comment, we are decreasing the reporting requirements in this regulation. As we also previously noted, this rule does not address the States' abilities to transfer funds. Accordingly, such a reporting requirement would have no bearing on the intent of this final rule.

Impact on State Plan Amendments

Commenter: One commenter has asked what effect this final rule will have on those 150 percent UPL State plans submitted before publication of the proposed rule, but which have not been approved.

Response: We reviewed and approved numerous State plans submitted before we issued the proposed rule that permitted 150 percent UPL payments. These amendments were reviewed based upon the current regulation in effect at the time of review. Unless these amendments qualify for a transition period, however, as of the effective date of this rule, no payments may be made that exceed the revised UPL. The requirements contained in this regulation will not take effect until 60 days after the publication of the regulation and, at that time, we will disapprove any pending amendments that would provide for payments that exceed the UPL in effect. Any new State plan amendments submitted on or after the effective date will be disapproved to the extent that payments would exceed the revised UPL.

Commenter: One commenter stated that States with already approved State plans that allow UPL payments up to 150 percent should be exempted from the proposed rule.

Response: We can not legally exempt from this rule States with approved State plan amendments supporting a higher UPL. We will handle all States equally with respect to the UPL. We can and have allowed States that qualify for transition periods to continue to have those transition periods at a lower level of Federal funding.

Miscellaneous

Comment: Several commenters indicated that we should consider the number of proposals the OIG has made including requiring annual audits of UPL calculations; providing definitive guidance on calculating the UPL that is uniform to all States; and requiring States to demonstrate that the enhanced payments are actually made available to the facilities and that these payments are for approved Medicaid services only. Another commenter indicated that we have an obligation to analyze the problem much more thoroughly and exercise our already broad authority to control the UPL problem using more appropriate methods targeted to the situation. For example, we could issue guidelines to clarify how States are actually calculating their upper payment limits and that Medicaid payments are reasonable and are being retained by the provider. Other commenters suggested alternatives to issuing a final rule. For example, we could reinstate the previous practice of requiring States to submit assurances that the UPL has not been exceeded.

Response: We want to curtail unnecessary spending in a way that results in the least amount of burden administratively on the States and the Federal government. The quickest way to reduce unnecessary spending is to stop the funding stream soon after the States begin to rely on it. In addition, we are considering increasing our oversight activities with respect to evaluating States' enhanced payments. The majority of the State plan proposals submitted since the effective date of the January 12, 2001 rule required hospitals to either fund the State's share of the costs of the 150 percent UPL payment or transfer part of the UPL payment back to the State or local government. In our view, the 100 percent UPL is adequate reimbursement as long as the States allow hospitals to retain the Medicaid payment. Furthermore, we do not see how creating a requirement that States submit assurances would result in the savings anticipated in this final rule.

Comment: One commenter suggested that abuses of the system be corrected on a case-by-case basis instead of by imposition of a broad based policy.

Response: We feel strongly that the problem being corrected in this rule is of national importance and is most appropriately addressed by this rule, rather than pursuing abuses based on other authorities on a case-by-case basis. As noted earlier, we want to limit any unnecessary spending that would result in burdensome administrative proceedings for the States and the Federal government. To track and evaluate each case of possible abuse would also require additional resources not currently available.

Comment: One commenter suggested that we have not met the requirements of the Administrative Procedure Act (APA) in publishing this rule. The commenter noted that relevant case law regarding the APA permits an agency to change a regulation if it can demonstrate good cause for making the change and can clearly explain the reasons for its departure from its prior stance. The commenter noted that before the January 12, 2001 rule took effect, the President announced a proposal to modify this UPL. The commenter believes we cannot articulate a reasonable basis for our policy reversal and, as a result, we cannot meet the requirements of the APA.

Response: We disagree. In publishing this rule, we have adhered to the law. In publishing this rule, we have based

our actions on a review of the OIG reports pertaining to UPL payments as well as our own review of the new State plan amendments submitted after the January 2001 rule took effect and our further analysis of the requirements of the Medicaid statute. This additional information and analysis underlay the President's proposal to modify the UPL, and the proposal has been promulgated using full notice and comment procedures. Therefore, this regulatory action to modify the UPL does not violate the APA.

Comment: One commenter stated that in attempting to implement the proposed regulation immediately, we are violating rulemaking requirements for the effective date of a regulation. In addition, the commenter believes that we are attempting to evade the rulemaking requirements contained in Executive Order 12866 by failing to make a serious effort to evaluate existing law and regulations.

Response: We have not implemented these proposed regulations to date, nor do we have any intention of so doing until the effective date stated in this rule. This effective date is consistent with all requirements of law. Furthermore the results intended to be achieved by this rule are fully consistent with the Medicaid statute and we believe are necessary to ensure the fiscal integrity of the Medicaid program. The Medicaid statute contains a formula for the Federal and State shares of expenditures; as explained above, the 150 percent UPL has been a means for States to effectively claim a higher Federal share than warranted. The payments that States are permitted to make to hospitals consistent with the revised UPL are sufficient to pay the full reasonable costs to hospitals of serving the Medicaid population, and will assure access to those hospitals for Medicaid beneficiaries. The revised UPL will assure that payments will be consistent with ''efficiency, economy and quality of care'' as required by section 1902(a)(30)(A) of the Social Security Act. The Medicaid statute has specific provisions for the additional payments to assist disproportionate share hospitals but does not contemplate other general assistance to hospitals, or use of excessive payments as mechanisms to finance general State obligations. In section VI below, we set forth our full regulatory impact analysis.

IV. Provisions of the Final Regulations

We are adopting the provisions of the regulations text in the November 23, 2001 proposed rule as final. In response to comments, we have modified §§ 447.272(e) and 447.321(e) to clarify that States with payment methodologies that provide for payments to non-State government-owned or operated hospitals up to the 150 percent of the UPL do not qualify for a transition period.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we have solicited public comment on each of these issues for the information collection requirements discussed below.

Section 447.272 Inpatient Services: Application of Upper Payment Limits

Under paragraph (f), *Reporting requirements for payments during the transition periods,* States that are eligible for a transition period described in § 447.272(e), and that make payments that exceed the limit under § 447.272(b) must report annually the following information to CMS:

(1) The total Medicaid payments made to each facility for services furnished during the entire State fiscal year.

(2) A reasonable estimate of the amount that would be paid for the services furnished by the facility under Medicare payment principles.

We estimate that there would be 57 reports filed the first year and that they would take 8 hours, for a total of 456 hours. The number of reports and corresponding burden would decrease each year.

Section 447.321 Outpatient Hospital and Clinic Services: Application of Upper Payment Limits

Under paragraph (f), *Reporting requirements for payments during the transition periods,* States that are eligible for a transition period described in § 447.321(e), and that make payments that exceed the limit under § 447.321(b), would have to report annually the following information to CMS:

(1) The total Medicaid payments made to each facility for services furnished during the entire State fiscal year.

(2) A reasonable estimate of the amount that would be paid for the services furnished by the facility under Medicare payment principles.

We estimate that there would be 31 reports filed the first year under this section and that it would take 8 hours to complete one report, for a total of 248 hours. The number of reports and corresponding burden would decrease over the next 8 years.

The particular information collection requirements contained in these two sections were published in the January 12, 2001 final rule. We are revising these requirements by eliminating the reporting requirement that States report hospital expenditures up to the 150 percent UPL, consistent with its elimination in this final rule. This would reduce the reporting burden by 31 reports (for the 31 States noted in section VI.B of this final rule) and 248 hours of burden.

We submitted an emergency request for approval of the information collection requirements associated with the January 12, 2001 final rule to OMB for review of the requirements in §§ 447.272 and 447.321. These sections have been approved by OMB under OMB number 0938–0855 through May 2002 and are now in effect. We plan to submit a revised request for approval to OMB shortly that incorporates the elimination of the reporting requirement that States report hospital expenditures up to 150 percent of the UPL. This change will not become effective until approved by OMB.

VI. Regulatory Impact Analysis

A. Introduction

We have examined the impact of this final rule as required by Executive Order (EO) 12866, the Unfunded Mandates Reform Act of 1995, and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). EO 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects

($100 million or more in any one year). We consider this a major rule and provide an analysis below.

B. Overall Impact

We have identified approximately 31 States with State plan amendments that may provide for payments to non-State government-owned or operated hospitals for inpatient or outpatient services in excess of the 100 percent UPL. These plans currently account for approximately $3 billion in Federal spending annually. This estimate is based on State-reported Federal fiscal information submitted with State plan amendments and State expenditure information, where available. In addition, we expect that, absent rulemaking, additional States would submit amendments to increase spending above the 100 percent UPL in the future. Estimates of these increased costs, both current and future, are included in the President's FY 2002 Medicaid budget baseline. Based on these budget estimates, we estimate that removing the higher UPL for non-State government-owned or operated hospitals reduces potential Federal costs by about $9 billion over fiscal years 2002 through 2006.

C. Impact on Small Entities and Rural Hospitals

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million to $25 million (see 65 FR 69432) or less annually. For purposes of the RFA, all hospitals are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant number of small entities, including small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

The purpose of this rule is to promote fiscal integrity to the Medicaid program and restore an appropriate balance between the Federal government and States with respect to funding the Medicaid program. This rule is necessary because, as the OIG concluded in a report dated September 11, 2001, States' use of intergovernmental transfers as part of enhanced payment programs was a financing mechanism designed to maximize Federal Medicaid reimbursements, thus effectively avoiding Federal/State matching requirements.

We believe the UPL in this final rule may potentially have a significant impact on small entities, including rural hospitals. Nationwide, we believe there are approximately 1,275 non-State government-owned or operated hospitals that could potentially be affected by this rule. We included facilities in all 50 States in this estimate because although not every State is currently making enhanced payments to non-State government-owned or operated hospitals, this rule will prevent new proposals from all States in the future. We believe that the 100 percent payment limit permits States to set fair and appropriate rates to non-State government-owned or operated hospitals for services provided to Medicaid beneficiaries. Even if States were paying rates to public hospitals to help subsidize the cost of care to non-Medicaid eligible individuals, the impact of this final rule will be mitigated due to several factors:

- First, if these hospitals are treating large numbers of indigent patients, they should be eligible to qualify as a disproportionate share hospital. Under both the Medicaid and Medicare program, supplemental funding is available to assist hospitals that serve a disproportionate share of indigent patients. In Federal fiscal year 2000, the Federal government provided more than $8.4 billion in financial assistance to safety net hospitals through the Medicaid DSH program. As noted previously, the Congress provided additional funding to public safety net hospitals by increasing the hospital-specific DSH limits from 100 percent to 175 percent of a hospital's reasonable costs of treating the uninsured and Medicaid beneficiaries for a period of two fiscal years beginning after September 30, 2002.
- Second, payment methodologies in excess of the January 12, 2001 final rule may qualify for one of the transition periods described in §§ 447.272(e) and 447.321(e). State payment methodologies that qualify for one of the transition periods would continue to qualify under this final rule; the only difference is that payments to non-State government-owned or operated hospitals must be reduced over the transition period to a 100 percent UPL rather than a 150 percent UPL. Currently, we believe that two States qualify for the 8-year transition period, four States for the 5-year transition period, and two States for the 2-year transition period. From 2002 through 2006, these States will require approximately $2.9 billion because of the transition periods allowed for in the rule.
- Third, the OIG issued a report on September 11, 2001 stating that the higher UPL for non-State government-owned or operated hospitals has not been adequately supported through an analysis of these hospitals' financial operations. To the extent that States now pay providers efficient rates that are retained by these providers, we do not believe States will be able to further reduce these rates.

We received comments on the impact analysis stating that we did not adequately consider the impact on these entities and that in fact monies paid under the 150 percent UPL were in fact retained by these facilities. The commenters also noted that the OIG did not specifically look at the 150 percent UPL. In addition, commenters noted that CMS did not effectively analyze the effects of the 150 percent UPL before issuing this new rule.

We believe that the OIG reports confirmed our subsequent analysis that States did not use these excess funds as part of the proper State and Federal match for the Medicaid program for any facilities, including non-State government-owned and operated hospitals. In fact, the OIG concluded that even in those cases where UPL enhanced payments were retained by public hospitals, these hospitals would instead return the majority of any Medicaid DSH payments to their State via intergovernmental transfers. States appear to have been replacing DSH payments with UPL enhanced payments, even though Medicaid DSH payments are specifically intended to help hospitals that provide care to a large number of Medicaid beneficiaries and uninsured patients.

D. Other Alternatives Considered

Section 1902(a)(30) of the Act requires in part that Medicaid service payments be consistent with efficiency and economy. In addition to the interpretation we are providing in this final rule, we considered several other alternatives to ensure that Medicaid service payments are consistent with efficiency and economy. In this section, we will explain these other alternatives and why we did not select them.

1. Maintain a Higher Upper Limit for Non-State Government-Owned or Operated Facilities

Under this option, we would set the upper payment limit for non-State government-owned or operated hospitals at a level between 100 percent and 150 percent. There are several reasons for not pursuing this option. As we have stated earlier, we believe that payments above the 100 percent UPL have resulted in excessive payments to these hospitals that have either been returned to the State via intergovernmental transfers or used to replace DSH funding returned to the State. The information available to date indicates that States are combining higher payments to public hospitals with intergovernmental transfers to effectively raise their Federal match rate. Furthermore, both the Medicaid and Medicare program include disproportionate share programs that are intended to assist facilities in providing care and services to indigent patients.

2. ''Grandfathering'' Existing Arrangements

Under this option, we would not approve any new plan amendments after the effective date of the final rule but would allow those that have been approved to continue operating. This would permit States that are currently making excessive payments to non-State government-owned or operated hospitals to continue making those payments indefinitely. However, allowing some States to permanently continue making excessive payments solely because they were approved before this rule is published and effective would be inconsistent with our responsibility to administer the Medicaid program in an equitable manner.

3. Create a Facility-Specific Upper Payment Limit

Under this option, Medicaid spending would be limited to a provider-specific application of Medicare payment principles. FFP would not be available on the amount of Medicaid service payments in excess of what a provider would have been paid using Medicare payment principles. These limits would be applied to all hospitals, or just to public hospitals where the incentives for overpayment are significant. While a facility-specific limitation may be the most effective method to ensure State service payments are consistent with economy and efficiency, implementation of such an option would require significant additional reporting and recordkeeping requirements to verify compliance.

We believe that the transition periods provided to States in the January 12, 2001 rule, the 2-year increase in the DSH payment limit for public safety net hospitals enacted by the Congress, and the elimination of any reporting requirements on hospitals, should minimize the significant economic impact on small entities.

E. The Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies perform an assessment of anticipated costs and benefits before proposing any rule that may result in a mandated expenditure in any one year by State, local, or Tribal governments, in the aggregate, or by private sector, of $110 million. Because this final rule does not mandate any new spending requirements or costs, but rather limits aggregate payments to a group of hospitals, we do not believe it has any unfunded mandate implications.

F. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We do not believe this final rule in any way imposes substantial direct compliance costs on State and local governments or preempts or supersedes State or local law. However, we realize the reform of upper payment limits is an issue in which some States are very interested. Therefore, in addition to providing States with an opportunity to comment on the proposed rule, we have tried to afford States ample opportunities to express their interest and concerns as we have moved forward in developing reforms.

G. Executive Order 12866

In accordance with the provisions of executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs-health, health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

For reasons set forth in the preamble, the Centers for Medicare and Medicaid Services amends 42 CFR, chapter IV, part 447 as follows:

PART 447—PAYMENTS FOR SERVICES

1. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Amend § 447.272 as follows:
a. Revise paragraph (b).
b. Remove paragraph (c)(1).
c. Redesignate paragraph (c)(2) as (c)(1).
d. Redesignate paragraph (c)(3) as (c)(2).
e. Revise paragraph (d).
f. Revise paragraph (e)(1)(ii).
g. Redesignate paragraph (e)(2)(iii) as (e)(2)(iv).
h. Redesignate paragraph (e)(2)(ii)(C)(*8*) as paragraph (e)(2)(iii).
i. Add paragraph (e)(2)(v).
j. Revise paragraph (f).
The addition and revisions read as follows:

§ 447.272 Inpatient services: Application of upper payment limits.

* * * * *

(b) *General rules.* (1) Upper payment limit refers to a reasonable estimate of the amount that would be paid for the services furnished by the group of facilities under Medicare payment principles in subchapter B of this chapter.

(2) Except as provided in paragraph (c) of this section, aggregate Medicaid payments to a group of facilities within one of the categories described in paragraph (a) of this section may not exceed the upper payment limit described in paragraph (b)(1) of this section.

* * * * *

(d) *Compliance dates.* Except as permitted under paragraph (e) of this section, a State must comply with the upper payment limit described in paragraph (b)(1) of this section by one of the following dates:

(1) *For non-State government-owned or operated hospitals*—March 19, 2002.

(2) *For all other facilities*—March 13, 2001.

(e) *Transition periods*—* * *

(1) * * *

(ii) *UPL* stands for the upper payment limit described in paragraph (b)(1) of this section for the referenced year.

* * * * *

(2) *General rules.* * * *

(v) A State with an approved State plan amendment payment provision that makes payments up to 150 percent of the UPL described in paragraph (b)(1) of this section to providers described in

paragraph (a)(2) of this section does not qualify for a transition period.

(f) *Reporting requirements for payments during the transition periods.* States that are eligible for a transition period described in paragraph (e) of this section, and that make payments that exceed the upper payment limit under paragraph (b)(1) of this section, must report annually the following information to CMS:

(1) The total Medicaid payments made to each facility for services furnished during the entire State fiscal year.

(2) A reasonable estimate of the amount that would be paid for the services furnished by the facility under Medicare payment principles.

3. Amend § 447.321 as follows:

a. Revise paragraphs (b) through (d).

b. Revise paragraph (e)(1)(ii).

c. Redesignate paragraph (e)(2)(iii) as (e)(2)(iv).

d. Redesignate paragraph (e)(2)(ii)(C)(*8*) as paragraph (e)(2)(iii).

e. Add paragraph (e)(2)(v).

f. Revise paragraph (f).

The addition and revisions read as follows:

§ 447.321 Outpatient hospital and clinic services: Application of upper payment limits.

* * * * *

(b) *General rules.* (1) Upper payment limit refers to a reasonable estimate of the amount that would be paid for the services furnished by the group of facilities under Medicare payment principles in subchapter B of this chapter.

(2) Except as provided in paragraph (c) of this section, aggregate Medicaid payments to a group of facilities within one of the categories described in paragraph (a) of this section may not exceed the upper payment limit described in paragraph (b)(1) of this section.

(c) *Exception—Indian Health Services and tribal facilities.* The limitation in paragraph (b) of this section does not apply to Indian Health Services facilities and tribal facilities that are funded through the Indian Self-Determination and Education Assistance Act (Public Law 93–638).

(d) *Compliance dates.* Except as permitted under paragraph (e) of this section, a State must comply with the upper payment limit described in paragraph (b)(1) of this section by one of the following dates:

(1) *For non-State government-owned or operated hospitals*—March 19, 2002.

(2) *For all other facilities*—March 13, 2001.

(e) *Transition periods*—* * *

(1) * * *

(ii) *UPL* stands for the upper payment limit described in paragraph (b)(1) of this section for the referenced year.

* * * * *

(2) *General rules.** * *

(v) A State with an approved State plan amendment payment provision that makes payments up to 150 percent of the UPL described in paragraph (b)(1) of this section to providers described in paragraph (a)(2) of this section does not qualify for a transition period.

(f) *Reporting requirements for payments during the transition periods.* States that are eligible for a transition period described in paragraph (e) of this section, and that make payments that exceed the limit under paragraph (b)(1) of this section, must report annually the following information to CMS:

(1) The total Medicaid payments made to each facility for services furnished during the entire State fiscal year.

(2) A reasonable estimate of the amount that would be paid for the services furnished by the facility under Medicare payment principles.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: January 14, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: January 15, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–1482 Filed 1–17–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket RSPA–97–2995; Notice 9]

Pipeline Drug Testing; Random Testing Rate

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of random drug testing rate.

SUMMARY: Each year, a minimum percentage of covered pipeline employees must be randomly tested for prohibited drugs. The percentage, either 50 percent or 25 percent, depends on the positive rate of random testing reported to RSPA in the previous year. In accordance with applicable standards, we have determined that the positive rate of random testing reported this year for testing in calendar year 2000 was less than 1.0 percent. Therefore, in calendar year 2002, the minimum annual percentage rate for random drug testing is 25 percent of covered employees.

DATES: Effective January 1, 2002, through December 31, 2002, at least 25 percent of covered employees must be randomly drug tested.

FOR FURTHER INFORMATION CONTACT: L. M. Furrow by phone at 202–366–4559, by fax at 202–366–4566, by mail at U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, or by e-mail at *buck.furrow@rspa.dot.gov.*

SUPPLEMENTARY INFORMATION: Operators of gas, hazardous liquid, and carbon dioxide pipelines and operators of liquefied natural gas facilities must annually submit Management Information System (MIS) reports of drug testing done in the previous calendar year (49 CFR 199.119(a)). One of the uses of this information is to calculate the minimum annual percentage rate at which operators must randomly drug test all covered employees during the next calendar year (49 CFR 199.105(c)(2)). If the minimum annual percentage rate for random drug testing is 50 percent, we may lower the rate to 25 percent if we determine that the positive rate reported for random tests for two consecutive calendar years is less than 1.0 percent (49 CFR 199.105(c)(3)). If the minimum annual percentage rate is 25 percent, we will increase the rate to 50 percent if we determine that the positive rate reported for random tests for any calendar year is equal to or greater than 1.0 percent (49 CFR 199.105(c)(4)). Part 199 defines ''positive rate'' as ''the number of positive results for random drug tests * * * plus the number of refusals of random tests * * *, divided by the total number of random drug tests * * * plus the number of refusals of random tests. * * *''

Through calendar year 1996, the minimum annual percentage rate for random drug testing in the pipeline industry was 50 percent of covered employees. Based on MIS reports of random testing done in 1994 and 1995, we lowered the minimum rate from 50 to 25 percent for calendar year 1997 (61 FR 60206—November 27, 1996). The minimum rate remained at 25 percent in calendar years 1998 (62 FR 59297—Nov. 3, 1997); 1999 (63 FR 58324—Oct. 30, 1998); 2000 (64 FR 66788—Nov. 30, 1999), and 2001 (65 FR 81409—Dec. 26, 2000).

Using the MIS reports received this year for drug testing done in calendar year 2000, we calculated the positive rate of random testing to be 0.6 percent. Since the positive rate continues to be less than 1.0 percent, we are announcing that the minimum annual percentage rate for random drug testing is 25 percent of covered employees for the period January 1, 2002, through December 31, 2002.

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60117, and 60118; 49 CFR 1.53.

Issued in Washington, DC, on December 31, 2001.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 02–261 Filed 1–17–02; 8:45 am]

BILLING CODE 4910–60–P

Rules and Regulations

Federal Register
Vol. 67, No. 13
Friday, January 18, 2002

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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8980]

RIN 1545–AW90

Notice and Opportunity for Hearing Before Levy

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the provision of notice to taxpayers of a right to a hearing before levy. The regulations implement certain changes made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998. They affect taxpayers against whose property or rights to property the Internal Revenue Service (IRS) intends to levy.

DATES: *Effective Date:* January 18, 2002.

Applicability date: These regulations apply to any levy which occurs on or after January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Jerome D. Sekula, (202) 622–3610 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Regulations on Procedure and Administration (26 CFR part 301) relating to the provision of notice under section 6330 of the Internal Revenue Code to taxpayers of a right to a hearing (a collection due process, or CDP, hearing) before levy. These final regulations implement certain changes made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Pub. L. 105–206; 112 Stat. 685) (RRA 1998). The final regulations affect taxpayers against whose property or rights to property the IRS intends to levy.

On January 22, 1999, temporary regulations (TD 8809) implementing these changes made by section 3401 of RRA 1998 were published in the **Federal Register** (64 FR 3405). A notice of proposed rulemaking (REG–117620–98) cross-referencing the temporary regulations was published on the same day in the **Federal Register** (64 FR 3462). No written comments were received within the 90-day period provided for comments, although two comments were received after this comment period.

Section 6320 also was added by section 3401 of RRA 1998 and provides for notice to taxpayers of a right to a hearing after the filing of a notice of federal tax lien (NFTL). A number of the provisions in section 6330 concerning the conduct and judicial review of a CDP hearing are incorporated by reference in section 6320. On January 22, 1999, temporary regulations (TD 8810) under section 6320 were published in the **Federal Register** (64 FR 3398). A notice of proposed rulemaking (REG–116824–98) cross-referencing the temporary regulations was published on the same day in the **Federal Register** (64 FR 3461). Final regulations under section 6320 are being published in the **Federal Register** along with these final regulations under section 6330.

After consideration of the comments, the proposed regulations, with certain changes to reflect IRS administrative practice under section 6330, are adopted as final regulations. The comments and changes are discussed below.

Summary of Comments

Both commentators urged that final regulations under section 6330 provide that potentially affected third-parties (i.e., persons not liable for the tax at issue) are entitled to notice and a hearing before the IRS Office of Appeals (Appeals) before the IRS levies on any property or right to property. Treasury and the IRS have concluded that the person liable for the tax set out in the collection due process notice (CDP Notice), whether issued under section 6320 or section 6330, is the person entitled to a CDP Notice and a CDP hearing under those sections. Section 6320(a)(1) provides that a CDP Notice provided under section 6320 will be sent to the person described in section 6321. The person described in section 6321 is the person liable to pay the tax—i.e., the taxpayer.

With respect to section 6330, the legislative history to section 6330 indicates that Congress intended to supplement the existing notice requirement under section 6331. Under section 6331, the IRS generally must provide a person liable for any tax (and who refuses to pay the tax after notice and demand) notice before levying on the property or rights to property of that person. Section 6330, in addition to the notice required under section 6331, provides for notice of the right to an Appeals hearing before levy.

Accordingly, the final regulations under both section 6320 and section 6330 provide that the person entitled to a CDP Notice under those sections is the person liable for the tax set out in the CDP Notice, or the taxpayer. Generally, when a third party's rights are affected by lien or levy, those rights can be protected through other administrative and judicial remedies, such as an administrative hearing before Appeals under its Collection Appeals Program or a wrongful levy or quiet title action.

One commentator requested that the final regulations establish formal procedures for the conduct of a CDP hearing as well as procedures for the admission and preservation of evidence to be considered by Appeals. Treasury and the IRS have declined to adopt this comment. Section 6320 and section 6330 are intended to give all taxpayers a right to an impartial Appeals review of the filing of a NFTL or of an intended levy action, with an additional right of judicial review of the Appeals determination. Section 6330(c) (applicable to both sections) and the proposed regulations under section 6320 and section 6330 (as modified by final regulations) already set out the specific requirements, including the issues to be considered, for a CDP hearing and require that Appeals issue a written determination (Notice of Determination) setting forth Appeals' findings and decisions. Due to the varied circumstances of taxpayers and the varied situations in which the filing of a NFTL or an intended levy action may arise, the final regulations provide flexibility regarding the manner in which a CDP hearing may be conducted.

One commentator stated that persons should have a right to judicial review in a retained jurisdiction case under section 6330(d)(2). Treasury and the IRS decline to adopt this comment. Under section 6330(b)(2), a taxpayer is entitled to only one CDP hearing with respect to the tax set out on a CDP Notice issued under section 6330. Section 6320(b)(2) provides a similar rule for section 6320. Under section 6330(d)(1), applicable to both section 6320 and section 6330, a taxpayer is entitled to judicial review only after the issuance of the determination by Appeals after a CDP hearing. Once the Notice of Determination has been issued, any subsequent consideration of the case by Appeals, including changed circumstances, based on Appeals' retained jurisdiction under section 6330(d)(2), is not part of the CDP hearing subject to judicial review.

One commentator also urged that a taxpayer be allowed to challenge the existence or amount of the tax liability set out in a CDP Notice issued under section 6330 even if the taxpayer had previously failed to raise such a challenge pursuant to a CDP Notice issued under section 6320. The commentator points to section 6330(c)(4), which provides generally that a person who had meaningfully participated in a section 6320 CDP hearing in which an issue was raised may not raise that same issue in a subsequent section 6330 CDP hearing. Treasury and the IRS have concluded that section 6330(c)(2)(B), addressing specifically a person's right to challenge the underlying tax liability, is clear that any prior opportunity to challenge the underlying tax liability, which would include a section 6320 CDP hearing, precludes a taxpayer from doing so at a later section 6330 CDP hearing.

Explanation of Revisions

The proposed regulations provided that district directors, directors of service centers and the Assistant Commissioner (International) would be the officials required to give notice of the right to, and the opportunity for, a CDP hearing to a taxpayer prior to levy on that taxpayer's property. To reflect the recent reorganization of the IRS, paragraphs (a)(1) and (2) of the final regulations eliminate references to these specific officers and substitutes a general authorization to the IRS to provide such notification.

Examples, similar to those in the corresponding paragraphs of the final regulations under section 6320, have been added in paragraphs (b) and (c) of these final regulations to illustrate the provisions of those paragraphs.

Question and Answer (Q&A) C1 of the proposed regulations stated that a request for a CDP hearing must be signed by the taxpayer or the taxpayer's authorized representative. Requests for CDP hearings on occasion are not signed by the taxpayer or the taxpayer's authorized representative but instead are filed on the taxpayer's behalf by the taxpayer's spouse or other personal representative not authorized to practice before Appeals. The IRS's administrative practice has been to treat these requests as complying with the temporary regulations provided that the taxpayer or the taxpayer's authorized representative signs the request within a reasonable period of time. Q&A C1 in the final regulations is revised to reflect this administrative practice.

Q&A C6 of the proposed regulations provided that a request for a CDP hearing should be filed with the IRS office that issued the CDP Notice or, if the taxpayer did not know the address of that IRS office, then with one of two alternative IRS offices. Q&A C6 of the final regulations requires that a request for a CDP hearing be filed with the IRS office and address indicated on the CDP Notice. The final regulations change the alternative addresses to reflect the IRS's recent reorganization. The final regulations provide that if no address is provided in the CDP Notice, then the request must be filed with the compliance area director, or his or her successor, serving the compliance area in which the taxpayer resides or has its principal place of business. The final regulations provide a toll-free number to obtain the address of the office of the appropriate compliance area director, or his or her successor.

The proposed regulations did not discuss how a CDP hearing should be conducted and where or how it may occur. A new Q&A D6, relating to how CDP hearings are conducted, and a new Q&A D7, relating to where in-person meetings will be held, are added to the final regulations to clarify how a CDP hearing may be conducted.

Paragraph (e)(2) of the proposed regulations, dealing with spousal defenses under section 6015, has been revised in the final regulations to also address spousal defenses raised under section 66. Q&A E3 of the proposed regulations, dealing with the extent of any limitations imposed under section 6330(c)(2)(B), has been revised in the final regulations to also address the effect of a spousal defense raised under section 66. The proposed regulations did not specifically discuss whether a taxpayer may raise a spousal defense at a CDP hearing when the taxpayer has raised that defense administratively, but has not raised it in a judicial proceeding that has become final. A new Q&A E4 is added to the final regulations to provide that a spousal defense may be raised if the IRS has not made a final determination as to that spousal defense in a final determination letter or statutory notice of deficiency. Q&A E4 of the proposed regulations, dealing with spousal defenses that were raised in a prior judicial proceeding, has been revised to also discuss the effect of a spousal defense raised under section 66, and has been renumbered as Q&A E5 of the final regulations.

Q&A E8 of the proposed regulations dealt with the question of whether there were any time limits on when a Notice of Determination must be issued. That Q&A, now Q&A E9 of the final regulations, has been revised to clarify the there are no time limitations on when a CDP hearing must be held or on when a Notice of Determination must be issued, except that both must be done as expeditiously as possible under the circumstances.

Under section 6330(c)(2)(B), a taxpayer may not challenge the existence or the amount of the underlying tax liability at a CDP hearing if the taxpayer has had a prior opportunity to dispute that liability—i.e., the taxpayer had received a statutory notice of deficiency or otherwise had an opportunity to dispute the underlying tax liability. The final regulations add a new Q&A E11 to address the effect of an Appeals officer's or employee's consideration of liability issues when the taxpayer has had a prior opportunity to dispute the underlying tax liability. In such circumstances, any consideration of liability issues by the Appeals officer or employee is discretionary and is not treated as part of the CDP hearing. Accordingly, the Appeals officer's or employee's determinations, if any, made with respect to liability issues are not required to appear in the Notice of Determination. Any determinations regarding the underlying tax liability that are included in the Notice of Determination are not reviewable by a district court or the Tax Court.

Q&A F2 and Q&A I5 of the proposed regulations, both relating to judicial review of CDP cases where a spousal defense under section 6015 is raised, specifically referred only to paragraphs (b) and (c) of section 6015. Q&A F2 and Q&A I5 have been revised in the final regulations also to include a denial of relief under section 6015(f).

Section 6330(e) generally provides for the suspension of the periods of limitation under section 6502, section 6531, and section 6532 after the filing of

a request for a CDP hearing under section 6330, and also provides that levy actions that are the subject of the requested CDP hearing are suspended during this same period. A new Q&A G3 is added to the final regulations to clarify what collection actions the IRS may take after a request for a CDP hearing under section 6330 has been filed.

As set out in Q&A G3 of the final regulations, the IRS may file NFTLs for the tax and tax period covered by the CDP Notice issued under section 6330, although such filings may give rise to issuance of a CDP Notice under section 6320. The IRS also may take enforcement actions for tax periods and taxes not covered by a CDP Notice that is the subject of the CDP hearing requested under section 6320. For example, the IRS may file NFTLs for tax periods or taxes not covered by the CDP Notice (although such filings may give rise to issuance of a CDP Notice under section 6320) and may levy for those taxes and tax periods if the CDP requirements under section 6330 as to those taxes and tax periods have been satisfied and CDP proceedings, if any, concluded. The IRS further is not prohibited by section 6330(e) from taking other non-levy collection actions such as initiating judicial proceedings to collect the tax shown on the CDP Notice issued under section 6330 or from offsetting overpayments from other periods, or of other taxes, against the tax shown on the CDP Notice. Moreover, the IRS may levy upon any state tax refund due the taxpayer, and, under appropriate circumstances, make jeopardy levies for the tax and tax periods covered by the CDP Notice at issue in the CDP hearing. Finally, section 6330 does not prohibit the IRS from accepting any voluntary payments made for the tax and tax period set out in the CDP Notice.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the preceding temporary regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this regulation is Jerome D. Sekula, of the Office of Associate Chief Counsel, Procedure and Administration (Collection, Bankruptcy and Summonses Division).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

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

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

2. Section 301.6330–1 is added under the undesignated centerheading ''Seizure of Property for Collection of Taxes'' to read as follows:

§ 301.6330–1 Notice and opportunity for hearing prior to levy.

(a) *Notification*—(1) *In general.* Except as specified in paragraph (a)(2) of this section, the Commissioner, or his or her delegate (the Commissioner), will prescribe procedures to provide persons upon whose property or rights to property the IRS intends to levy (hereinafter referred to as the taxpayer) on or after January 19, 1999, notice of that intention and to give them the right to, and the opportunity for, a pre-levy Collection Due Process (CDP) hearing with the Internal Revenue Service (IRS) Office of Appeals (Appeals). This pre-levy Collection Due Process Hearing Notice (CDP Notice) must be given in person, left at the dwelling or usual place of business of the taxpayer, or sent by certified or registered mail, return receipt requested, to the taxpayer's last known address. For further guidance regarding the definition of last known address, see § 301.6212–2.

(2) *Exceptions*—(i) *state tax refunds.* Section 6330(f) does not require the Commissioner to provide the taxpayer with notification of the taxpayer's right to a CDP hearing prior to issuing a levy to collect state tax refunds owing to the taxpayer. However, the Commissioner will prescribe procedures to give the taxpayer notice of the right to, and the opportunity for, a CDP hearing with Appeals with respect to any such levy issued on or after January 19, 1999, within a reasonable time after the levy has occurred. The notification required to be given following a levy on a state tax refund is referred to as a post-levy CDP Notice.

(ii) *Jeopardy.* Section 6330(f) does not require the Commissioner to provide the taxpayer with notification of the taxpayer's right to a CDP hearing prior to a levy when there has been a determination that collection of the tax is in jeopardy. However, the Commissioner will prescribe procedures to provide notice of the right to, and the opportunity for, a CDP hearing with Appeals to the taxpayer with respect to any such levy issued on or after January 19, 1999, within a reasonable time after the levy has occurred. The notification required to be given following a jeopardy levy also is referred to as post-levy CDP Notice.

(3) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (a) as follows:

Q–A1. Who is the person to be notified under section 6330?

A–A1. Under section 6330(a)(1), a pre-levy or post-levy CDP Notice is required to be given only to the person whose property or right to property is intended to be levied upon, or, in the case of a levy made on a state tax refund or a jeopardy levy, the person whose property or right to property was levied upon. The person described in section 6330(a)(1) is the same person described in section 6331(a)—i.e., the person liable to pay the tax due after notice and demand who refuses or neglects to pay (referred to here as the taxpayer). A pre-levy or post-levy CDP Notice therefore will be given only to the taxpayer.

Q–A2. Will the IRS give notification to a known nominee of, a person holding property of, or a person who holds property subject to a lien with respect to, the taxpayer of the IRS' intention to issue a levy?

A–A2. No. Such a person is not the person described in section 6331(a)(1), but such persons have other remedies. See A–B5 of paragraph (b)(2) of this section.

Q–A3. Will the IRS give notification for each tax and tax period it intends to include or has included in a levy issued on or after January 19, 1999?

A–A3. Yes. The notification of an intent to levy or of the issuance of a jeopardy or state tax refund levy will specify each tax and tax period that will be or was included in the levy.

Q–A4. Will the IRS give notification to a taxpayer with respect to levies for a tax and tax period issued on or after January 19, 1999, even though the IRS had issued a levy prior to January 19,

1999, with respect to the same tax and tax period?

A–A4. Yes. The IRS will provide appropriate pre-levy or post-levy notification to a taxpayer regarding the first levy it intends to issue or has issued on or after January 19, 1999, with respect to a tax and tax period, even though it had issued a levy with respect to that same tax and tax period prior to January 19, 1999.

Q–A5. When will the IRS provide this notice?

A–A5. Beginning on January 19, 1999, the IRS will give a pre-levy CDP Notice to the taxpayer of the IRS' intent to levy on property or rights to property, other than in state tax refund and jeopardy levy situations, at least 30 days prior to the first such levy with respect to a tax and tax period. If the taxpayer has not received a pre-levy CDP Notice and the IRS levies on a state tax refund or issues a jeopardy levy on or after January 19, 1999, the IRS will provide a post-levy CDP Notice to the taxpayer within a reasonable time after that levy.

Q–A6. What must a pre-levy CDP Notice include?

A–A6. Pursuant to section 6330(a)(3), a pre-levy CDP Notice must include, in simple and nontechnical terms:

(i) The amount of the unpaid tax.

(ii) Notification of the right to request a CDP hearing.

(iii) A statement that the IRS intends to levy.

(iv) The taxpayer's rights with respect to the levy action, including a brief statement that sets forth—

(A) The statutory provisions relating to the levy and sale of property;

(B) The procedures applicable to the levy and sale of property;

(C) The administrative appeals available to the taxpayer with respect to the levy and sale and the procedures relating to those appeals;

(D) The alternatives available to taxpayers that could prevent levy on the property (including installment agreements); and

(E) The statutory provisions and the procedures relating to the redemption of property and the release of liens on property.

Q–A7. What must a post-levy CDP Notice include?

A–A7. A post-levy CDP Notice must include, in simple and nontechnical terms:

(i) The amount of the unpaid tax.

(ii) Notification of the right to request a CDP hearing.

(iii) A statement that the IRS has levied upon the taxpayer's state tax refund or has made a jeopardy levy on property or rights to property of the taxpayer, as appropriate.

(iv) The taxpayer's rights with respect to the levy action, including a brief statement that sets forth—

(A) The statutory provisions relating to the levy and sale of property;

(B) The procedures applicable to the levy and sale of property;

(C) The administrative appeals available to the taxpayer with respect to the levy and sale and the procedures relating to those appeals;

(D) The alternatives available to taxpayers that could prevent any further levies on the taxpayer's property (including installment agreements); and

(E) The statutory provisions and the procedures relating to the redemption of property and the release of liens on property.

Q–A8. How will this pre-levy or post-levy notification under section 6330 be accomplished?

A–A8. The IRS will notify the taxpayer by means of a pre-levy CDP Notice or a post-levy CDP Notice, as appropriate. The additional information the IRS is required to provide, together with Form 12153, Request for a Collection Due Process Hearing, will be included with the CDP Notice.

(i) The IRS may effect delivery of a pre-levy CDP Notice (and accompanying materials) in one of three ways:

(A) By delivering the notice personally to the taxpayer.

(B) By leaving the notice at the taxpayer's dwelling or usual place of business.

(C) By mailing the notice to the taxpayer at the taxpayer's last known address by certified or registered mail, return receipt requested.

(ii) The IRS may effect delivery of a post-levy CDP Notice (and accompanying materials) in one of three ways:

(A) By delivering the notice personally to the taxpayer.

(B) By leaving the notice at the taxpayer's dwelling or usual place of business.

(C) By mailing the notice to the taxpayer at the taxpayer's last known address by certified or registered mail.

Q–A9. What are the consequences if the taxpayer does not receive or accept the notification which was properly left at the taxpayer's dwelling or usual place of business, or properly sent by certified or registered mail, return receipt requested, to the taxpayer's last known address?

A–A9. Notification properly sent to the taxpayer's last known address or left at the taxpayer's dwelling or usual place of business is sufficient to start the 30-day period within which the taxpayer may request a CDP hearing. See paragraph (c) of this section for when a request for a CDP hearing must be filed. Actual receipt is not a prerequisite to the validity of the CDP Notice.

Q–A10. What if the taxpayer does not receive the CDP Notice because the IRS did not send that notice by certified or registered mail to the taxpayer's last known address, or failed to leave it at the dwelling or usual place of business of the taxpayer, and the taxpayer fails to request a CDP hearing with Appeals within the 30-day period commencing the day after the date of the CDP Notice?

A–A10. When the IRS determines that it failed properly to provide a taxpayer with a CDP Notice, it will promptly provide the taxpayer with a substitute CDP Notice and provide the taxpayer with an opportunity to request a CDP hearing. Substitute CDP Notices are discussed in Q&A–B3 of paragraph (b)(2) and Q&A–C8 of paragraph (c)(2) of this section.

(4) *Examples.* The following examples illustrate the principles of this paragraph (a):

Example 1. Prior to January 19, 1999, the IRS issues a continuous levy on a taxpayer's wages and a levy on that taxpayer's fixed right to future payments. The IRS is not required to release either levy on or after January 19, 1999, until the requirements of section 6343(a)(1) are met. The taxpayer is not entitled to a CDP Notice or a CDP hearing under section 6330 with respect to either levy because both levy actions were initiated prior to January 19, 1999.

Example 2. The same facts as in *Example 1,* except the IRS intends to levy upon a taxpayer's bank account on or after January 19, 1999. The taxpayer is entitled to a pre-levy CDP Notice with respect to this proposed new levy.

(b) *Entitlement to a CDP hearing*—(1) *In general.* A taxpayer is entitled to one CDP hearing with respect to the unpaid tax and tax periods covered by the pre-levy or post-levy CDP Notice provided to the taxpayer. The taxpayer must request the CDP hearing within the 30-day period commencing on the day after the date of the CDP Notice.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (b) as follows:

Q–B1. Is the taxpayer entitled to a CDP hearing where a levy for state tax refunds is issued on or after January 19, 1999, even though the IRS had previously issued other levies prior to January 19, 1999, seeking to collect the taxes owed for the same period?

A–B1. Yes. The taxpayer is entitled to a CDP hearing under section 6330 for the type of tax and tax periods set forth in the state tax refund levy issued on or after January 19, 1999.

Q–B2. Is the taxpayer entitled to a CDP hearing when the IRS, more than

30 days after issuance of a CDP Notice under section 6330 with respect to the unpaid tax and periods, provides subsequent notice to that taxpayer that the IRS intends to levy on property or rights to property of the taxpayer for the same tax and tax periods shown on the CDP Notice?

A–B2. No. Under section 6330, only the first pre-levy or post-levy CDP Notice with respect to the unpaid tax and tax periods entitles the taxpayer to request a CDP hearing. If the taxpayer does not timely request a CDP hearing with Appeals following that first notification, the taxpayer foregoes the right to a CDP hearing with Appeals and judicial review of Appeals' determination with respect to levies relating to that tax and tax period. The IRS generally provides additional notices or reminders (reminder notifications) to the taxpayer of its intent to levy when no collection action has occurred within 180 days of a proposed levy. Under such circumstances, a taxpayer may request an equivalent hearing as described in paragraph (i) of this section.

Q–B3. When the IRS provides a taxpayer with a substitute CDP Notice and the taxpayer timely requests a CDP hearing, is the taxpayer entitled to a CDP Hearing before Appeals?

A–B3. Yes. Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, the taxpayer is entitled to a CDP hearing before Appeals. Following the hearing, Appeals will issue a Notice of Determination, and the taxpayer is entitled to seek judicial review of that Notice of Determination.

Q–B4. If the IRS sends a second CDP Notice under section 6330 (other than a substitute CDP Notice) for a tax period and with respect to an unpaid tax for which a CDP Notice under section 6330 was previously sent, is the taxpayer entitled to a section 6330 CDP hearing based on the second CDP Notice?

A–B4. No. The taxpayer is entitled to only one CDP hearing under section 6330 with respect to the tax and tax period. The taxpayer must request the CDP hearing within 30 days of the date of the first CDP Notice provided for that tax and tax period.

Q–B5. Will the IRS give pre-levy or post-levy CDP Notices to known nominees of, persons holding property of, or persons holding property subject to a lien with respect to the taxpayer?

A–B5. No. Such person is not the person described in section 6331(a) and is, therefore, not entitled to a CDP hearing or an equivalent hearing (as discussed in paragraph (i) of this section). Such person, however, may seek reconsideration by the IRS office collecting the tax, assistance from the National Taxpayer Advocate, or an administrative hearing before Appeals under its Collection Appeals Program. However, any such administrative hearing would not be a CDP hearing under section 6330 and any determination or decision resulting from the hearing would not be subject to judicial review.

(3) *Example.* The following example illustrates the principles of this paragraph (b):

Example. Federal income tax liability for 1997 is assessed against individual D. D buys an asset and puts it in individual E's name. The IRS gives D a CDP Notice of intent to levy with respect to the 1997 tax liability. The IRS will not notify E of its intent to levy. The IRS is not required to notify E of its intent to levy although E holds property of individual D. E is not the taxpayer.

(c) *Requesting a CDP hearing*—(1) *In general.* When a taxpayer is entitled to a CDP hearing under section 6330, the CDP hearing must be requested during the 30-day period that commences the day after the date of the CDP Notice.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (c) as follows:

Q–C1. What must a taxpayer do to obtain a CDP hearing?

A–C1. (i) The taxpayer must make a request in writing for a CDP hearing. A written request in any form which requests a CDP hearing will be acceptable. The request must include the taxpayer's name, address, and daytime telephone number, and must be signed by the taxpayer or the taxpayer's authorized representative and dated. The CDP Notice should include, when appropriate, a Form 12153, Request for a Collection Due Process Hearing, that can be used by the taxpayer to request a CDP hearing.

(ii) The Form 12153 requests the following information:

(A) The taxpayer's name, address, daytime telephone number, and taxpayer identification number (SSN or TIN).

(B) The type of tax involved.

(C) The tax period at issue.

(D) A statement that the taxpayer requests a hearing with Appeals concerning the proposed collection activity.

(E) The reason or reasons why the taxpayer disagrees with the proposed collection action.

(iii) Taxpayers are encouraged to use a Form 12153 in requesting a CDP hearing so that the request can be readily identified and forwarded to Appeals. Taxpayers may obtain a copy of Form 12153 by contacting the IRS office that issued the CDP Notice or by calling, toll-free, 1–800–829–3676.

(iv) The taxpayer may perfect any timely written request for a CDP hearing, which otherwise meets the requirements set forth above and which is made or alleged to have been made on the taxpayer's behalf by the taxpayer's spouse or any other representative, by filing, within a reasonable time of a request from Appeals, a signed written affirmation that the request was originally submitted on the taxpayer's behalf.

Q–C2. Must the request for the CDP hearing be in writing?

A–C2. Yes. There are several reasons why the request for a CDP hearing must be in writing. The filing of a timely request for a CDP hearing is the first step in what may result in a court proceeding. A written request will provide proof that the CDP hearing was requested and thus permit the court to verify that it has jurisdiction over any subsequent appeal of the Notice of Determination issued by Appeals. In addition, the receipt of the written request will establish the date on which the periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended as a result of the CDP hearing and any judicial appeal. Moreover, because the IRS anticipates that taxpayers will contact the IRS office that issued the CDP Notice for further information or assistance in filling out Form 12153, or to attempt to resolve their liabilities prior to going through the CDP hearing process, the requirement of a written request should help prevent any misunderstanding as to whether a CDP hearing has been requested. If the information requested on Form 12153 is furnished by the taxpayer, the written request also will help to establish the issues for which the taxpayer seeks a determination by Appeals.

Q–C3. When must a taxpayer request a CDP hearing with respect to a CDP Notice issued under section 6330?

A–C3. A taxpayer must submit a written request for a CDP hearing within the 30-day period commencing the day after the date of the CDP Notice issued under section 6330. This period is slightly different from the period for submitting a written request for a CDP hearing with respect to a CDP Notice issued under section 6320. For a CDP Notice issued under section 6320, a taxpayer must submit a written request for a CDP hearing within the 30-day period commencing the day after the end of the five business day period

following the filing of the notice of federal tax lien (NFTL).

Q–C4. How will the timeliness of a taxpayer's written request for a CDP hearing be determined?

A–C4. The rules and regulations under section 7502 and section 7503 will apply to determine the timeliness of the taxpayer's request for a CDP hearing, if properly transmitted and addressed as provided in A–C6 of this paragraph (c)(2).

Q–C5. Is the 30-day period within which a taxpayer must make a request for a CDP hearing extended because the taxpayer resides outside the United States?

A–C5. No. Section 6330 does not make provision for such a circumstance. Accordingly, all taxpayers who want a CDP hearing under section 6330 must request such a hearing within the 30-day period commencing the day after the date of the CDP Notice.

Q–C6. Where should the written request for a CDP hearing be sent?

A–C6. The written request for a CDP hearing must be sent, or hand delivered, to the IRS office that issued the CDP Notice at the address indicated on the CDP Notice. If the address of that office does not appear on the CDP notice, the request must be sent, or hand delivered, to the compliance area director, or his or her successor, serving the compliance area in which the taxpayer resides or has its principal place of business. If the taxpayer does not have a residence or principal place of business in the United States, the request must be sent, or hand delivered, to the compliance director, Philadelphia Submission Processing Center, or his or her successor. Taxpayers may obtain the address of the appropriate person to which the written request should be sent or hand delivered by calling, toll-free, 1–800–829–1040 and providing their taxpayer identification number (SSN or TIN).

Q–C7. What will happen if the taxpayer does not request a CDP hearing in writing within the 30-day period commencing on the day after the date of the CDP Notice issued under section 6330?

A–C7. If the taxpayer does not request a CDP hearing with Appeals within the 30-day period commencing the day after the date of the CDP Notice, the taxpayer will forego the right to a CDP hearing under section 6330 with respect to the unpaid tax and tax periods shown on the CDP Notice. The taxpayer may, however, request an equivalent hearing. See paragraph (i) of this section.

Q–C8. When must a taxpayer request a CDP hearing with respect to a substitute CDP Notice?

A–C8. A CDP hearing with respect to a substitute CDP Notice must be requested in writing by the taxpayer prior to the end of the 30-day period commencing the day after the date of the substitute CDP Notice.

Q–C9. Can taxpayers attempt to resolve the matter of the proposed levy with an officer or employee of the IRS office collecting the tax liability stated on the CDP Notice either before or after requesting a CDP hearing?

A–C9. Yes. Taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax, either before or after they request a CDP hearing. If such a discussion occurs before a request is made for a CDP hearing, the matter may be resolved without the need for Appeals consideration. However, these discussions do not suspend the running of the 30-day period within which the taxpayer is required to request a CDP hearing, nor do they extend that 30-day period. If discussions occur after the request for a CDP hearing is filed and the taxpayer resolves the matter with the IRS office collecting the tax, the taxpayer may withdraw in writing the request that a CDP hearing be conducted by Appeals. The taxpayer can also waive in writing some or all of the requirements regarding the contents of the Notice of Determination.

(3) *Examples.* The following examples illustrate the principles of this paragraph (c):

Example 1. The IRS mails a CDP Notice of intent to levy to individual A's last known address on June 24, 1999. Individual A has until July 26, 1999, a Monday, to request a CDP hearing. The 30-day period within which individual A may request a CDP hearing begins on June 25, 1999. Because the 30-day period expires on July 24, 1999, a Saturday, individual A's written request for a CDP hearing will be considered timely if it is properly transmitted and addressed to the IRS in accordance with section 7502 and the regulations thereunder no later than July 26, 1999.

Example 2. Same facts as in *Example 1,* except that individual A is on vacation, outside the United States, or otherwise does not receive or read the CDP Notice until July 19, 1999. As in *Example 1,* individual A has until July 26, 1999, to request a CDP hearing. If individual A does not request a CDP hearing, individual A may request an equivalent hearing as to the levy at a later time. The taxpayer should make a request for an equivalent hearing at the earliest possible time.

Example 3. Same facts as in *Example 2,* except that individual A does not receive or read the CDP Notice until after July 26, 1999, and does not request a hearing by July 26, 1999. Individual A is not entitled to a CDP hearing. Individual A may request an equivalent hearing as to the levy at a later time. The taxpayer should make a request for an equivalent hearing at the earliest possible time.

Example 4. Same facts as in *Example 1,* except the IRS determines that the CDP Notice mailed on June 24, 1999, was not mailed to individual A's last known address. As soon as practicable after making this determination, the IRS will mail a substitute CDP Notice to individual A at individual A's last known address, hand deliver the substitute CDP Notice to individual A, or leave the substitute CDP Notice at individual A's dwelling or usual place of business. Individual A will have 30 days commencing on the day after the date of the substitute CDP Notice within which to request a CDP hearing.

(d) *Conduct of CDP hearing*—(1) *In general.* If a taxpayer requests a CDP hearing under section 6330(a)(3)(B) (and does not withdraw that request), the CDP hearing will be held with Appeals. The taxpayer is entitled to only one CDP hearing under section 6330 with respect to the unpaid tax and tax periods shown on the CDP Notice. To the extent practicable, the CDP hearing requested under section 6330 will be held in conjunction with any CDP hearing the taxpayer requests under section 6320. A CDP hearing will be conducted by an employee or officer of Appeals who, prior to the first CDP hearing under section 6320 or section 6330, has had no involvement with respect to the tax for the tax periods to be covered by the hearing, unless the taxpayer waives this requirement.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (d) as follows:

Q–D1. Under what circumstances can a taxpayer receive more than one pre-levy CDP hearing under section 6330 with respect to a tax period?

A–D1. The taxpayer may receive more than one CDP pre-levy hearing under section 6330 with respect to a tax period where the tax involved is a different type of tax (for example, an employment tax liability, where the original CDP hearing for the tax period involved an income tax liability), or where the same type of tax for the same period is involved, but where the amount of the unpaid tax has changed as a result of an additional assessment of tax (not including interest or penalties) for that period or an additional accuracy-related or filing-delinquency penalty has been assessed. The taxpayer is not entitled to another CDP hearing under section 6330 if the additional assessment represents accruals of interest, accruals of penalties, or both.

Q–D2. Will a CDP hearing with respect to one tax period be combined with a CDP hearing with respect to another tax period?

A–D2. To the extent practicable, a CDP hearing with respect to one tax period shown on a CDP Notice will be combined with any and all other CDP hearings which the taxpayer has requested.

Q–D3. Will a CDP hearing under section 6330 be combined with a CDP hearing under section 6320?

A–D3. To the extent it is practicable, a CDP hearing under section 6330 will be held in conjunction with a CDP hearing under section 6320.

Q–D4. What is considered to be prior involvement by an employee or officer of Appeals with respect to the tax and tax period or periods involved in the hearing?

A–D4. Prior involvement by an employee or officer of Appeals includes participation or involvement in an Appeals hearing (other than a CDP hearing held under either section 6320 or section 6330) that the taxpayer may have had with respect to the tax and tax periods shown on the CDP Notice.

Q–D5. How can a taxpayer waive the requirement that the officer or employee of Appeals have no prior involvement with respect to the tax and tax period or periods involved in the CDP hearing?

A–D5. The taxpayer must sign a written waiver.

Q–D6. How are CDP hearings conducted?

A–D6. The formal hearing procedures required under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, do not apply to CDP hearings. CDP hearings are much like Collection Appeal Program (CAP) hearings in that they are informal in nature and do not require the Appeals officer or employee and the taxpayer, or the taxpayer's representative, to hold a face-to-face meeting. A CDP hearing may, but is not required to, consist of a face-to-face meeting, one or more written or oral communications between an Appeals officer or employee and the taxpayer or the taxpayer's representative, or some combination thereof. A transcript or recording of any face-to-face meeting or conversation between an Appeals officer or employee and the taxpayer or the taxpayer's representative is not required. The taxpayer or the taxpayer's representative does not have the right to subpoena and examine witnesses at a CDP hearing.

Q–D7. If a taxpayer wants a face-to-face CDP hearing, where will it be held?

A–D7. The taxpayer must be offered an opportunity for a hearing at the Appeals office closest to taxpayer's residence or, in the case of a business taxpayer, the taxpayer's principal place of business. If that is not satisfactory to the taxpayer, the taxpayer will be given an opportunity for a hearing by correspondence or by telephone. If that is not satisfactory to the taxpayer, the Appeals officer or employee will review the taxpayer's request for a CDP hearing, the case file, any other written communications from the taxpayer (including written communications, if any, submitted in connection with the CDP hearing), and any notes of any oral communications with the taxpayer or the taxpayer's representative. Under such circumstances, review of those documents will constitute the CDP hearing for the purposes of section 6330(b).

(e) *Matters considered at CDP hearing*—(1) *In general.* Appeals has the authority to determine the validity, sufficiency, and timeliness of any CDP Notice given by the IRS and of any request for a CDP hearing that is made by a taxpayer. Prior to issuance of a determination, the hearing officer is required to obtain verification from the IRS office collecting the tax that the requirements of any applicable law or administrative procedure have been met. The taxpayer may raise any relevant issue relating to the unpaid tax at the hearing, including appropriate spousal defenses, challenges to the appropriateness of the proposed collection action, and offers of collection alternatives. The taxpayer also may raise challenges to the existence or amount of the tax liability specified on the CDP Notice for any tax period shown on the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for that tax liability or did not otherwise have an opportunity to dispute that tax liability. Finally, the taxpayer may not raise an issue that was raised and considered at a previous CDP hearing under section 6320 or in any other previous administrative or judicial proceeding if the taxpayer participated meaningfully in such hearing or proceeding. Taxpayers will be expected to provide all relevant information requested by Appeals, including financial statements, for its consideration of the facts and issues involved in the hearing.

(2) *Spousal defenses.* A taxpayer may raise any appropriate spousal defenses at a CDP hearing unless the Commissioner has already made a final determination as to spousal defenses in a statutory notice of deficiency or final determination letter. To claim a spousal defense under section 66 or section 6015, the taxpayer must do so in writing according to rules prescribed by the Commissioner or the Secretary. Spousal defenses raised under sections 66 and 6015 in a CDP hearing are governed in all respects by the provisions of sections 66 and section 6015 and the regulations and procedures thereunder.

(3) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (e) as follows:

Q–E1. What factors will Appeals consider in making its determination?

A–E1. Appeals will consider the following matters in making its determination:

(i) Whether the IRS met the requirements of any applicable law or administrative procedure.

(ii) Any issues appropriately raised by the taxpayer relating to the unpaid tax.

(iii) Any appropriate spousal defenses raised by the taxpayer.

(iv) Any challenges made by the taxpayer to the appropriateness of the proposed collection action.

(v) Any offers by the taxpayer for collection alternatives.

(vi) Whether the proposed collection action balances the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.

Q–E2. When is a taxpayer entitled to challenge the existence or amount of the tax liability specified in the CDP Notice?

A–E2. A taxpayer is entitled to challenge the existence or amount of the tax liability specified in the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for such liability or did not otherwise have an opportunity to dispute such liability. Receipt of a statutory notice of deficiency for this purpose means receipt in time to petition the Tax Court for a redetermination of the deficiency asserted in the notice of deficiency. An opportunity to dispute a liability includes a prior opportunity for a conference with Appeals that was offered either before or after the assessment of the liability.

Q–E3. Are spousal defenses subject to the limitations imposed under section 6330(c)(2)(B) on a taxpayer's right to challenge the tax liability specified in the CDP Notice at a CDP hearing?

A–E3. The limitations imposed under section 6330(c)(2)(B) do not apply to spousal defenses. When a taxpayer asserts a spousal defense, the taxpayer is not disputing the amount or existence of the liability itself, but asserting a defense to the liability which may or may not be disputed. A spousal defense raised under section 66 or section 6015 is governed by section 66 or section 6015 and the regulations and procedures thereunder. Any limitation under those sections, regulations, and procedures therefore will apply.

Q–E4. May a taxpayer raise at a CDP hearing a spousal defense under section 66 or section 6015 if that defense was raised and considered administratively and the Commissioner has issued a statutory notice of deficiency or final determination letter addressing the spousal defense?

A–E4. No. A taxpayer is precluded from raising a spousal defense at a CDP hearing when the Commissioner has made a final determination (under section 66 or section 6015) as to spousal defenses in a final determination letter or statutory notice of deficiency. However, a taxpayer may raise spousal defenses in a CDP hearing when the taxpayer has previously raised spousal defenses, but the Commissioner has not yet made a final determination regarding this issue.

Q–E5. May a taxpayer raise at a CDP hearing a spousal defense under section 66 or section 6015 if that defense was raised and considered in a prior judicial proceeding that has become final?

A–E5. No. A taxpayer is precluded by the doctrine of res judicata and by the specific limitations under section 66 or section 6015 from raising a spousal defense in a CDP hearing under these circumstances.

Q–E6. What collection alternatives are available to the taxpayer?

A–E6. Collection alternatives would include, for example, a proposal to withhold the proposed or future collection action in circumstances that will facilitate the collection of the tax liability, an installment agreement, an offer-in-compromise, the posting of a bond, or the substitution of other assets.

Q–E7. What issues may a taxpayer raise in a CDP hearing under section 6330 if the taxpayer previously received a notice under section 6320 with respect to the same tax and tax period and did not request a CDP hearing with respect to that notice?

A–E7. The taxpayer may raise appropriate spousal defenses, challenges to the appropriateness of the proposed collection action, and offers of collection alternatives. The existence or amount of the tax liability for the tax for the tax period specified in the CDP Notice may be challenged only if the taxpayer did not already have an opportunity to dispute that tax liability. Where the taxpayer previously received a CDP Notice under section 6320 with respect to the same tax and tax period and did not request a CDP hearing with respect to that earlier CDP Notice, the taxpayer already had an opportunity to dispute the existence or amount of the underlying tax liability.

Q–E8. How will Appeals issue its determination?

A–E8. (i) Taxpayers will be sent a dated Notice of Determination by certified or registered mail. The Notice of Determination will set forth Appeals' findings and decisions. It will state whether the IRS met the requirements of any applicable law or administrative procedure; it will resolve any issues appropriately raised by the taxpayer relating to the unpaid tax; it will include a decision on any appropriate spousal defenses raised by the taxpayer; it will include a decision on any challenges made by the taxpayer to the appropriateness of the collection action; it will respond to any offers by the taxpayer for collection alternatives; and it will address whether the proposed collection action represents a balance between the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary. The Notice of Determination will also set forth any agreements that Appeals reached with the taxpayer, any relief given the taxpayer, and any actions the taxpayer or the IRS are required to take. Lastly, the Notice of Determination will advise the taxpayer of the taxpayer's right to seek judicial review within 30 days of the date of the Notice of Determination.

(ii) Because taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax, certain matters that might have been raised at a CDP hearing may be resolved without the need for Appeals consideration. Unless, as a result of these discussions, the taxpayer agrees in writing to withdraw the request that Appeals conduct a CDP hearing, Appeals will still issue a Notice of Determination, but the taxpayer can waive in writing Appeals' consideration of some or all of the matters it would otherwise consider in making its determination.

Q–E9. Is there a period of time within which Appeals must conduct a CDP hearing or issue a Notice of Determination?

A–E9. No. Appeals will, however, attempt to conduct a CDP hearing and issue a Notice of Determination as expeditiously as possible under the circumstances.

Q–E10. Why is the Notice of Determination and its date important?

A–E10. The Notice of Determination will set forth Appeals' findings and decisions with respect to the matters set forth in A–E1 of this paragraph (e)(3). The 30-day period within which the taxpayer is permitted to seek judicial review of Appeals' determination commences the day after the date of the Notice of Determination.

Q–E11. If an Appeals officer considers the merits of a taxpayer's liability in a CDP hearing when the taxpayer had previously received a statutory notice of deficiency or otherwise had an opportunity to dispute the liability prior to the issuance of a notice of intention to levy, will the Appeals officer's determination regarding those liability issues be considered part of the Notice of Determination?

A–E11. No. An Appeals officer may consider the existence and amount of the underlying tax liability as a part of the CDP hearing only if the taxpayer did not receive a statutory notice of deficiency for the tax liability in question or otherwise have a prior opportunity to dispute the tax liability. Similarly, an Appeals officer may not consider any other issue if the issue was raised and considered at a previous hearing under section 6320 or in any other previous administrative or judicial proceeding in which the person seeking to raise the issue meaningfully participated. In the Appeals officer's sole discretion, however, the Appeals officer may consider the existence or amount of the underlying tax liability, or such other precluded issues, at the same time as the CDP hearing. Any determination, however, made by the Appeals officer with respect to such a precluded issue shall not be treated as part of the Notice of Determination issued by the Appeals officer and will not be subject to any judicial review. Because any decision made by the Appeals officer on such precluded issues is not properly a part of the CDP hearing, such decisions are not required to appear in the Notice of Determination issued following the hearing. Even if a decision concerning such precluded issues is referred to in the Notice of Determination, it is not reviewable by a district court or the Tax Court because the precluded issue is not properly part of the CDP hearing.

(4) *Examples.* The following examples illustrate the principles of this paragraph (e):

Example 1. The IRS sends a statutory notice of deficiency to the taxpayer at his last known address asserting a deficiency for the tax year 1995. The taxpayer receives the notice of deficiency in time to petition the Tax Court for a redetermination of the asserted deficiency. The taxpayer does not timely file a petition with the Tax Court. The taxpayer is precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

Example 2. Same facts as in *Example 1,* except the taxpayer does not receive the notice of deficiency in time to petition the Tax Court and did not have another prior opportunity to dispute the tax liability. The taxpayer is not precluded from challenging

the existence or amount of the tax liability in a subsequent CDP hearing.

Example 3. The IRS properly assesses a trust fund recovery penalty against the taxpayer. The IRS offers the taxpayer the opportunity for a conference with Appeals at which the taxpayer would have the opportunity to dispute the assessed liability. The taxpayer declines the opportunity to participate in such a conference. The taxpayer is precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

(f) *Judicial review of Notice of Determination*—(1) *In general.* Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, Appeals is required to issue a Notice of Determination in all cases where a taxpayer has timely requested a CDP hearing. The taxpayer may appeal such determinations made by Appeals within the 30-day period commencing the day after the date of the Notice of Determination to the Tax Court or a district court of the United States, as appropriate.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (f) as follows:

Q–F1. What must a taxpayer do to obtain judicial review of a Notice of Determination?

A–F1. Subject to the jurisdictional limitations described in A–F2, the taxpayer must, within the 30-day period commencing the day after the date of the Notice of Determination, appeal the determination by Appeals to the Tax Court or to a district court of the United States.

Q–F2. With respect to the relief available to the taxpayer under section 6015, what is the time frame within which a taxpayer may seek Tax Court review of Appeals' determination following a CDP hearing?

A–F2. If the taxpayer seeks Tax Court review not only of Appeals' denial of relief under section 6015, but also of relief with respect to other issues raised in the CDP hearing, the taxpayer should request Tax Court review within the 30-day period commencing the day after the date of the Notice of Determination. If the taxpayer only seeks Tax Court review of Appeals' denial of relief under section 6015, the taxpayer should request review by the Tax Court, as provided by section 6015(e), within 90 days of Appeals' determination. If a request for Tax Court review is filed after the 30-day period for seeking judicial review under section 6330, then only the taxpayer's section 6015 claims may be reviewable by the Tax Court.

Q–F3. Where should a taxpayer direct a request for judicial review of a Notice of Determination?

A–F3. If the Tax Court would have jurisdiction over the type of tax specified in the CDP Notice (for example, income and estate taxes), then the taxpayer must seek judicial review by the Tax Court. If the tax liability arises from a type of tax over which the Tax Court would not have jurisdiction, then the taxpayer must seek judicial review by a district court of the United States in accordance with Title 28 of the United States Code.

Q–F4. What happens if the taxpayer timely appeals Appeals' determination to the incorrect court?

A–F4. If the court to which the taxpayer directed a timely appeal of the Notice of Determination determines that the appeal was to the incorrect court (because of jurisdictional, venue or other reasons), the taxpayer will have 30 days after the court's determination to that effect within which to file an appeal to the correct court.

Q–F5. What issue or issues may the taxpayer raise before the Tax Court or before a district court if the taxpayer disagrees with the Notice of Determination?

A–F5. In seeking Tax Court or district court review of Appeals' Notice of Determination, the taxpayer can only ask the court to consider an issue that was raised in the taxpayer's CDP hearing.

(g) *Effect of request for CDP hearing and judicial review on periods of limitation and collection activity*—(1) *In general.* The periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended until the date the IRS receives the taxpayer's written withdrawal of the request for a CDP hearing by Appeals or the determination resulting from the CDP hearing becomes final by expiration of the time for seeking judicial review or the exhaustion of any rights to appeals following judicial review. In no event shall any of these periods of limitation expire before the 90th day after the date on which the IRS receives the taxpayer's written withdrawal of the request that Appeals conduct a CDP hearing or the Notice of Determination with respect to such hearing becomes final upon either the expiration of the time for seeking judicial review or upon exhaustion of any rights to appeals following judicial review.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (g) as follows:

Q–G1. For what period of time will the periods of limitation under section 6502, section 6531, and section 6532 remain suspended if the taxpayer timely requests a CDP hearing concerning a pre-levy or post-levy CDP Notice?

A–G1. The suspension period commences on the date the IRS receives the taxpayer's written request for a CDP hearing. The suspension period continues until the IRS receives a written withdrawal by the taxpayer of the request for a CDP hearing or the Notice of Determination resulting from the CDP hearing becomes final upon either the expiration of the time for seeking judicial review or upon exhaustion of any rights to appeals following judicial review. In no event shall any of these periods of limitation expire before the 90th day after the day on which there is a final determination with respect to such hearing. The periods of limitation that are suspended under section 6330 are those which apply to the taxes and the tax period or periods to which the CDP Notice relates.

Q–G2. For what period of time will the periods of limitation under section 6502, section 6531, and section 6532 be suspended if the taxpayer does not request a CDP hearing concerning the CDP Notice, or the taxpayer requests a CDP hearing, but his request is not timely?

A–G2. Under either of these circumstances, section 6330 does not provide for a suspension of the periods of limitation.

Q–G3. What, if any, enforcement actions can the IRS take during the suspension period?

A–G3. Section 6330(e) provides for the suspension of the periods of limitation discussed in paragraph (g)(1) of these regulations. Section 6330(e) also provides that levy actions that are the subject of the requested CDP hearing under that section shall be suspended during the same period. The IRS, however, may levy for other taxes and periods not covered by the CDP Notice if the CDP requirements under section 6330 for those taxes and periods have been satisfied. The IRS also may file NFTLs for tax periods and taxes, whether or not covered by the CDP Notice issued under section 6330, and may take other non-levy collection actions such as initiating judicial proceedings to collect the tax shown on the CDP Notice or offsetting overpayments from other periods, or of other taxes, against the tax shown on the CDP Notice. Moreover, the provisions in section 6330 do not apply when the IRS levies for the tax and tax period shown

on the CDP Notice to collect a state tax refund due the taxpayer, or determines that collection of the tax is in jeopardy. Finally, section 6330 does not prohibit the IRS from accepting any voluntary payments made for the tax and tax period stated on the CDP Notice.

(3) *Examples.* The following examples illustrate the principles of this paragraph (g):

Example 1. The period of limitation under section 6502 with respect to the taxpayer's tax period listed in the CDP Notice will expire on August 1, 1999. The IRS sent a CDP Notice to the taxpayer on April 30, 1999. The taxpayer timely requested a CDP hearing. The IRS received this request on May 15, 1999. Appeals sends the taxpayer its determination on June 15, 1999. The taxpayer timely seeks judicial review of that determination. The period of limitation under section 6502 would be suspended from May 15, 1999, until the determination resulting from that hearing becomes final by expiration of the time for seeking review or reconsideration before the appropriate court, plus 90 days.

Example 2. Same facts as in *Example 1*, except the taxpayer does not seek judicial review of Appeals' determination. Because the taxpayer requested the CDP hearing when fewer than 90 days remained on the period of limitation, the period of limitation will be extended to October 13, 1999 (90 days from July 15, 1999).

(h) *Retained jurisdiction of Appeals*—(1) *In general.* The Appeals office that makes a determination under section 6330 retains jurisdiction over that determination, including any subsequent administrative hearings that may be requested by the taxpayer regarding levies and any collection actions taken or proposed with respect to Appeals' determination. Once a taxpayer has exhausted his other remedies, Appeals' retained jurisdiction permits it to consider whether a change in the taxpayer's circumstances affects its original determination. Where a taxpayer alleges a change in circumstances that affects Appeals' original determination, Appeals may consider whether changed circumstances warrant a change in its earlier determination.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (h) as follows:

Q–H1. Are the periods of limitation suspended during the course of any subsequent Appeals consideration of the matters raised by a taxpayer when the taxpayer invokes the retained jurisdiction of Appeals under section 6330(d)(2)(A) or (B)?

A–H1. No. Under section 6330(b)(2), a taxpayer is entitled to only one CDP hearing under section 6330 with respect to the tax and tax periods specified in the CDP Notice. Any subsequent consideration by Appeals pursuant to its retained jurisdiction is not a continuation of the original CDP hearing and does not suspend the periods of limitation.

Q–H2. Is a decision of Appeals resulting from a retained jurisdiction hearing appealable to the Tax Court or a district court?

A–H2. No. As discussed in A–H1, a taxpayer is entitled to only one CDP hearing under section 6330 with respect to the tax and tax period or periods specified in the CDP Notice. Only determinations resulting from CDP hearings are appealable to the Tax Court or a district court.

(i) *Equivalent hearing*—(1) *In general.* A taxpayer who fails to make a timely request for a CDP hearing is not entitled to a CDP hearing. Such a taxpayer may nevertheless request an administrative hearing with Appeals, which is referred to herein as an ''equivalent hearing.'' The equivalent hearing will be held by Appeals and generally will follow Appeals procedures for a CDP hearing. Appeals will not, however, issue a Notice of Determination. Under such circumstances, Appeals will issue a Decision Letter.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (i) as follows:

Q–I1. What issues will Appeals consider at an equivalent hearing?

A–I1. In an equivalent hearing, Appeals will consider the same issues that it would have considered at a CDP hearing on the same matter.

Q–I2. Are the periods of limitation under sections 6502, 6531, and 6532 suspended if the taxpayer does not timely request a CDP hearing and is subsequently given an equivalent hearing?

A–I2. No. The suspension period provided for in section 6330(e) relates only to hearings requested within the 30-day period that commences the day following the date of the pre-levy or post-levy CDP Notice, that is, CDP hearings.

Q–I3. Will collection action be suspended if a taxpayer requests and receives an equivalent hearing?

A–I3. Collection action is not required to be suspended. Accordingly, the decision to take collection action during the pendency of an equivalent hearing will be determined on a case-by-case basis. Appeals may request the IRS office with responsibility for collecting the taxes to suspend all or some collection action or to take other appropriate action if it determines that such action is appropriate or necessary under the circumstances.

Q–I4. What will the Decision Letter state?

A–I4. The Decision Letter will generally contain the same information as a Notice of Determination.

Q–I5. Will a taxpayer be able to obtain court review of a decision made by Appeals with respect to an equivalent hearing?

A–I5. Section 6330 does not authorize a taxpayer to appeal the decision of Appeals with respect to an equivalent hearing. A taxpayer may under certain circumstances be able to seek Tax Court review of Appeals' denial of relief under section 6015. Such review must be sought within 90 days of the issuance of Appeals' determination on those issues, as provided by section 6015(e).

(j) *Effective date.* This section is applicable with respect to any levy which occurs on or after January 19, 1999.

§ 301.6330–1T [Removed]

3. Section 301.6330–1T is removed.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: January 14, 2002.

Mark A. Weinberger,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 02–1305 Filed 1–17–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8979]

RIN 1545–AW91

Notice and Opportunity for Hearing Upon Filing of Notice of Lien

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the provision of notice to taxpayers of the filing of a notice of federal tax lien (NFTL). A taxpayer receiving notice of a NFTL may request a hearing with IRS Office of Appeals and may subsequently seek judicial review of Appeals' determination. The regulations implement certain changes made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998. They affect taxpayers against whose property or rights to property the IRS files a NFTL.

DATES: *Effective Date:* These regulations are effective on or after January 18, 2002.

Applicability Date: These regulations apply to any notice of Federal tax lien which is filed on or after January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Jerome D. Sekula, (202) 622–3610 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Regulations on Procedure and Administration (26 CFR part 301) relating to the provision of notice under section 6320 of the Internal Revenue Code to taxpayers of a right to a hearing (a collection due process, or CDP, hearing) after the filing of a notice of federal tax lien (NFTL). These final regulations implement certain changes made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Pub. L. 105–206, 112 Stat. 685) (RRA 1998). The final regulations affect taxpayers against whose property or rights to property the IRS files a NFTL on or after January 19, 1999.

On January 22, 1999, temporary regulations (TD 8810) implementing these changes made by section 3401 of RRA 1998 were published in the **Federal Register** (64 FR 3398). A notice of proposed rulemaking (REG–116824–98) cross-referencing the temporary regulations was published on the same day in the **Federal Register** (64 FR 3461). No public hearing was requested or held. No written comments were received within the 90-day period provided for comments, although two comments were received after this period.

Section 6330 also was added by section 3401 of RRA 1998 and provides for notice to taxpayers of a right to a hearing prior to a levy. A number of the provisions in section 6330 concerning the conduct and judicial review of a CDP hearing are incorporated by reference in section 6320. On January 22, 1999, temporary regulations (TD 8809) implementing the changes made by section 3401 of RRA 1998 with respect to section 6330 were published in the **Federal Register** (64 FR 3405). A notice of proposed rulemaking (REG–117620–98) cross-referencing those temporary regulations was published on the same day in the **Federal Register** (64 FR 3462). Final regulations under section 6330 are being published in the **Federal Register** along with these final regulations under section 6320.

After consideration of the comments, the proposed regulations, with certain changes to reflect the IRS administrative practice under section 6320, are adopted as final regulations. These comments and changes are discussed below.

Summary of Comments

Although the two comments were directed generally at the proposed regulations under section 6330, the comments are discussed here because they address provisions that, in large part, apply to both section 6320 and section 6330.

Both commentators urged that final regulations under section 6330 provide that potentially affected third-parties (*i.e.,* persons not liable for the tax at issue) are entitled to notice and a hearing before the IRS Office of Appeals (Appeals) before the IRS levies on any property or right to property. Treasury and the IRS have concluded that the person liable for the tax set out in the collection due process notice (CDP Notice), whether issued under section 6320 or section 6330, is the person entitled to a CDP Notice and a CDP hearing under those sections. Section 6320(a)(1) provides that a CDP Notice provided under section 6320 will be sent to the person described in section 6321. The person described in section 6321 is the person liable to pay the tax—*i.e.,* the taxpayer.

With respect to section 6330, the legislative history to that section indicates that Congress intended to supplement the existing notice requirement under section 6331. Under section 6331, the IRS generally must provide a person liable for any tax (and who refuses to pay the tax after notice and demand) notice before levying on the property or rights to property of that person. Section 6330, in addition to the notice required under section 6331, provides for notice of the right to an Appeals hearing before levy.

Accordingly, the final regulations under both section 6320 and section 6330 provide that the person entitled to a CDP Notice under those sections is the person liable for the tax set out in the CDP Notice, *i.e.,* the taxpayer. Generally, when a third party's rights are affected by lien or levy, those rights can be protected through other administrative and judicial remedies, such as an administrative hearing before Appeals under its Collection Appeals Program or a wrongful levy or quiet title action.

One commentator requested that the final regulations establish formal procedures for the conduct of a CDP hearing as well as procedures for the admission and preservation of evidence to be considered by Appeals. Treasury and the IRS have declined to adopt this comment. Section 6320 and section 6330 are intended to give all taxpayers a right to an impartial Appeals review of the filing of a NFTL or of an intended levy action, with an additional right of judicial review of the Appeals determination. Section 6330(c) (which is applicable to both section 6320 and section 6330) and the proposed regulations under section 6320 and section 6330 (as modified by final regulations) already set out the specific requirements, including the issues to be considered, for a CDP hearing and require that Appeals issue a written determination (Notice of Determination) setting forth Appeals' findings and decisions. Due to the varied circumstances of taxpayers and the varied situations in which the filing of a NFTL or an intended levy action may arise, the final regulations provide flexibility regarding the manner in which a CDP hearing may be conducted.

One commentator stated that taxpayers should have a right to judicial review in a retained jurisdiction case under section 6330(d)(2). Treasury and the IRS decline to adopt this comment. Under section 6330(b)(2), a taxpayer is entitled to only one CDP hearing with respect to the tax set out on a CDP Notice issued under section 6330. Section 6320(b)(2) provides a similar rule for section 6320. Under section 6330(d)(1), applicable to both section 6320 and section 6330, a taxpayer is entitled to judicial review only after the issuance of the determination by Appeals after a CDP hearing. Once the Notice of Determination has been issued, any subsequent consideration of the case by Appeals, including changed circumstances, based on Appeals' retained jurisdiction under section 6330(d)(2), is not part of the CDP hearing subject to judicial review.

One commentator also urged that a taxpayer be allowed to challenge the existence or amount of the tax liability set out in a CDP Notice issued under section 6330 even if the taxpayer had previously failed to raise such a challenge pursuant to a CDP Notice issued under section 6320. The commentator points to section 6330(c)(4), which provides generally that a person who had meaningfully participated in a section 6320 CDP hearing in which an issue was raised may not raise that same issue in a subsequent section 6330 CDP hearing. Treasury and the IRS have concluded that section 6330(c)(2)(B), addressing specifically a person's right to challenge the underlying tax liability, is clear that any prior opportunity to challenge the

underlying tax liability, which would include a section 6320 CDP hearing, precludes a taxpayer from doing so at a later section 6330 CDP hearing.

Explanation of Revisions

The proposed regulations provided that district directors, directors of service centers and the Assistant Commissioner (International) would be the IRS officials required to give notice of the right to, and the opportunity for, a CDP hearing to a taxpayer following the filing of a NFTL. To reflect the recent reorganization of the IRS, paragraph (a)(1) of the final regulations eliminates reference to these specific officers and substitutes a general authorization to the IRS to provide such notification.

Question and Answer (Q&A) C1 of the proposed regulations stated that a request for a CDP hearing must be signed by the taxpayer or the taxpayer's authorized representative. Requests for CDP hearings on occasion are not signed by the taxpayer or the taxpayer's authorized representative but instead are filed on the taxpayer's behalf by the taxpayer's spouse or other personal representative not authorized to practice before Appeals. The IRS's administrative practice has been to treat these requests as complying with the temporary regulations provided that the taxpayer or the taxpayer's authorized representative signs the request within a reasonable period of time. Q&A C1 in the final regulations is revised to reflect this administrative practice.

Q&A C6 of the proposed regulations provided that a request for a CDP hearing should be filed with the IRS office that issued the CDP Notice or, if the taxpayer did not know the address of that IRS office, then with one of two alternative IRS offices. Q&A C6 of the final regulations requires that a request for a CDP hearing be filed with the IRS office and address indicated on the CDP Notice. The final regulations change the alternative addresses to reflect the IRS's recent reorganization. The final regulations provide that if no address is provided in the CDP Notice, then the request must be filed with the compliance area director, or his or her successor, serving the compliance area in which the taxpayer resides or has its principal place of business. The final regulations provide a toll-free number to obtain the address of the office of the appropriate compliance area director, or his or her successor.

The proposed regulations did not discuss how a CDP hearing should be conducted, or where or how it may occur. A new Q&A D6, relating to how CDP hearings are conducted, and a new Q&A D7, relating to when in-person meetings will be held, are added to the final regulations to clarify how a CDP hearing may be conducted.

Paragraph (e)(2) of the proposed regulations, dealing with spousal defenses under section 6015, has been revised in the final regulations to also address spousal defenses raised under section 66. Q&A E3 of the proposed regulations, dealing with the extent of any limitations imposed under section 6330(c)(2)(B), has been revised in the final regulations to also address the effect of a spousal defense raised under section 66. The proposed regulations did not specifically discuss whether a taxpayer may raise a spousal defense at a CDP hearing when the taxpayer has raised that defense administratively, but has not raised it in a judicial proceeding that has become final. A new Q&A E4 is added to the final regulations to provide that a spousal defense may be raised if the IRS has not made a final determination as to that spousal defense in a final determination letter or statutory notice of deficiency. Q&A E4 of the proposed regulations, dealing with spousal defenses that were raised in a prior judicial proceeding, has been revised to also discuss the effect of a spousal defense raised under section 66, and has been renumbered as Q&A E5 of the final regulations.

Q&A E8 of the proposed regulations addressed whether a Notice of Determination was required to be issued within a certain period of time after the CDP hearing. That Q&A, now Q&A E9 of the final regulations, has been revised to clarify that there are no time limitations on when a CDP hearing must be held or on when a Notice of Determination must be issued, except that both must be done as expeditiously as possible under the circumstances.

Under section 6330(c)(2)(B), a taxpayer may not challenge the existence or the amount of the underlying tax liability at a CDP hearing if the taxpayer has had a prior opportunity to dispute that liability—i.e., the taxpayer had received a statutory notice of deficiency or otherwise had an opportunity to dispute the underlying tax liability. The final regulations add a new Q&A E11 to address the effect of an Appeals officer's or employee's consideration of liability issues when the taxpayer has had a prior opportunity to dispute the underlying tax liability. In such circumstances, any consideration of liability issues by the Appeals officer or employee is discretionary and is not treated as part of the CDP hearing. Accordingly, the Appeals officer's or employee's determinations, if any, made with respect to liability issues are not required to appear in the Notice of Determination. Any determinations regarding the underlying tax liability that are included in the Notice of Determination are not reviewable by a district court or the Tax Court.

Q&A F2 and Q&A I5 of the proposed regulations, both relating to judicial review of CDP cases where a spousal defense under section 6015 is raised, specifically referred only to paragraphs (b) and (c) of section 6015. Q&A F2 and Q&A I5 have been revised in the final regulations also to include a denial of relief under section 6015(f).

Section 6320(c) incorporates by reference section 6330(e), which generally provides for the suspension of the periods of limitation under section 6502, section 6531, and section 6532 after the filing of a request for a CDP hearing under section 6330. Section 6330(e) also provides that levy actions that are the subject of the requested CDP hearing are suspended during this same period. Levy actions, however, are not the subject of a CDP hearing under section 6320. A new Q&A G3 is added to the final regulations to clarify what collection actions the IRS may take after a request for a CDP hearing under section 6320 has been filed.

As set out in Q&A G3 of the final regulations, the IRS may take enforcement actions for tax periods and taxes not covered by a CDP Notice that is the subject of the CDP hearing requested under section 6320. For example, the IRS may file NFTLs for tax periods or taxes not covered by the CDP Notice (although such filings may give rise to issuance of a CDP Notice under section 6320) and may levy for those taxes and tax periods and for the tax and tax periods covered by the CDP Notice under section 6320, if the CDP requirements under section 6330 as to those taxes and tax periods have been satisfied and CDP proceedings, if any, concluded. The IRS also is not prohibited by section 6330(e) from taking other non-levy collection actions such as initiating judicial proceedings to collect the tax shown on the CDP Notice issued under section 6320 or from offsetting overpayments from other periods, or of other taxes, against the tax shown on the CDP Notice. Moreover, the IRS may levy upon any state tax refund due the taxpayer, and, under appropriate circumstances, make jeopardy levies for the tax and tax periods covered by the CDP Notice at issue in the CDP hearing. Finally, section 6330 does not prohibit the IRS from accepting any voluntary payments made for the tax and tax periods set out in the CDP Notice.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the preceding temporary regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this regulation is Jerome D. Sekula, of the Office of Associate Chief Counsel, Procedure and Administration (Collection, Bankruptcy and Summonses Division).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

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

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

2. Section 301.6320–1 is added under the undesignated centerheading ''Lien for Taxes'' to read as follows:

§ 301.6320–1 Notice and opportunity for hearing upon filing of notice of Federal tax lien.

(a) *Notification*—(1) *In general.* For a notice of Federal tax lien (NFTL) filed on or after January 19, 1999, the Commissioner, or his or her delegate (the Commissioner), will prescribe procedures to notify the person described in section 6321 of the filing of a NFTL not more than five business days after the date of any such filing. The Collection Due Process Hearing Notice (CDP Notice) and other notices given under section 6320 must be given in person, left at the dwelling or usual place of business of such person, or sent by certified or registered mail to such person's last known address, not more than five business days after the day the NFTL was filed. For further guidance regarding the definition of last known address, see Sec. 301.6212–2.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (a) as follows:

Q–A1. Who is the person entitled to notice under section 6320?

A–A1. Under section 6320(a)(1), notification of the filing of a NFTL on or after January 19, 1999, is required to be given only to the person described in section 6321 who is named on the NFTL that is filed. The person described in section 6321 is the person liable to pay the tax due after notice and demand who refuses or neglects to pay the tax due (hereinafter, referred to as the taxpayer).

Q–A2. When will the Internal Revenue Service (IRS) provide the notice required under section 6320?

A–A2. The IRS will provide this notice within five business days after the filing of the NFTL.

Q–A3. Will the IRS give notification to the taxpayer for each tax period listed in a NFTL filed on or after January 19, 1999?

A–A3. Yes. A NFTL can be filed for more than one tax period. The notification of the filing of a NFTL will specify each unpaid tax and tax period listed in the NFTL.

Q–A4. Will the IRS give notification to the taxpayer of any filing of a NFTL for the same tax period or periods at another place of filing?

A–A4. Yes. The IRS will notify a taxpayer when a NFTL is filed on or after January 19, 1999, for a tax period or periods at any recording office.

Q–A5. Will the IRS give notification to the taxpayer if a NFTL is filed on or after January 19, 1999, for a tax period or periods for which a NFTL was filed in another recording office prior to that date?

A–A5. Yes. The IRS will notify a taxpayer when each NFTL is filed on or after January 19, 1999, for a tax period or periods at any recording office.

Q–A6. Will the IRS give notification to the taxpayer when a NFTL is refiled on or after January 19, 1999?

A–A6. No. Section 6320(a)(1) does not require the IRS to notify the taxpayer of the refiling of a NFTL. A taxpayer may, however, seek reconsideration by the IRS office that is collecting the tax or refiling the NFTL, an administrative hearing before the IRS Office of Appeals (Appeals), or assistance from the National Taxpayer Advocate.

Q–A7. Will the IRS give notification to a known nominee of, or a person holding property of, the taxpayer of the filing of the NFTL?

A–A7. No. Such person is not the person described in section 6321 and, therefore, is not entitled to notice, but such persons have other remedies. See A–B5 of paragraph (b)(2) of this section.

Q–A8. Will the IRS give notification to the taxpayer when a subsequent NFTL is filed for the same period or periods?

A–A8. Yes. If the IRS files an additional NFTL with respect to the same tax period or periods for which an original NFTL was filed, the IRS will notify the taxpayer when the subsequent NFTL is filed. Not all such notices will, however, give rise to a right to a CDP hearing (see paragraph (b) of this section).

Q–A9. How will notification under section 6320 be accomplished?

A–A9. The IRS will notify the taxpayer by letter. Included with this letter will be the additional information the IRS is required to provide taxpayers as well as, when appropriate, a Form 12153, Request for a Due Process Hearing. The IRS may effect delivery of the letter (and accompanying materials) in one of three ways: by delivering the notice personally to the taxpayer; by leaving the notice at the taxpayer's dwelling or usual place of business; or by mailing the notice to the taxpayer at his last known address by certified or registered mail.

Q–A10. What must a CDP Notice given under section 6320 include?

A–A10. These notices must include, in simple and nontechnical terms:

(i) The amount of the unpaid tax.

(ii) A statement concerning the taxpayer's right to request a CDP hearing during the 30-day period that commences the day after the end of the five business day period within which the IRS is required to provide the taxpayer with notice of the filing of the NFTL.

(iii) The administrative appeals available to the taxpayer with respect to the NFTL and the procedures relating to such appeals.

(iv) The statutory provisions and the procedures relating to the release of liens on property.

Q–A11. What are the consequences if the taxpayer does not receive or accept a CDP Notice that is properly left at the taxpayer's dwelling or usual place of business, or sent by certified or registered mail to the taxpayer's last known address?

A–A11. A CDP Notice properly sent by certified or registered mail to the taxpayer's last known address or left at the taxpayer's dwelling or usual place of business is sufficient to start the 30-day

period, commencing the day after the end of the five business day notification period, within which the taxpayer may request a CDP hearing. Actual receipt is not a prerequisite to the validity of the CDP Notice.

Q–A12. What if the taxpayer does not receive the CDP Notice because the IRS did not send that notice by certified or registered mail to the taxpayer's last known address, or failed to leave it at the dwelling or usual place of business of the taxpayer, and the taxpayer fails to request a CDP hearing with Appeals within the 30-day period commencing the day after the end of the five business day notification period?

A–A12. A NFTL becomes effective upon filing. The validity and priority of a NFTL is not conditioned on notification to the taxpayer pursuant to section 6320. Therefore, the failure to notify the taxpayer concerning the filing of a NFTL does not affect the validity or priority of the NFTL. When the IRS determines that it failed properly to provide a taxpayer with a CDP Notice, it will promptly provide the taxpayer with a substitute CDP Notice and provide the taxpayer with an opportunity to request a CDP hearing. Substitute CDP Notices are discussed in Q&A–B3 of paragraph (b)(2) and Q&A–C8 of paragraph (c)(2) of this section.

(3) *Examples.* The following examples illustrate the principles of this paragraph (a):

Example 1. H and W are jointly and severally liable with respect to a jointly filed income tax return for 1996. IRS files a NFTL with respect to H and W in County X on January 26, 1999. This is the first NFTL filed on or after January 19, 1999, for their 1996 liability. H and W will each be notified of the filing of the NFTL.

Example 2. Employment taxes for 1997 are assessed against ABC Corporation. A NFTL is filed against ABC Corporation for the 1997 liability in County X on June 5, 1998. A NFTL is filed against ABC Corporation for the 1997 liability in County Y on June 17, 1999. The IRS will notify the ABC Corporation with respect to the filing of the NFTL in County Y.

Example 3. Federal income tax liability for 1997 is assessed against individual D. D buys an asset and puts it in individual E's name. A NFTL is filed against D in County X on June 5, 1999, for D's federal income tax liability for 1997. On June 17, 1999, a NFTL for the same tax liability is filed in County Y against E, as nominee of D. The IRS will notify D of the filing of the NFTL in both County X and County Y. The IRS will not notify E of the NFTL filed in County X. The IRS is not required to notify E of the NFTL filed in County Y. Although E is named on the NFTL filed in County Y, E is not the person described in section 6321 (the taxpayer) who is named on the NFTL.

(b) *Entitlement to a CDP hearing*—(1) *In general.* A taxpayer is entitled to one CDP hearing with respect to the first filing of a NFTL (on or after January 19, 1999) for a given tax period or periods with respect to the unpaid tax shown on the NFTL if the taxpayer timely requests such a hearing. The taxpayer must request such a hearing during the 30-day period that commences the day after the end of the five business day period within which the IRS is required to provide the taxpayer with notice of the filing of the NFTL.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (b) as follows:

Q–B1. Is a taxpayer entitled to a CDP hearing with respect to the filing of a NFTL for a type of tax and tax periods previously subject to a CDP Notice with respect to a NFTL filed in a different location on or after January 19, 1999?

A–B1. No. Although the taxpayer will receive notice of each filing of a NFTL, under section 6320(b)(2), the taxpayer is entitled to only one CDP hearing under section 6320 for the type of tax and tax periods with respect to the first filing of a NFTL that occurs on or after January 19, 1999, with respect to that unpaid tax. Accordingly, if the taxpayer does not timely request a CDP hearing with respect to the first filing of a NFTL on or after January 19, 1999, for a given tax period or periods with respect to an unpaid tax, the taxpayer forgoes the right to a CDP hearing with Appeals and judicial review of the Appeals determination with respect to the NFTL. Under such circumstances, the taxpayer may request an equivalent hearing as described in paragraph (i) of this section.

Q–B2. Is the taxpayer entitled to a CDP hearing when a NFTL for an unpaid tax is filed on or after January 19, 1999, in one recording office and a NFTL was previously filed for the same unpaid tax in another recording office prior to that date?

A–B2. Yes. Under section 6320(b)(2), the taxpayer is entitled to a CDP hearing under section 6320 for each tax period with respect to the first filing of a NFTL on or after January 19, 1999, with respect to an unpaid tax, whether or not a NFTL was filed prior to January 19, 1999, for the same unpaid tax and tax period or periods.

Q–B3. When the IRS provides the taxpayer with a substitute CDP Notice and the taxpayer timely requests a CDP hearing, is the taxpayer entitled to a CDP hearing before Appeals?

A–B3. Yes. Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, the taxpayer is entitled to a CDP hearing before Appeals. Following the hearing, Appeals will issue a Notice of Determination, and the taxpayer is entitled to seek judicial review of that Notice of Determination.

Q–B4. If the IRS sends a second CDP Notice under section 6320 (other than a substitute CDP Notice) for a tax period and with respect to an unpaid tax for which a section 6320 CDP Notice was previously sent, is the taxpayer entitled to a section 6320 CDP hearing based on the second CDP Notice?

A–B4. No. The taxpayer is entitled to a CDP hearing under section 6320 for each tax period only with respect to the first filing of a NFTL on or after January 19, 1999, with respect to an unpaid tax.

Q–B5. Is a nominee of, or a person holding property of, the taxpayer entitled to a CDP hearing or an equivalent hearing?

A–B5. No. Such person is not the person described in section 6321 and is, therefore, not entitled to a CDP hearing or an equivalent hearing (as discussed in paragraph (i) of this section). Such person, however, may seek reconsideration by the IRS office collecting the tax or filing the NFTL, an administrative hearing before Appeals under its Collection Appeals Program, or assistance from the National Taxpayer Advocate. However, any such administrative hearing would not be a CDP hearing under section 6320 and any determination or decision resulting from the hearing would not be subject to judicial review under section 6320. Such person also may avail himself of the administrative procedure included in section 6325(b)(4) or of any other procedures to which he is entitled.

(3) *Examples.* The following examples illustrate the principles of this paragraph (b):

Example 1. H and W are jointly and severally liable with respect to a jointly filed income tax return for 1996. The IRS files a NFTL with respect to H and W in County X on January 26, 1999. This is the first NFTL filed on or after January 19, 1999, for their 1996 liability. H and W are each entitled to a CDP hearing with respect to the NFTL filed in County X. On June 17, 1999, a NFTL for the same tax liability is filed against H and W in County Y. The IRS will give H and W notification of the NFTL filed in County Y. H and W, however, are not entitled to a CDP hearing or an equivalent hearing with respect to the NFTL filed in County Y.

Example 2. Federal income tax liability for 1997 is assessed against individual D. D buys an asset and puts it in individual E's name. A NFTL is filed against E, as nominee of D in County X on June 5, 1999, for D's federal income tax liability for 1997. The IRS will give D a CDP Notice with respect to the NFTL filed in County X. The IRS will not notify E of the NFTL filed in County X. The IRS is not required to notify E of the filing of the NFTL in County X. Although E is named on the

NFTL filed in County X, E is not the person described in section 6321 (the taxpayer) who is named on the NFTL.

(c) *Requesting a CDP hearing*—(1) *In general.* When a taxpayer is entitled to a CDP hearing under section 6320, the CDP hearing must be requested during the 30-day period that commences the day after the end of the five business day period within which the IRS is required to provide the taxpayer with a CDP Notice with respect to the filing of the NFTL.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (c) as follows:

Q–C1. What must a taxpayer do to obtain a CDP hearing?

A–C1. (i) The taxpayer must make a request in writing for a CDP hearing. A written request in any form, which requests a CDP hearing, will be acceptable. The request must include the taxpayer's name, address, and daytime telephone number, and must be signed by the taxpayer or the taxpayer's authorized representative and dated. The CDP Notice should include, when appropriate, a Form 12153 (Request for a Collection Due Process Hearing) that can be used by the taxpayer to request a CDP hearing.

(ii) The Form 12153 requests the following information:

(A) The taxpayer's name, address, daytime telephone number, and taxpayer identification number (SSN or TIN).

(B) The type of tax involved.

(C) The tax period at issue.

(D) A statement that the taxpayer requests a hearing with Appeals concerning the filing of the NFTL.

(E) The reason or reasons why the taxpayer disagrees with the filing of the NFTL.

(iii) Taxpayers are encouraged to use a Form 12153 in requesting a CDP hearing so that the request can be readily identified and forwarded to Appeals. Taxpayers may obtain a copy of Form 12153 by contacting the IRS office that issued the CDP Notice or by calling, toll free, 1–800–829–3676.

(iv) The taxpayer may perfect any timely written request for a CDP hearing which otherwise meets the requirements set forth above and which is made or alleged to have been made on the taxpayer's behalf by the taxpayer's spouse or any other representative by filing, within a reasonable time of a request from Appeals, a signed written affirmation that the request was originally submitted on the taxpayer's behalf.

Q–C2. Must the request for the CDP hearing be in writing?

A–C2. Yes. There are several reasons why the request for a CDP hearing must be in writing. The filing of a timely request for a CDP hearing is the first step in what may result in a court proceeding. A written request will provide proof that the CDP hearing was requested and thus permit the court to verify that it has jurisdiction over any subsequent appeal of the Notice of Determination issued by Appeals. In addition, the receipt of the written request will establish the date on which the periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended as a result of the CDP hearing and any judicial appeal. Moreover, because the IRS anticipates that taxpayers will contact the IRS office that issued the CDP Notice for further information or assistance in filling out Form 12153, or to attempt to resolve their liabilities prior to going through the CDP hearing process, the requirement of a written request should help prevent any misunderstanding as to whether a CDP hearing has been requested. If the information requested on Form 12153 is furnished by the taxpayer, the written request also will help to establish the issues for which the taxpayer seeks a determination by Appeals.

Q–C3. When must a taxpayer request a CDP hearing with respect to a CDP Notice issued under section 6320?

A–C3. A taxpayer must submit a written request for a CDP hearing within the 30-day period that commences the day after the end of the five business day period following the filing of the NFTL. Any request filed during the five business day period (before the beginning of the 30-day period) will be deemed to be filed on the first day of the 30-day period. The period for submitting a written request for a CDP hearing with respect to a CDP Notice issued under section 6320 is slightly different from the period for submitting a written request for a CDP hearing with respect to a CDP Notice issued under section 6330. For a CDP Notice issued under section 6330, the taxpayer must submit a written request for a CDP hearing within the 30-day period commencing the day after the date of the CDP Notice.

Q–C4. How will the timeliness of a taxpayer's written request for a CDP hearing be determined?

A–C4. The rules and regulations under section 7502 and section 7503 will apply to determine the timeliness of the taxpayer's request for a CDP hearing, if properly transmitted and addressed as provided in A–C6 of this paragraph (c)(2).

Q–C5. Is the 30-day period within which a taxpayer must make a request for a CDP hearing extended because the taxpayer resides outside the United States?

A–C5. No. Section 6320 does not make provision for such a circumstance. Accordingly, all taxpayers who want a CDP hearing under section 6320 must request such a hearing within the 30-day period that commences the day after the end of the five business day notification period.

Q–C6. Where should the written request for a CDP hearing be sent?

A–C6. The written request for a CDP hearing must be sent, or hand delivered, to the IRS office that issued the CDP Notice at the address indicated on the CDP Notice. If the address of that office does not appear on the CDP Notice, the request must be sent, or hand delivered, to the compliance area director, or his or her successor, serving the compliance area in which the taxpayer resides or has its principal place of business. If the taxpayer does not have a residence or principal place of business in the United States, the request must be sent, or hand delivered, to the compliance director, Philadelphia Submission Processing Center, or his or her successor. Taxpayers may obtain the address of the appropriate person to which the written request should be sent or hand delivered by calling, toll-free, 1–800–829–1040 and providing their taxpayer identification number (SSN or TIN).

Q–C7. What will happen if the taxpayer does not request a CDP hearing in writing within the 30-day period that commences the day after the end of the five business day notification period?

A–C7. If the taxpayer does not request a CDP hearing in writing within the 30-day period that commences on the day after the end of the five business day notification period, the taxpayer will forego the right to a CDP hearing under section 6320 with respect to the unpaid tax and tax periods shown on the CDP Notice. The taxpayer may, however, request an equivalent hearing. See paragraph (i) of this section.

Q–C8. When must a taxpayer request a CDP hearing with respect to a substitute CDP Notice?

A–C8. A CDP hearing with respect to a substitute CDP Notice must be requested in writing by the taxpayer prior to the end of the 30-day period commencing the day after the date of the substitute CDP Notice.

Q–C9. Can taxpayers attempt to resolve the matter of the NFTL with an officer or employee of the IRS office collecting the tax or filing the NFTL either before or after requesting a CDP hearing?

A–C9. Yes. Taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax or filing the NFTL, either before or after they request a CDP hearing. If such a discussion occurs before a request is made for a CDP hearing, the matter may be resolved without the need for Appeals consideration. However, these discussions do not suspend the running of the 30-day period, commencing the day after the end of the five business day notification period, within which the taxpayer is required to request a CDP hearing, nor do they extend that 30-day period. If discussions occur after the request for a CDP hearing is filed and the taxpayer resolves the matter with the IRS office collecting the tax or filing the NFTL, the taxpayer may withdraw in writing the request that a CDP hearing be conducted by Appeals. The taxpayer can also waive in writing some or all of the requirements regarding the contents of the Notice of Determination.

(3) *Examples.* The following examples illustrate the principles of this paragraph (c):

Example 1. A NFTL for a 1997 income tax liability assessed against individual A is filed in County X on June 17, 1999. The IRS mails a CDP Notice to individual A's last known address on June 18, 1999. Individual A has until July 26, 1999, a Monday, to request a CDP hearing. The five business day period within which the IRS is required to notify individual A of the filing of the NFTL in County X expires on June 24, 1999. The 30-day period within which individual A may request a CDP hearing begins on June 25, 1999. Because the 30-day period expires on July 24, 1999, a Saturday, individual A's written request for a CDP hearing will be considered timely if it is properly transmitted and addressed to the IRS in accordance with section 7502 and the regulations thereunder no later than July 26, 1999.

Example 2. Same facts as in *Example 1,* except that individual A is on vacation, outside the United States, or otherwise does not receive or read the CDP Notice until July 19, 1999. As in *Example 1,* individual A has until July 26, 1999, to request a CDP hearing. If individual A does not request a CDP hearing, individual A may request an equivalent hearing as to the NFTL at a later time. The taxpayer should make a request for an equivalent hearing at the earliest possible time.

Example 3. Same facts as in *Example 2,* except that individual A does not receive or read the CDP Notice until after July 26, 1999, and does not request a hearing by July 26, 1999. Individual A is not entitled to a CDP hearing. Individual A may request an equivalent hearing as to the NFTL at a later time. The taxpayer should make a request for an equivalent hearing at the earliest possible time.

Example 4. Same facts as in *Example 1,* except the IRS determines that the CDP Notice mailed on June 18, 1999, was not mailed to individual A's last known address. As soon as practicable after making this determination, the IRS will mail a substitute CDP Notice to individual A at individual A's last known address, hand deliver the substitute CDP Notice to individual A, or leave the substitute CDP Notice at individual A's dwelling or usual place of business. Individual A will have 30 days commencing on the day after the date of the substitute CDP Notice within which to request a CDP hearing.

(d) *Conduct of CDP hearing*—(1) *In general.* If a taxpayer requests a CDP hearing under section 6320(a)(3)(B) (and does not withdraw that request), the CDP hearing will be held with Appeals. The taxpayer is entitled under section 6320 to a CDP hearing for the unpaid tax and tax periods set forth in a NFTL only with respect to the first filing of a NFTL on or after January 19, 1999. To the extent practicable, the CDP hearing requested under section 6320 will be held in conjunction with any CDP hearing the taxpayer requests under section 6330. A CDP hearing will be conducted by an employee or officer of Appeals who, prior to the first CDP hearing under section 6320 or section 6330, has had no involvement with respect to the unpaid tax for the tax periods to be covered by the hearing, unless the taxpayer waives this requirement.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (d) as follows:

Q–D1. Under what circumstances can a taxpayer receive more than one CDP hearing under section 6320 with respect to a tax period?

A–D1. The taxpayer may receive more than one CDP hearing under section 6320 with respect to a tax period where the tax involved is a different type of tax (for example, an employment tax liability, where the original CDP hearing for the tax period involved an income tax liability), or where the same type of tax for the same period is involved, but where the amount of the unpaid tax has changed as a result of an additional assessment of tax (not including interest or penalties) for that period or an additional accuracy-related or filing-delinquency penalty has been assessed. The taxpayer is not entitled to another CDP hearing under section 6320 if the additional assessment represents accruals of interest, accruals of penalties, or both.

Q–D2. Will a CDP hearing with respect to one tax period be combined with a CDP hearing with respect to another tax period?

A–D2. To the extent practicable, a CDP hearing with respect to one tax period shown on the NFTL will be combined with any and all other CDP hearings which the taxpayer has requested.

Q–D3. Will a CDP hearing under section 6320 be combined with a CDP hearing under section 6330?

A–D3. To the extent practicable, a CDP hearing under section 6320 will be held in conjunction with a CDP hearing under section 6330.

Q–D4. What is considered to be prior involvement by an employee or officer of Appeals with respect to the unpaid tax and tax period involved in the hearing?

A–D4. Prior involvement by an employee or officer of Appeals includes participation or involvement in an Appeals hearing (other than a CDP hearing held under either section 6320 or section 6330) that the taxpayer may have had with respect to the unpaid tax and tax periods shown on the NFTL.

Q–D5. How can a taxpayer waive the requirement that the officer or employee of Appeals have no prior involvement with respect to the tax and tax periods involved in the CDP hearing?

A–D5. The taxpayer must sign a written waiver.

Q–D6. How are CDP hearings conducted?

A–D6. The formal hearing procedures required under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, do not apply to CDP hearings. CDP hearings are much like Collection Appeal Program (CAP) hearings in that they are informal in nature and do not require the Appeals officer or employee and the taxpayer, or the taxpayer's representative, to hold a face-to-face meeting. A CDP hearing may, but is not required to, consist of a face-to-face meeting, one or more written or oral communications between an Appeals officer or employee and the taxpayer or the taxpayer's representative, or some combination thereof. A transcript or recording of any face-to-face meeting or conversation between an Appeals officer or employee and the taxpayer or the taxpayer's representative is not required. The taxpayer or the taxpayer's representative does not have the right to subpoena and examine witnesses at a CDP hearing.

Q–D7. If a taxpayer wants a face-to-face CDP hearing, where will it be held?

A–D7. The taxpayer must be offered an opportunity for a hearing at the Appeals office closest to taxpayer's

residence or, in the case of business taxpayers, the taxpayer's principal place of business. If that is not satisfactory to the taxpayer, the taxpayer will be given an opportunity for a hearing by correspondence or by telephone. If that is not satisfactory to the taxpayer, the Appeals officer or employee will review the taxpayer's request for a CDP hearing, the case file, any other written communications from the taxpayer (including written communications, if any, submitted in connection with the CDP hearing), and any notes of any oral communications with the taxpayer or the taxpayer's representative. Under such circumstances, review of those documents will constitute the CDP hearing for the purposes of section 6320(b).

(e) *Matters considered at CDP hearing*—(1) *In general.* Appeals has the authority to determine the validity, sufficiency, and timeliness of any CDP Notice given by the IRS and of any request for a CDP hearing that is made by a taxpayer. Prior to the issuance of a determination, the hearing officer is required to obtain verification from the IRS office collecting the tax or filing the NFTL that the requirements of any applicable law or administrative procedure have been met. The taxpayer may raise any relevant issue relating to the unpaid tax at the hearing, including appropriate spousal defenses, challenges to the appropriateness of the NFTL filing, and offers of collection alternatives. The taxpayer also may raise challenges to the existence or amount of the tax liability specified on the CDP Notice for any tax period shown on the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for that tax liability or did not otherwise have an opportunity to dispute that tax liability. Finally, the taxpayer may not raise an issue that was raised and considered at a previous CDP hearing under section 6330 or in any other previous administrative or judicial proceeding if the taxpayer participated meaningfully in such hearing or proceeding. Taxpayers will be expected to provide all relevant information requested by Appeals, including financial statements, for its consideration of the facts and issues involved in the hearing.

(2) *Spousal defenses.* A taxpayer may raise any appropriate spousal defenses at a CDP hearing unless the Commissioner has already made a final determination as to spousal defenses in a statutory notice of deficiency or final determination letter. To claim a spousal defense under section 66 or section 6015, the taxpayer must do so in writing according to rules prescribed by the Commissioner or the Secretary. Spousal defenses raised under sections 66 and 6015 in a CDP hearing are governed in all respects by the provisions of sections 66 and section 6015 and the regulations and procedures thereunder.

(3) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (e) as follows:

Q–E1. What factors will Appeals consider in making its determination?

A–E1. Appeals will consider the following matters in making its determination:

(i) Whether the IRS met the requirements of any applicable law or administrative procedure.

(ii) Any issues appropriately raised by the taxpayer relating to the unpaid tax.

(iii) Any appropriate spousal defenses raised by the taxpayer.

(iv) Any challenges made by the taxpayer to the appropriateness of the NFTL filing.

(v) Any offers by the taxpayer for collection alternatives.

(vi) Whether the continued existence of the filed NFTL represents a balance between the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.

Q–E2. When is a taxpayer entitled to challenge the existence or amount of the tax liability specified in the CDP Notice?

A–E2. A taxpayer is entitled to challenge the existence or amount of the tax liability specified in the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for such liability or did not otherwise have an opportunity to dispute such liability. Receipt of a statutory notice of deficiency for this purpose means receipt in time to petition the Tax Court for a redetermination of the deficiency asserted in the notice of deficiency. An opportunity to dispute a liability includes a prior opportunity for a conference with Appeals that was offered either before or after the assessment of the liability.

Q–E3. Are spousal defenses subject to the limitations imposed under section 6330(c)(2)(B) on a taxpayer's right to challenge the tax liability specified in the CDP Notice at a CDP hearing?

A–E3. The limitations imposed under section 6330(c)(2)(B) do not apply to spousal defenses. When a taxpayer asserts a spousal defense, the taxpayer is not disputing the amount or existence of the liability itself, but asserting a defense to the liability which may or may not be disputed. A spousal defense raised under section 66 or section 6015 is governed by section 66 or section 6015 and the regulations and procedures thereunder. Any limitation under those sections, regulations, and procedures therefore will apply.

Q–E4. May a taxpayer raise at a CDP hearing a spousal defense under section 66 or section 6015 if that defense was raised and considered administratively and the Commissioner has issued a statutory notice of deficiency or final determination letter addressing the spousal defense?

A–E4. No. A taxpayer is precluded from raising a spousal defense at a CDP hearing when the Commissioner has made a final determination under section 66 or section 6015 in a final determination letter or statutory notice of deficiency. However, a taxpayer may raise spousal defenses in a CDP hearing when the taxpayer has previously raised spousal defenses, but the Commissioner has not yet made a final determination regarding this issue.

Q–E5. May a taxpayer raise at a CDP hearing a spousal defense under section 66 or section 6015 if that defense was raised and considered in a prior judicial proceeding that has become final?

A–E5. No. A taxpayer is precluded by the doctrine of res judicata and by the specific limitations under section 66 or section 6015 from raising a spousal defense in a CDP hearing under these circumstances.

Q–E6. What collection alternatives are available to the taxpayer?

A–E6. Collection alternatives would include, for example, a proposal to withdraw the NFTL in circumstances that will facilitate the collection of the tax liability, an installment agreement, an offer-in-compromise, the posting of a bond, or the substitution of other assets.

Q–E7. What issues may a taxpayer raise in a CDP hearing under section 6320 if the taxpayer previously received a notice under section 6330 with respect to the same tax and tax period and did not request a CDP hearing with respect to that notice?

A–E7. The taxpayer may raise appropriate spousal defenses, challenges to the appropriateness of the NFTL filing, and offers of collection alternatives. The existence or amount of the tax liability for the tax and tax period specified in the CDP Notice may be challenged only if the taxpayer did not already have an opportunity to dispute that tax liability. Where the taxpayer previously received a CDP Notice under section 6330 with respect to the same tax and tax period and did not request a CDP hearing with respect to that earlier CDP Notice, the taxpayer already had an opportunity to dispute the existence or amount of the underlying tax liability.

Q–E8. How will Appeals issue its determination?

A–E8. (i) Taxpayers will be sent a dated Notice of Determination by certified or registered mail. The Notice of Determination will set forth Appeals' findings and decisions. It will state whether the IRS met the requirements of any applicable law or administrative procedure; it will resolve any issues appropriately raised by the taxpayer relating to the unpaid tax; it will include a decision on any appropriate spousal defenses raised by the taxpayer; it will include a decision on any challenges made by the taxpayer to the appropriateness of the NFTL filing; it will respond to any offers by the taxpayer for collection alternatives; and it will address whether the continued existence of the filed NFTL represents a balance between the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary. The Notice of Determination will also set forth any agreements that Appeals reached with the taxpayer, any relief given the taxpayer, and any actions the taxpayer or the IRS are required to take. Lastly, the Notice of Determination will advise the taxpayer of the taxpayer's right to seek judicial review within 30 days of the date of the Notice of Determination.

(ii) Because taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax or filing the NFTL, certain matters that might have been raised at a CDP hearing may be resolved without the need for Appeals consideration. Unless, as a result of these discussions, the taxpayer agrees in writing to withdraw the request that Appeals conduct a CDP hearing, Appeals will still issue a Notice of Determination. The taxpayer can, however, waive in writing Appeals' consideration of some or all of the matters it would otherwise consider in making its determination.

Q–E9. Is there a period of time within which Appeals must conduct a CDP hearing or issue a Notice of Determination?

A–E9. No. Appeals will, however, attempt to conduct a CDP hearing and issue a Notice of Determination as expeditiously as possible under the circumstances.

Q–E10. Why is the Notice of Determination and its date important?

A–E10. The Notice of Determination will set forth Appeals' findings and decisions with respect to the matters set forth in A–E1 of this paragraph (e)(3). The 30-day period within which the taxpayer is permitted to seek judicial review of Appeals' determination commences the day after the date of the Notice of Determination.

Q–E11. If an Appeals officer considers the merits of a taxpayer's liability in a CDP hearing when the taxpayer had previously received a statutory notice of deficiency or otherwise had an opportunity to dispute the liability prior to the NFTL, will the Appeals officer's determination regarding those liability issues be considered part of the Notice of Determination?

A–E11. No. An Appeals officer may consider the existence and amount of the underlying tax liability as a part of the CDP hearing only if the taxpayer did not receive a statutory notice of deficiency for the tax liability in question or otherwise have a prior opportunity to dispute the tax liability. Similarly, an Appeals officer may not consider any other issue if the issue was raised and considered at a previous hearing under section 6330 or in any other previous administrative or judicial proceeding in which the person seeking to raise the issue meaningfully participated. In the Appeals officer's sole discretion, however, the Appeals officer may consider the existence or amount of the underlying tax liability, or such other precluded issues, at the same time as the CDP hearing. Any determination, however, made by the Appeals officer with respect to such a precluded issue shall not be treated as part of the Notice of Determination issued by the Appeals officer and will not be subject to any judicial review. Because any decisions made by the Appeals officer with respect to such precluded issues are not properly a part of the CDP hearing, such decisions are not required to appear in the Notice of Determination issued following the hearing. Even if a decision concerning such precluded issues is referred to in the Notice of Determination, it is not reviewable by a district court or the Tax Court because the precluded issue is not properly part of the CDP hearing.

(4) *Examples.* The following examples illustrate the principles of this paragraph (e):

Example 1. The IRS sends a statutory notice of deficiency to the taxpayer at his last known address asserting a deficiency for the tax year 1995. The taxpayer receives the notice of deficiency in time to petition the Tax Court for a redetermination of the asserted deficiency. The taxpayer does not timely file a petition with the Tax Court. The taxpayer is precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

Example 2. Same facts as in *Example 1,* except the taxpayer does not receive the notice of deficiency in time to petition the Tax Court and did not have another prior opportunity to dispute the tax liability. The taxpayer is not precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

Example 3. The IRS properly assesses a trust fund recovery penalty against the taxpayer. The IRS offers the taxpayer the opportunity for a conference with Appeals at which the taxpayer would have the opportunity to dispute the assessed liability. The taxpayer declines the opportunity to participate in such a conference. The taxpayer is precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

(f) *Judicial review of Notice of Determination*—(1) *In general.* Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, Appeals is required to issue a Notice of Determination in all cases where a taxpayer has timely requested a CDP hearing. The taxpayer may appeal such determinations made by Appeals within the 30-day period commencing the day after the date of the Notice of Determination to the Tax Court or a district court of the United States, as appropriate.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (f) as follows:

Q–F1. What must a taxpayer do to obtain judicial review of a Notice of Determination?

A–F1. Subject to the jurisdictional limitations described in A–F2, the taxpayer must, within the 30-day period commencing the day after the date of the Notice of Determination, appeal the determination by Appeals to the Tax Court or to a district court of the United States.

Q–F2. With respect to the relief available to the taxpayer under section 6015, what is the time frame within which a taxpayer may seek Tax Court review of Appeals' determination following a CDP hearing?

A–F2. If the taxpayer seeks Tax Court review not only of Appeals' denial of relief under section 6015, but also of relief requested with respect to other issues raised in the CDP hearing, the taxpayer should request Tax Court review within the 30-day period commencing the day after the date of the Notice of Determination. If the taxpayer only seeks Tax Court review of Appeals' denial of relief under section 6015, then the taxpayer should request Tax Court review, as provided by section 6015(e), within 90 days of Appeals' determination. If a request for Tax Court review is filed after the 30-day period for seeking judicial review under section 6320, then only the taxpayer's section 6015 claims may be reviewable by the Tax Court.

Q–F3. Where should a taxpayer direct a request for judicial review of a Notice of Determination?

A–F3. If the Tax Court would have jurisdiction over the type of tax specified in the CDP Notice (for example, income and estate taxes), then the taxpayer must seek judicial review by the Tax Court. If the tax liability arises from a type of tax over which the Tax Court would not have jurisdiction, then the taxpayer must seek judicial review by a district court of the United States in accordance with Title 28 of the United States Code.

Q–F4. What happens if the taxpayer timely appeals Appeals' determination to the incorrect court?

A–F4. If the court to which the taxpayer directed a timely appeal of the Notice of Determination determines that the appeal was to the incorrect court (because of jurisdictional, venue or other reasons), the taxpayer will have 30 days after the court's determination to that effect within which to file an appeal to the correct court.

Q–F5. What issue or issues may the taxpayer raise before the Tax Court or before a district court if the taxpayer disagrees with the Notice of Determination?

A–F5. In seeking Tax Court or district court review of Appeals' Notice of Determination, the taxpayer can only request that the court consider an issue that was raised in the taxpayer's CDP hearing.

(g) *Effect of request for CDP hearing and judicial review on periods of limitation and collection activity*—(1) *In general.* The periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended until the date the IRS receives the taxpayer's written withdrawal of the request for a CDP hearing by Appeals or the determination resulting from the CDP hearing becomes final by expiration of the time for seeking judicial review or the exhaustion of any rights to appeals following judicial review. In no event shall any of these periods of limitation expire before the 90th day after the date on which the IRS receives the taxpayer's written withdrawal of the request that Appeals conduct a CDP hearing or the determination with respect to such hearing becomes final upon either the expiration of the time for seeking judicial review or upon exhaustion of any rights to appeals following judicial review.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (g) as follows:

Q–G1. For what period of time will the periods of limitation under sections 6502, 6531, and 6532 remain suspended if the taxpayer timely requests a CDP hearing concerning the filing of a NFTL?

A–G1. The suspension period commences on the date the IRS receives the taxpayer's written request for a CDP hearing. The suspension period continues until the IRS receives a written withdrawal by the taxpayer of the request for a CDP hearing or the Notice of Determination resulting from the CDP hearing becomes final. In no event shall any of these periods of limitation expire before the 90th day after the day on which the IRS receives the taxpayer's written withdrawal of the request that Appeals conduct a CDP hearing or there is a final determination with respect to such hearing. The periods of limitation that are suspended under section 6320 are those which apply to the taxes and the tax period or periods to which the CDP Notice relates.

Q–G2. For what period of time will the periods of limitation under sections 6502, 6531, and 6532 be suspended if the taxpayer does not request a CDP hearing concerning the filing of a NFTL, or the taxpayer requests a CDP hearing, but his request is not timely?

A–G2. Under either of these circumstances, section 6320 does not provide for a suspension of the periods of limitation.

Q–G3. What, if any, enforcement actions can the IRS take during the suspension period?

A–G3. Section 6330(e), made applicable to section 6320 CDP hearings by section 6320(c), provides for the suspension of the periods of limitation discussed in paragraph (g)(1) of these regulations. Section 6330(e) also provides that levy actions that are the subject of the requested CDP hearing under that section shall be suspended during the same period. Levy actions, however, are not the subject of a CDP hearing under section 6320. The IRS may levy for tax periods and taxes covered by the CDP Notice under section 6320 and for other taxes and periods if the CDP requirements under section 6330 for those taxes and periods have been satisfied. The IRS also may file NFTLs for tax periods or taxes not covered by the CDP Notice, may file a NFTL for the same tax and tax period stated on the CDP Notice at another recording office, and may take other non-levy collection actions such as initiating judicial proceedings to collect the tax shown on the CDP Notice or offsetting overpayments from other periods, or of other taxes, against the tax shown on the CDP Notice. Moreover, the provisions in section 6330 do not apply when the IRS levies for the tax and tax period shown on the CDP Notice to collect a state tax refund due the taxpayer, or determines that collection of the tax is in jeopardy. Finally, section 6330 does not prohibit the IRS from accepting any voluntary payments made for the tax and tax period stated on the CDP Notice.

(3) *Examples.* The following examples illustrate the principles of this paragraph (g):

Example 1. The period of limitation under section 6502 with respect to the taxpayer's tax period listed in the NFTL will expire on August 1, 1999. The IRS sent a CDP Notice to the taxpayer on April 30, 1999. The taxpayer timely requested a CDP hearing. The IRS received this request on May 15, 1999. Appeals sends the taxpayer its determination on June 15, 1999. The taxpayer timely seeks judicial review of that determination. The period of limitation under section 6502 would be suspended from May 15, 1999, until the determination resulting from that hearing becomes final by expiration of the time for seeking review or reconsideration before the appropriate court, plus 90 days.

Example 2. Same facts as in *Example 1,* except the taxpayer does not seek judicial review of Appeals' determination. Because the taxpayer requested the CDP hearing when fewer than 90 days remained on the period of limitation, the period of limitation will be extended to October 13, 1999 (90 days from July 15, 1999).

(h) *Retained jurisdiction of Appeals*—(1) *In general.* The Appeals office that makes a determination under section 6320 retains jurisdiction over that determination, including any subsequent administrative hearings that may be requested by the taxpayer regarding the NFTL and any collection actions taken or proposed with respect to Appeals' determination. Once a taxpayer has exhausted his other remedies, Appeals' retained jurisdiction permits it to consider whether a change in the taxpayer's circumstances affects its original determination. Where a taxpayer alleges a change in circumstances that affects Appeals' original determination, Appeals may consider whether changed circumstances warrant a change in its earlier determination.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (h) as follows:

Q–H1. Are the periods of limitation suspended during the course of any subsequent Appeals consideration of the matters raised by a taxpayer when the taxpayer invokes the retained jurisdiction of Appeals under section 6330(d)(2)(A) or (d)(2)(B)?

A–H1. No. Under section 6320(b)(2), a taxpayer is entitled to only one CDP hearing under section 6320 with respect to the tax and tax period or periods specified in the CDP Notice. Any subsequent consideration by Appeals pursuant to its retained jurisdiction is not a continuation of the original CDP hearing and does not suspend the periods of limitation.

Q–H2. Is a decision of Appeals resulting from a retained jurisdiction hearing appealable to the Tax Court or a district court?

A–H2. No. As discussed in A–H1, a taxpayer is entitled to only one CDP hearing under section 6320 with respect to the tax and tax period or periods specified in the CDP Notice. Only determinations resulting from CDP hearings are appealable to the Tax Court or a district court.

(i) *Equivalent hearing*—(1) *In general.* A taxpayer who fails to make a timely request for a CDP hearing is not entitled to a CDP hearing. Such a taxpayer may nevertheless request an administrative hearing with Appeals, which is referred to herein as an ''equivalent hearing.'' The equivalent hearing will be held by Appeals and generally will follow Appeals' procedures for a CDP hearing. Appeals will not, however, issue a Notice of Determination. Under such circumstances, Appeals will issue a Decision Letter.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (i) as follows:

Q–I1. What issues will Appeals consider at an equivalent hearing?

A–I1. In an equivalent hearing, Appeals will consider the same issues that it would have considered at a CDP hearing on the same matter.

Q–I2. Are the periods of limitation under sections 6502, 6531, and 6532 suspended if the taxpayer does not timely request a CDP hearing and is subsequently given an equivalent hearing?

A–I2. No. The suspension period provided for in section 6330(e) relates only to hearings requested within the 30-day period that commences on the day after the end of the five business day period following the filing of the NFTL, that is, CDP hearings.

Q–I3. Will collection action, including the filing of additional NFTLs, be suspended if a taxpayer requests and receives an equivalent hearing?

A–I3. Collection action is not required to be suspended. Accordingly, the decision to take collection action during the pendency of an equivalent hearing will be determined on a case-by-case basis. Appeals may request the IRS office with responsibility for collecting the taxes to suspend all or some collection action or to take other appropriate action if it determines that such action is appropriate or necessary under the circumstances.

Q–I4. What will the Decision Letter state?

A–I4. The Decision Letter will generally contain the same information as a Notice of Determination.

Q–I5. Will a taxpayer be able to obtain court review of a decision made by Appeals with respect to an equivalent hearing?

A–I5. Section 6320 does not authorize a taxpayer to appeal the decision of Appeals with respect to an equivalent hearing. A taxpayer may under certain circumstances be able to seek Tax Court review of Appeals' denial of relief under section 6015. Such review must be sought within 90 days of the issuance of Appeals' determination on those issues, as provided by section 6015(e).

(j) *Effective date.* This section is applicable with respect to any filing of a NFTL on or after January 19, 1999.

§ 301.6320–1T [Removed]

Par. 3. Section 301.6320–1T is removed.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Mark A. Weinberger,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 02–1306 Filed 1–17–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the District of Columbia Code

AGENCY: United States Parole Commission, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The U.S. Parole Commission is amending its rules of procedure that govern the revocation process for District of Columbia parolees who are arrested and held in the District of Columbia on warrants charging them with violations of parole. The amended rules implement a decision of the U.S. District Court for the District of Columbia, in *Long* v. *Gaines*, Civ. Action No. 01–0010 (EGS), dated November 21, 2001, which obliges the Commission to promulgate amendments to its regulations so as to conform them to the requirements of constitutional due process as interpreted by the Court. The amended rules impose new deadlines for making determinations of probable cause (five days from arrest), for holding the final revocation hearing (sixty-five days from arrest), and for issuing final decisions as to revocation (eighty-six days after arrest). The amended rules also include other procedures designed to comply with the court's order.

DATES: This interim rule will take effect on February 19, 2002. Comments must be received by March 19, 2002.

ADDRESSES: Send comments to Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: In *Long* v. *Gaines*, 167 F. Supp. 2d 75 (D.D.C. 2001), the U.S. District Court for the District of Columbia held that the Parole Commission's rules governing the revocation process for District of Columbia parolees are unconstitutional with respect to the applicable time deadlines for making determinations of probable cause and completing the revocation process. Under the Commission's current rules, a parolee who is arrested on a warrant charging a violation of parole is entitled to a prompt preliminary interview, normally conducted by a parole officer other than the officer who supervised the parolee. The Commission must make a determination of probable cause ''as expeditiously as possible'' if the interviewing officer recommends a finding of ''no probable cause,'' and within 21 days of the interview if the interviewing officer recommends that probable cause be found. A local revocation hearing must be held within 60 days of the probable cause determination if the parolee denies violating parole and has not been convicted of a new crime. Thereafter, the Commission must issue a final decision within 21 days of the revocation hearing, excluding weekends and holidays. See 28 CFR 2.101 through 2.105 (2001). Because the Commission customarily holds preliminary interviews within three to five days of arrest, these rules provide for an outside limit of 86 days from arrest for the

revocation hearing to be held, and 107 days from arrest for the final decision to be issued. (Parolees who are convicted of new crimes are only entitled to revocation hearings within 90 days of arrest; the rules governing such offenders are not changed by these amendments.)

However, in *Long* v. *Gaines* the court has held that the due process clause of the U.S. Constitution requires that the Commission make determinations of probable cause no later than five days from arrest, that revocation hearings be held not later than 65 days from arrest, and that final decisions be issued no later than 86 days from arrest. Except in the case of parolees convicted of new crimes, the Commission has now been enjoined to operate within these deadlines. The court also held that the Commission must ensure that: (1) The parolee is given notice of the time and purpose of the probable cause hearing and the charged violations; (2) prior to the revocation hearing, the parolee is provided with disclosure of the evidence to be relied upon by the Commission in determining whether parole was violated and, if so, whether to revoke parole; and (3) the ultimate decisionmaker is informed of all the parolee's arguments and evidence prior to rendering a final decision.

The amended rules implement these requirements. Although not all of the court's requirements necessitate departures from the Commission's current practice, the amended rules significantly differ from the Commission's current practice by adopting the court's new deadlines, and by requiring that Commission hearing examiners conduct probable cause hearings in the District of Columbia within five days of the parolee's arrest. The Commission has delegated to these examiners the authority to make a probable cause decision at the conclusion of each hearing. The examiner will also have the authority to order the release of the parolee if no probable cause is found, and to set a date for the revocation hearing if probable cause is found.

Implementation

The Commission's regulations at 28 CFR 2.98 through 2.105, as amended by this publication, will be followed by the Commission in the case of all District of Columbia Code parolees who are arrested and held in the District of Columbia on warrants charging a violation or violations of parole, until the taking effect of final rules promulgated by the Commission. However, these interim amendments will also retain the status of proposed rules for the purposes of the public comment requirement of 5 U.S.C. 553 (b). The Commission will withhold promulgation of final rules until completion of the comment and objection process accorded to the plaintiffs in *Long* v. *Gaines*. These regulations do not supersede or replace any representation made by the defendants in the Compliance Plan approved by the district court on November 21, 2001.

Regulatory Assessment Requirements

The U.S. Parole Commission has determined that these interim regulations do not constitute a significant rule within the meaning of Executive Order 12866. The amended rules will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b), and are deemed by the Commission to be rules of agency practice that do not substantially affect the rights or obligations of non-agency parties pursuant to Section 804(3)(C) of the Congressional Review Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Amended Rules

Accordingly, the U.S. Parole Commission is adopting the following amendments to 28 CFR Part 2.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Section 2.98 is amended as follows:

a. Amend paragraph (a)(1) by removing ''preliminary interview'' and adding in its place ''probable cause hearing''.

b. Revise paragraph (f) to read as follows:

§ 2.98 Summons to appear or warrant for retaking of parolee.

* * * * *

(f) A summons or warrant issued pursuant to this section shall be accompanied by a warrant application (or other notice) stating:

(1) The charges against the parolee;

(2) The specific reports and other documents upon which the Commission intends to rely in determining whether a violation occurred and whether to revoke parole;

(3) Notice of the Commission's intent, if the parolee is arrested within the District of Columbia, to hold a probable cause hearing within five days of the parolee's arrest;

(4) A statement of the purpose of the probable cause hearing;

(5) The days of the week on which the Commission regularly holds its dockets of probable cause hearings at the Central Detention Facility;

(6) The parolee's procedural rights in the revocation process; and

(7) The possible actions that the Commission may take.

* * * * *

3. Section 2.99 is amended as follows:

a. Revise paragraph (b) to read as set forth below.

b. Amend paragraph (e) by removing ''preliminary interview'' and adding in its place ''probable cause hearing''.

§ 2.99 Execution of warrant and service of summons.

* * * * *

(b) Upon the arrest of the parolee, the officer executing the warrant shall deliver to the parolee a copy of the warrant application (or other notice provided by the Commission) containing the information described in § 2.98 (f).

* * * * *

4. Section 2.101 is revised to read as follows:

§ 2.101 Probable cause hearing and determination.

(a) Hearing. A parolee who is retaken and held in custody in the District of Columbia on a warrant issued by the Commission (or by the Board of Parole of the District of Columbia), and who has not been convicted of a new crime, shall, no later than five days from the date of such retaking, be given a probable cause hearing by an examiner of the Commission. The purpose of the probable cause hearing is to determine whether there is probable cause to believe that the parolee has violated parole as charged, and if so, whether a local or institutional revocation hearing should be conducted.

(b) Notice and opportunity to postpone hearing. Prior to the commencement of each docket of probable cause hearings, a list of the parolees who are scheduled for probable cause hearings, together with a copy of the warrant application for each parolee, shall be sent to the DC Public Defender Service. At or before the probable cause hearing, the parolee (or the parolee's attorney) may submit a written request that the hearing be postponed for any period up to thirty days, and the Commission shall ordinarily grant such requests. Prior to the commencement of

the probable cause hearing, the examiner shall advise the parolee that the parolee may accept representation by the attorney from the DC Public Defender Service who is assigned to that docket, waive the assistance of an attorney at the probable cause hearing, or have the probable cause hearing postponed in order to obtain another attorney and/or witnesses on his behalf. In addition, the parolee may request the Commission to require the attendance of adverse witnesses (i.e., witnesses who have given information upon which revocation may be based) at a postponed probable cause hearing. Such adverse witnesses may be required to attend either a postponed probable cause hearing, or a combined postponed probable cause and local revocation hearing, provided the parolee meets the requirements of § 2.102(a) for a local revocation hearing. The parolee shall also be given notice of the time and place of any postponed probable cause hearing.

(c) Review of the charges. At the beginning of the probable cause hearing, the examiner shall ascertain that the notice required by § 2.99 (b) has been given to the parolee. The examiner shall then review the violation charges with the parolee and shall apprise the parolee of the evidence that has been submitted in support of the charges. The examiner shall ascertain whether the parolee admits or denies each charge listed on the warrant application (or other notice of charges), and shall offer the parolee an opportunity to rebut or explain the allegations contained in the evidence giving rise to each charge. The examiner shall also receive the statements of any witnesses and documentary evidence that may be presented by the parolee. At a postponed probable cause hearing, the examiner shall also permit the parolee to confront and cross-examine any adverse witnesses in attendance, unless good cause is found for not allowing confrontation. Whenever a probable cause hearing is postponed to secure the appearance of adverse witnesses, the Commission will ordinarily order a combined probable cause and local revocation hearing as provided in paragraph (i) of this section.

(d) Probable cause determination. At the conclusion of the probable cause hearing, the examiner shall determine whether probable cause exists to believe that the parolee has violated parole as charged, and shall so inform the parolee. The examiner shall then take either of the following actions:

(1) If the examiner determines that no probable cause exists for any violation charge, the examiner shall order that the parolee be released from the custody of the warrant and either reinstated to parole, or discharged from supervision if the parolee's sentence has expired.

(2) If the hearing examiner determines that probable cause exists on any violation charge, and the parolee has requested (and is eligible for) a local revocation hearing in the District of Columbia as provided by § 2.102 (a), the examiner shall schedule a local revocation hearing for a date that is within 65 days of the parolee's arrest. After the probable cause hearing, the parolee (or the parolee's attorney) may submit a written request for a postponement. Such postponements will normally be granted if the request is received no later than fifteen days before the date of the revocation hearing. A request for a postponement that is received by the Commission less than fifteen days before the scheduled date of the revocation hearing will be granted only for a compelling reason. The parolee (or the parolee's attorney) may also request, in writing, a hearing date that is earlier than the date scheduled by the examiner, and the Commission will accommodate such request if practicable.

(e) Institutional revocation hearing. If the parolee is not eligible for a local revocation hearing as provided by § 2.102 (a), or has requested to be transferred to an institution for his revocation hearing, the Commission will request the Bureau of Prisons to designate the parolee to an appropriate institution, and an institutional revocation hearing shall be scheduled for a date that is within ninety days of the parolee's retaking.

(f) Digest of the probable cause hearing. At the conclusion of the probable cause hearing, the examiner shall prepare a digest summarizing the evidence presented at the hearing, the responses of the parolee, and the examiner's findings as to probable cause.

(g) Release notwithstanding probable cause. Notwithstanding a finding of probable cause, the Commission may order the parolee's reinstatement to supervision or release pending further proceedings, if it determines that:

(1) Continuation of revocation proceedings is not warranted despite the finding of probable cause; or

(2) Incarceration pending further revocation proceedings is not warranted by the frequency or seriousness of the alleged violation(s), and the parolee is neither likely to fail to appear for further proceedings, nor is a danger to himself or others.

(h) Conviction as probable cause. Conviction of any crime committed subsequent to release by a parolee shall constitute probable cause for the purposes of this section, and no probable cause hearing shall be conducted unless a hearing is needed to consider additional violation charges that may be determinative of the Commission's decision whether to revoke parole.

(i) Combined probable cause and local revocation hearing. A postponed probable cause hearing may be conducted as a combined probable cause and local revocation hearing, provided such hearing is conducted within 65 days of the parolee's arrest and the parolee has been notified that the postponed probable cause hearing will constitute his final revocation hearing. The Commission's policy is to conduct a combined probable cause and local revocation hearing whenever adverse witnesses are required to appear and give testimony with respect to contested charges.

(j) Late received charges. If the Commission is notified of an additional charge after probable cause has been found to proceed with a revocation hearing, the Commission may:

(1) Remand the case for a supplemental probable cause hearing if the new charge may be contested by the parolee and possibly result in the appearance of witness(es) at the revocation hearing;

(2) Notify the parolee that the additional charge will be considered at the revocation hearing without conducting a supplemental probable cause hearing; or

(3) Determine that the new charge shall not be considered at the revocation hearing.

5. Section 2.102 (f) is revised to read as follows:

§ 2.102 Place of revocation hearing.

* * * * *

(f) A local revocation hearing shall be held not later than sixty-five days from the retaking of the parolee on the parole violation warrant. An institutional revocation hearing shall be held within ninety days of the retaking of the parolee on the parole violation warrant. If the parolee requests and receives any postponement, or consents to any postponement, or by his actions otherwise precludes the prompt completion of revocation proceedings in his case, the above-stated time limits shall be correspondingly extended.

6. Section 2.103 is amended by revising paragraph (d) and adding paragraphs (f) and (g) to read as follows:

§ 2.103 Revocation hearing procedure.

* * * * *

(d) All evidence upon which a finding of violation may be based shall be disclosed to the alleged violator before the revocation hearing. Such evidence shall include the Community Supervision Officer's letter summarizing the parolee's adjustment to parole and requesting the warrant, all other documents describing the charged violation or violations of parole, and any additional evidence upon which the Commission intends to rely in determining whether the charged violation or violations, if sustained, would warrant revocation of parole. If the parolee is represented by an attorney, the attorney shall be provided, prior to the revocation hearing, with a copy of the parolee's presentence investigation report, if such report is available to the Commission. If disclosure of any information would reveal the identity of a confidential informant or result in harm to any person, that information may be withheld from disclosure, in which case a summary of the withheld information shall be disclosed to the parolee prior to the revocation hearing.

* * * * *

(f) At a local revocation hearing, the Commission shall secure the presence of the parolee's Community Supervision Officer, or a substitute Community Supervision Officer, who shall bring the parolee's supervision file, if the parolee's Community Supervision Officer is not available. At the request of the hearing examiner, such officer shall provide testimony at the hearing concerning the parolee's adjustment to parole.

(g) After the revocation hearing, the hearing examiner shall prepare a summary of the hearing that includes a description of the evidence against the parolee and the evidence submitted by the parolee in defense or mitigation of the charges, a summary of the arguments against revocation presented by the parolee, and the examiner's recommended decision. The hearing examiner's summary, together with the parolee's file (including any documentary evidence and letters submitted on behalf of the parolee), shall be given to another examiner for review. When two hearing examiners concur in a recommended disposition, that recommendation, together with the parolee's file and the hearing examiner's summary of the hearing, shall be submitted to the Commission for decision.

* * * * *

7. Section 2.104 (a)(1) is amended by removing ''preliminary interview'' and adding in its place ''probable cause hearing''.

8. Section 2.105 (c) is revised to read as follows:

§ 2.105 Revocation decisions.

* * * * *

(c) Decisions under this section shall be made upon the concurrence of two Commissioner votes, except that a decision to override an examiner panel recommendation shall require the concurrence of three Commissioner votes. The final decision following a local revocation hearing shall be issued within 86 days of the retaking of the parolee on the parole violation warrant. The final decision following an institutional revocation hearing shall be issued within 21 days of the hearing, excluding weekends and holidays.

* * * * *

Dated: January 10, 2002.

Edward F. Reilly, Jr.,

Chairman, Parole Commission.

[FR Doc. 02–1308 Filed 1–17–01; 8:45 am]

BILLING CODE 4410–31–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 160

[USCG–2001–10689]

RIN 2115–AG24

Temporary Requirements for Notification of Arrival in U.S. Ports

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments; correction.

SUMMARY: This document corrects the temporary final rule with request for comments published in the **Federal Register** on October 4, 2001. That rule temporarily changed notification requirements for vessels bound for or departing from U.S. ports. The rule temporarily lengthened the usual notification period from 24 to 96 hours prior to port entry, required submission of reports to a central national clearinghouse, suspended exemptions for vessels operating in compliance with the Automated Mutual Assistance Vessel Rescue System, for some vessels operating on the Great Lakes, and required submission of information about persons onboard these vessels.

DATES: The temporary final rule published in the **Federal Register** (66 FR 50565) was effective on October 4, 2001 to June 15, 2002. These corrections to that rule are effective on January 18, 2002.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call LTJG Marcus A. Lines, Coast Guard, at telephone 202–267–6854. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at telephone 202–366–5149.

SUPPLEMENTARY INFORMATION

Need for Correction

As published, the temporary final rule contains an error that inadvertently delays an existing effective date of a reporting requirement for certain vessels to include International Safety Management (ISM) Code (Chapter IX of SOLAS) Notice information in the notice of arrival report.

Correction

In the temporary final rule FR Doc. 01–24984, beginning on page 50565 in the issue of October 4, 2001, make the following corrections:

§ 160.T208 [Amended]

1. In § 160.T208 in paragraph (f)(2) on page 50573, in the first column, remove the date ''July 1, 2002,'' and add in its place the date ''January 1, 2002,''.

Dated: January 11, 2002.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 02–1370 Filed 1–17–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles—Long Beach 01–011]

RIN 2115–AA97

Security Zones; Port of Los Angeles and Catalina Island

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a moving and fixed security zone 100 yards around all cruise ships that enter, are moored in, or depart from the Port of Los Angeles, and while anchored at Catalina Island. These security zones are needed for national security reasons to protect the public and ports from potential subversive acts. Entry into these zones is prohibited, unless specifically authorized by the Capitan of the Port Los Angeles—Long Beach, or his designated representative.

DATES: The regulation is effective from 11:59 p.m. PST on November 1, 2001 to 11:59 p.m. PDT on May 1, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket COTP Los Angeles—Long Beach 01–011 and are available for inspection or copying at Coast Guard Marine Safety Office Los Angeles—Long Beach, 1001 South Seaside Avenue, Building 20, San Pedro, California, 90731, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Rob Griffiths, Waterways Management, at (310) 732–2020.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM, which would incorporate a comment period before a final rule was issued, would be contrary to the public interest since immediate action is needed to protect the public, ports, and waterways of the United States. For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard will issue a broadcast notice to mariners advising of these new regulations.

Background and Purpose

Based on the September 11, 2001, terrorist attacks on the World Trade Center in New York and the Pentagon in Arlington, Virginia, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Port of Los Angeles or Catalina Island, against cruise ships entering, departing, or moored within the port of Los Angeles and against cruise ships anchored at Catalina Island. The terrorist acts against the United States on September 11, 2001, have increased the need for safety and security measures on U.S. ports and waterways.

In response to these terrorist acts, and in order to prevent similar occurrences, the Coast Guard has established a security zone around cruise ships to protect persons, transiting vessels, adjacent waterfront facilities, and the adjacent land of the Port of Los Angeles and Catalina Island. These security zones are necessary to prevent damage or injury to any vessel or waterfront facility, and to safeguard ports, harbors, or waters of the United States near Los Angeles and Catalina Island, California.

These security zones are established pursuant to the authority of The Magnuson Act regulations promulgated by the President under 50 U.S.C. 191, including Subparts 6.01 and 6.04 of Part 6 of Title 33 of the Code of Federal Regulations. Vessels or person violating this section are subject to the penalties set forth in 50 U.S.C. 192: Seizure and forfeiture of the vessel, a monetary penalty of not more than $10,000, and imprisonment for not more than 10 years.

This regulation will be enforced by the Captain of the Port Los Angeles—Long Beach, who may also enlist the aid and cooperation of any Federal, State, county, municipal, and private agencies to assist in the enforcement of this regulation. Initially, Coast Guard and local police department patrol vessels will be on scene to monitor traffic through these areas.

This security zone prohibits all vessels and people from approaching cruise ships that are underway or moored near Los Angeles, California, and while anchored at Catalina Island. Specifically, no vessel or person may close to within 100 yards of a cruise ship that is entering, moored, or departing the Port of Los Angeles, or while anchored at Catalina Island.

A security zone is automatically activated when a cruise ship passes the Los Angeles sea buoy while entering port and remains in effect while the vessel is moored within in the Port of Los Angeles, California. Additionally, a security zone is automatically activated when a cruise ship is anchored at Catalina Island. When activated, these security zones will encompass a portion of the waterway described as a 100-yard radius around a cruise ship in the Port of Los Angeles, and at Catalina Island. These security zones are automatically deactivated when the cruise ship passes the Los Angeles sea buoy on its departure from port, or weighs anchor from Catalina Island. Vessels and people may be allowed to enter an established security zone on a case-by-case basis with authorization from the Captain of the Port.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979) because these zones will encompass a small portion of the waterway for limited periods of time.

Small Entities

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

For the same reasons stated in the section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or

impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that it is categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add a new temporary § 165.T11–058 to read as follows:

§ 165.T11–058 Security Zones; Port of Los Angeles and Catalina Island.

(a) *Regulated area.* Temporary moving security zones are established 100 yards around all cruise ships while entering or departing the Port of Los Angeles. These moving security zones are activated when the cruise ship passes the Los Angeles sea buoy while entering the Port of Los Angeles. Temporary fixed security zones are established 100 yards around all cruise ships docked in the Port of Los Angeles, California, and while anchored at Catalina Island. These security zones are deactivated when the cruise ship passes the sea buoy on its departure from the Port of Los Angeles or weighs anchor at Catalina Island.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33, the following rules apply to security zones established by this section:

(i) No person or vessel may enter or remain in a security zone without the permission of the Captain of the Port;

(ii) Each person and vessel in a security zone shall obey any direction or order of the Captain of the Port;

(iii) The Captain of the Port may take possession and control of any vessel in a security zone;

(iv) The Captain of the Port may remove any person, vessel, article, or thing from a security zone;

(v) No person may board, or take or place any article or thing on board, any vessel in a security zone without the permission of the Captain of the Port; and

(vi) No person may take or place any article or thing upon any waterfront facility in a security zone without the permission of the Captain of the Port.

(2) The Captain of the Port will notify the public via broadcast and published notice to mariners.

(3) Nothing in this section shall be construed as relieving the owner or person in charge of any vessel from complying with the rules of the road and safe navigation practice.

(4) The regulations of this section will be enforced by the Captain of the Port Los Angeles-Long Beach, or his authorized representative, and the Los Angeles Port Police.

(c) *Effective dates.* This section becomes effective at 11:59 p.m. PST on November 1, 2001, and will terminate at 11:59 p.m. PDT on May 1, 2002.

Dated: November 1, 2001.

J. M. Holmes,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach.

[FR Doc. 02–1369 Filed 1–17–02; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 053–REC; FRL–7122–8]

Corrections to the California State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the deletion of various local rules from the California State Implementation Plan (SIP) that were incorporated into the SIP in error. These primarily include rules concerning local fees, enforcement authorities, New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP). EPA has determined that the continued presence of these rules in the SIP is potentially confusing and thus harmful to affected sources, local agencies and to EPA. The intended effect of this final action is to delete these rules and make the SIP consistent with the Clean Air Act as amended in 1990 (CAA or the Act). This

action also reinserts a paragraph into the compilation of federal regulations that was deleted in error in the **Federal Register** on November 10, 1982 and redesignates another paragraph published in the **Federal Register** on June 23, 1982.

EFFECTIVE DATE: This rule is effective on February 19, 2002.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office, 75 Hawthorne Street, San Francisco, CA 94105, during normal business hours. You may also see copies of the rules at the locations listed in **SUPPLEMENTARY INFORMATION** under ''Public Inspection.''

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947–4126. Email: rose.julie@EPA.gov

SUPPLEMENTARY INFORMATION:

Public Inspection

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Amador County Air Pollution Control District, 500 Argonaut Lane, Jackson, CA 95642.

Antelope Valley Air Pollution Control District, 43301 Division Street, Suite 206, Lancaster, CA 93539–4409.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

Butte County Air Quality Management District, 2525 Dominic Drive, Suite J, Chico, CA 95928–7184.

Calaveras County Air Pollution Control District, 891 Mountain Ranch Road, San Andreas, CA 95249–9709.

Colusa County Air Pollution Control District, 100 Sunrise Blvd. Suite F, Colusa, CA 95932–3246.

El Dorado County Air Pollution Control District, 2850 Fairlane Court, Building C, Placerville, CA 95667–4100.

Feather River Air Quality Management District, 938–14th Street, Marysville, CA 95901–4149.

Glenn County Air Pollution Control District, 720 North Colusa Street, Willows, CA 95988–0351.

Great Basin Unified Air Pollution Control District, 157 Short Street, Suite 6, Bishop, CA 93514.

Imperial County Air Pollution Control District, 150 South Ninth Street, El Centro, CA 92243–2801.

Kern County (Southeast Desert) Air Pollution Control District, 2700 M. Street, Suite 302, Bakersfield, CA 93301–2370.

Lake County Air Quality Management District, 883 Lakeport Blvd., Lakeport, CA 95453–5405.

Lassen County Air Pollution Control District, 175 Russell Avenue, Susanville, CA 96130–4215.

Mariposa County Air Pollution Control District, 5110 Bullion Street, Mariposa, CA 95338.

Mendocino County Air Quality Management District, 306 E. Gobbi Street, Ukiah, CA 95482.

Modoc County Air Pollution Control District, 202 W. Fourth Street, Alturas, CA 96101.

Mojave Desert Air Quality Management District, 14306 Park Avenue, Victorville, CA 92392–2310.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Ct., Monterey, CA 93940–6536.

North Coast Unified Air Quality Management District, 2300 Myrtle Avenue, Eureka, CA 95501–3327.

Northern Sierra Air Quality Management District, 200 Litton Drive, Suite 320, Grass Valley, CA 95945–2509.

Northern Sonoma County Air Pollution Control District, 150 Matheson Street, Healdsburg, CA 95448–4908.

Placer County Air Pollution Control District, 11464 B Avenue, Auburn, CA 95603.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg, Fresno, CA 93726.

San Luis Obispo County Air Pollution Control District, 3433 Roberto Court, San Luis Obispo, CA 93401–7126.

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, B–23, Goleta, CA 93117.

Shasta County Air Quality Management District, 1855 Placer Street, Suite 101, Redding, CA 96001–1759.

Siskiyou County Air Pollution Control District, 525 South Foothill Drive, Yreka, CA 96097–3036.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765.

Tehama County Air Pollution Control District, 1750 Walnut Street, Red Bluff, CA 96080.

Tuolumne County Air Pollution Control District, 22365 Airport, Columbia, CA 95310.

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003.

Yolo-Solano Air Quality Management District, 1947 Galileo Court, Suite 103, Davis, CA 95616.

Throughout this document wherever ''we,'' ''us,'' or ''our'' are used, we mean EPA.

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I. Proposed Action

On September 13, 2001 (66 FR 47603), EPA proposed to delete various rules from the California SIP, after determining that they had been approved into the SIP in error. Most of these rules fall into one of the following categories:

A. Various local fee provisions that are not economic incentive programs and are not designed to replace or relax a SIP emission limit. While it is appropriate for local agencies to implement fee provisions, for example, to recover costs for issuing permits, it is generally not appropriate to make local fee collection federally enforceable.

B. Various provisions describing local agency investigative or enforcement authority such as some rules titled enforcement, authority to inspect, authority to arrest, violation notices, and orders for abatement. States may need to adopt such rules to demonstrate adequate enforcement authority under section 110(a)(2) of the Act, but they should not be approved into the applicable SIP to avoid potential conflict with EPA's independent authorities provided in sections 113, 114, and elsewhere.

C. Local adoption of federal NSPS requirements either by reference or by adopting text identical or modified from the requirements found in 40 CFR Part 60. Since EPA has independent authority to implement 40 CFR Part 60, it is not appropriate to make parallel local authorities federally enforceable by approving them into the applicable SIP.

D. Local adoption of NESHAP requirements found in 40 CFR 61 as similarly discussed regarding NSPS.

A complete listing of each rule being deleted can be found in the proposed rule cited above.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received two public comment letters: a letter dated October 9, 2001 from Lawrence D. Odle, air pollution control officer of Butte County Air Quality Management District (BCAQMD), and a letter dated September 24, 2001 from Robert L. Reynolds, air pollution control officer of Lake County Air Quality Management District (LCAQMD). The commenter from BCAQMD expresses support for

the proposed action. The commenter from LCAQMD requests that LCAQMD rules proposed for deletion from the California SIP be retained on the grounds that administration of LCAQMD's air pollution control program relies on these rules, which relate to investigative and enforcement authorities, penalties, and fees.

EPA agrees that these rules are important for local administration of LCAQMD's program. However, removal of these rules from the SIP does not affect the authority LCAQMD has under State law to implement its program or enforce its rules. As explained above, provisions describing local agency investigative or enforcement authorities should not be approved into the SIP to avoid potential conflict with EPA's independent authorities provided in sections 113, 114, and elsewhere in the Act. Also, fee provisions that are not economic incentive programs and are not designed to replace or relax a SIP emission limit should not be approved into the SIP since doing so provides the basis for federal enforcement, i.e., by EPA or a citizen, which is inappropriate for local fee collection provisions. While, for the reasons stated, these types of provisions should not be approved into the SIP, some were erroneously approved into the California SIP, and the purpose of this action is to remove them.

The commenter also requests that certain LCAQMD rules be updated in the SIP to reflect the most recent version of these rules. EPA cannot take action on revisions to these rules because they have not been submitted as official revisions to the California SIP by the California Air Resources Board, but more importantly, for the reasons discussed above, these rules, whether or not they are the most recent versions, are not the types of rules that are appropriate for approval into a SIP.

III. EPA Action

No comments were submitted that change our assessment that the rules listed in the proposed rule are appropriate for deletion from the SIP. Therefore, as authorized in section 110(k)(6) of the Act, EPA is deleting all these rules from the California SIP.

In this action, EPA is also reinserting a paragraph listing EPA-approved rules of the California SIP that were inadvertently deleted from Title 40 of the Code of Federal Regulations, part 52, § 52.220 in other actions. On November 10, 1982, at 47 FR 50864, EPA published a final rulemaking action approving changes to rules of sixteen air pollution districts submitted by the California Air Resources Board as revisions to the California SIP. This action inadvertently deleted paragraph (B) from 40 CFR 52.220(c)(89)(iii). The rules listed in paragraph (B) of 52.220(c)(89)(iii) had previously been incorporated into the California SIP on April 12, 1982, at 47 FR 15585, and were not among the rules that were the subject of the action taken by EPA on November 10, 1982. This action corrects this inadvertent deletion by reinserting paragraph (B) to 40 CFR 52.220(c)(89)(iii).

Section 553 of the Administrative Procedure Act, 5 U.S.C 553(b)(B), provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making (the portion of) today's rule (that relates to technical corrections to the CFR) final without prior proposal and opportunity for comment because EPA is correcting inadvertent deletions of rules duly approved into a state implementation plan. The affected regulations were codified at 40 CFR part 52, subpart F, § 52.220(c)(89)(iii)(B) prior to their inadvertent deletion, and were previously subject to notice and comment prior to EPA approval. Thus, notice and public procedures are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

EPA is also correcting the letter designation of a paragraph in Title 40 of the Code of Federal Regulations, part 52, section 52.220. On June 23, 1982, at 47 FR 27068, EPA added a second paragraph (B) to 40 CFR 52.220 (c)(51)(xiv). However, a paragraph (B) citing different local rules had already been added to 40 CFR 52.220 (c)(51)(xiv) on May 27, 1982, at 47 FR 23159. Today's action redesignates the material in the second paragraph (B) published on June 23, 1982 to paragraph (C). For the same reasons as provided above for the inadvertent deletion of SIP rules, EPA has determined that there is good cause for making this technical correction to the CFR final without prior proposal and opportunity for comment.

Lastly, our proposed rule published on September 13, 2001 indicated that EPA was proposing to delete Fresno County Air Pollution Control District (APCD) rule 111 (Arrests and Notice to Appear) from the California SIP. The State of California submitted a number of local rules, including Fresno County APCD rule 111, to EPA on June 4, 1986 for incorporation into the California SIP. On April 10, 1989, at 54 FR 14224, EPA approved Fresno County APCD rule 111 into the California SIP through a direct final rulemaking. This approval was subsequently withdrawn on June 23, 1989, at 54 FR 26373, in response to receipt of adverse comment on our direct final approval. On June 22, 1989, at 54 FR 262211, in anticipation of our withdrawal notice of June 23, 1989, we proposed to approve Fresno County APCD rule 111 into the California SIP, but the approval was never finalized. Therefore, Fresno County APCD rule 111 is not in the California SIP and is no longer a part of this action.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 32111, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In this action, EPA is not developing or adopting a technical standard. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 19, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: December 12, 2001.

Sally Seymour,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended:

a. By adding paragraphs: (b)(1)(ii), (b)(2)(ii), (b)(4)(ii), (b)(6) through (b)(11), (c)(6)(ii)(B), (c)(6)(iii)(B), (c)(6)(iv)(B), (c)(6)(v)(B), (c)(6)(vi)(B), (c)(6)(vii)(B), (c)(6)(x)(B), (c)(6)(xi)(B), (c)(6)(xii)(B), (c)(6)(xiii)(B), (c)(6)(xiv)(B), (c)(6)(xvi)(B), (c)(6)(xvii)(B), (c)(6)(xix)(B), (c)(6)(xx) to (c)(6)(xxii), (c)(21)(ix)(D), (c)(21)(xviii)(B), (c)(24)(vi)(D), (c)(25)(vii)(B), (c)(26)(ii)(D), (c)(26)(iv)(D) and (E), (c)(26)(xvii)(D), (c)(27)(vii)(D), (c)(27)(viii)(D), (c)(28)(viii)(B), (c)(29)(vi)(C), (c)(30)(v)(B), (c)(30)(vi)(B), (c)(31)(i)(G), (c)(31)(iii)(B), (c)(31)(vi)(E), (c)(31)(xviii)(F), (c)(32)(ii)(C), (c)(32)(iii)(F), (c)(35)(iii)(D), (c)(35)(v)(C), (c)(35)(xii)(H), (c)(35)(xiii)(D), (c)(35)(xv)(F), (c)(37)(iv)(E), (c)(37)(v)(D), (c)(39)(iii)(G), (c)(39)(iv)(G), (c)(39)(vii)(D), (c)(39)(x)(D), (c)(41)(ix)(D), (c)(41)(x)(D) through (G), (c)(42)(i)(F), (c)(42)(iii)(D), (c)(42)(viii)(B), (c)(42)(x)(C), (c)(42)(xiv)(D), (c)(44)(iv)(D), (c)(51)(xi)(B), (c)(51)(xiii)(C), (c)(51)(xiv)(D), (c)(51)(xviii)(B), (c)(51)(xx)(C), (c)(52)(ii)(C), (c)(52)(iv)(F), (c)(52)(xi)(C), (c)(52)(xv)(D), (c)(52)(xvi)(C), (c)(54)(vi)(B), (c)(70)(iv)(B), (c)(85)(vi)(C), (c)(85)(vii)(B), (c)(85)(x)(B), (c)(89)(iii)(B) and (C), (c)(92)(iv)(B), (c)(93)(iii)(C), (c)(93)(iv)(D), (c)(96)(iii)(C), (c)(98)(i)(E), (c)(101)(ii)(G), (c)(103)(xi)(B), (c)(103)(xiii)(C), (c)(103)(xiv)(C), (c)(103)(xvii)(C), (c)(119)(i)(D), (c)(124)(ii)(B), (c)(125)(iv)(C), (c)(125)(v)(C), (c)(126)(ii)(B), (c)(127)(v)(C), (c)(127)(vii)(F) and (G), (c)(137)(i)(C), (c)(137)(ii)(E), (c)(138)(i)(C), (c)(138)(ii)(E), (c)(138)(iii)(B), (c)(138)(iv)(B), (c)(138)(v)(E), (c)(140)(i)(D), (c)(140)(iii)(C), (c)(148)(ii)(C), (c)(153)(ii)(D), (c)(154)(i)(D), (c)(155)(v)(C), (c)(156)(ii)(B), (c)(158)(i)(C), (c)(159)(iii)(D), (c)(164)(i)(A)(*2*), (c)(164)(i)(B)(*3*), (c)(168)(i)(A)(*5*), (c)(168)(i)(C)(*3*), (c)(173)(i)(B)(*2*), (c)(173)(i)(D)(*2*), (c)(177)(i)(D)(*3*), (c)(179)(i)(B)(*2*), (c)(179)(i)(E)(*4*), (c)(246)(i)(A)(*3*); and

b. By redesignating the second paragraph (c)(51)(xiv)(B) as (c)(51)(xiv)(C).

The additions read as follows:

§ 52.220 Identification of plan.

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(b) * * *

(1) * * *

(ii) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Part X, Paragraph 3.

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(2) * * *

(ii) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Rules 40 and 42.

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(4) * * *

(ii) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Regulation 3, Rules 40, 42, 43, and 44.

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(6) Lassen County APCD.

(i) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Rules 1.4, 3.2, 3.3 (Schedules 1–6), 3.4, and 3.5.

(7) Nevada County APCD.

(i) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Rule 41.

(8) Orange County APCD.

(i) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Rule 120.

(9) Sierra County APCD.

(i) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Rules 46 and 50.

(10) Siskiyou County APCD.

(i) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Rules 3.1, 3.2, and 3.3.

(11) Yolo-Solano AQMD.

(i) Previously approved on May 31, 1972 in paragraph (b) of this section and now deleted without replacement, Rules 1.7 and 2.18.

(c) * * *

(6) * * *

(ii) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rule 109.

(iii) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rules 1.4, 2.13, 6.11 and 6.12.

(iv) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rules 104, 105, 107, 109, 303, and 304.

(v) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rules 151 and 153.

(vi) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of

this section and now deleted without replacement, Rules 107, 109, 303, and 304.

(vii) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rule 109.

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(x) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rules 107, 301 (Paragraphs c to g, i, and j), 303, and 304.

(xi) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rule 1.4.

(xii) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rules 107 and 109.

(xiii) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rule 107.

(xiv) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rules 107 and 109.

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(xvi) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rules 42 and 100.

(xvii) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rules 43, 44, and Rule 120.

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(xix) * * *

(B) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rules 43 and 44 (Mojave Desert AQMD only).

(xx) Mariposa County APCD.

(A) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rule 17.

(xxi) Plumas County APCD.

(A) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rules 3, 4, and 40.

(xxii) Sutter County APCD.

(A) Previously approved on September 22, 1972 in paragraph (c) of this section and now deleted without replacement, Rule 2.20.

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(21) * * *

(ix) * * *

(D) Previously approved on August 22, 1977 in paragraph (c)(21)(ix)(A) of this section and now deleted without replacement, Rule 107.

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(xviii) * * *

(B) Previously approved on September 8, 1978 in paragraph (c)(21)(xviii)(A) of this section and now deleted without replacement, Rule 45.

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(24) * * *

(vi) * * *

(D) Previously approved on August 22, 1977 in paragraph (c)(24)(vi)(A) of this section and now deleted without replacement, Rule 3.7.

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(25) * * *

(vii) * * *

(B) Previously approved on October 27, 1977 in paragraph (c)(25)(vii)(A) of this section and now deleted without replacement, Rules 302 and 303.

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(26) * * *

(ii) * * *

(D) Previously approved on May 11, 1977 in paragraph (c)(26)(ii)(B) of this section and now deleted without replacement, Regulation 7.

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(iv) * * *

(D) Previously approved on May 11, 1977 in paragraph (c)(26)(iv)(A) of this section and now deleted without replacement, Rule 155.

(E) Previously approved on August 22, 1977 in paragraph (c)(26)(iv)(A) of this section and now deleted without replacement, Rule 3.1.

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(xvii) * * *

(D) Previously approved on June 14, 1978 in paragraph (c)(26)(xvii)(A) of this section and now deleted without replacement, Rule 105.

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(27) * * *

(vii) * * *

(D) Previously approved on June 14, 1978 in paragraph (c)(27)(vii)(A) of this section and now deleted without replacement, Rules 105, 601, and 602.

(viii) * * *

(D) Previously approved on June 14, 1978 in paragraph (c)(27)(viii)(A) of this section and now deleted without replacement, Rules 323, 601, and 602.

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(28) * * *

(viii) * * *

(B) Previously approved on August 22, 1977 in paragraph (c)(28)(viii)(A) of this section and now deleted without replacement, Rules 422 and 423.

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(29) * * *

(vi) * * *

(C) Previously approved on August 15, 1977 in paragraph (c)(29)(vi)(A) of this section and now deleted without replacement, Rule 72 (72–72.8).

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(30) * * *

(v) * * *

(B) Previously approved on August 22, 1977 in paragraph (c)(30)(v)(A) of this section and now deleted without replacement, Rules 422 and 423.

(vi) * * *

(B) Previously approved on August 22, 1977 in paragraph (c)(30)(vi)(A) of this section and now deleted without replacement, Rules 422 and 423.

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(31) * * *

(i) * * *

(G) Previously approved on June 6, 1977 in paragraph (c)(31)(i)(B) of this section and now deleted without replacement, Rules 105, 302, and 303.

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(iii) * * *

(B) Previously approved on May 11, 1977 in paragraph (c)(31)(iii)(A) of this section and now deleted without replacement, Rule 5.

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(vi) * * *

(E) Previously approved on June 14, 1978 in paragraph (c)(31)(vi)(B) of this section and now deleted without replacement, Rule 105.

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(xviii) * * *

(F) Previously approved on June 14, 1978 in paragraph (c)(31)(xvii)(B) of this section and now deleted without replacement, Rule 105.

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(32) * * *

(ii) * * *

(C) Previously approved on August 22, 1977 in paragraph (c)(32)(ii)(A) of this section and now deleted without replacement, Rules 104, 105, 112, 422, and 423.

(iii) * * *

(F) Previously approved on June 14, 1978 in paragraph (c)(32)(iii)(C) of this section and now deleted without replacement, Rule 302.

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(35) * * *

(iii) * * *

(D) Previously approved on August 15, 1977 in paragraph (c)(35)(iii)(B) of this section and now deleted without

replacement, Rules 72 (72.9–72.10) and 73.

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(v) * * *

(C) Previously approved on October 4, 1977 in paragraph (c)(35)(v)(A) of this section and now deleted without replacement, Rules 104, 105, and 112.

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(xii) * * *

(H) Previously approved on August 4, 1978 in paragraph (c)(35)(xii)(A) of this section and now deleted without replacement, Rules 110 and 111.

(xiii) * * *

(D) Previously approved on March 22, 1978 in paragraph (c)(35)(xiii)(A) of this section and now deleted without replacement, Rule 104.

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(xv) * * *

(F) Previously approved on November 7, 1978 in paragraph (c)(35)(xv)(C) of this section and now deleted without replacement, Rules 340.

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(37) * * *

(iv) * * *

(E) Previously approved on August 4, 1978 in paragraph (c)(37)(iv)(B) of this section and now deleted without replacement, Rules 531, 901, and 1500.

(v) * * *

(D) Previously approved on December 6, 1979 in paragraph (c)(37)(v)(B) of this section and now deleted without replacement, Rules 216, 323, and 324.

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(39) * * *

(iii) * * *

(G) Previously approved on September 8, 1978 in paragraph (c)(39)(iii)(C) of this section and now deleted without replacement, Rules 42 and 105.

(iv) * * *

(G) Previously approved on September 8, 1978 in paragraph (c)(39)(iv)(C) of this section and now deleted without replacement, Rules 42 and 301.

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(vii) * * *

(D) Previously approved on August 16, 1978 in paragraph (c)(39)(vii)(A) of this section and now deleted without replacement, Rules 216 and 402.

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(x) * * *

(D) Previously approved on September 14, 1978 in paragraph (c)(39)(x)(A) of this section and now deleted without replacement, Rule 402.

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(41) * * *

(ix) * * *

(D) Previously approved on November 7, 1978 in paragraph (c)(41)(ix)(A) of this section and now deleted without replacement, Rules 216, 324, 402, 602, 603, and 604.

(x) * * *

(D) Previously approved on November 15, 1978 in paragraph (c)(41)(x)(A) of this section and now deleted without replacement, Rule 402.

(E) Previously approved on November 15, 1978 in paragraph (c)(41)(x)(A) of this section and now deleted without replacement, Rules 801 to 804 (Lake Tahoe Air Basin).

(F) Previously approved on November 15, 1978 in paragraph (c)(41)(x)(A) of this section and now deleted without replacement, Rules 801, 802, 803 (paragraphs B and C), and 804 (Mountain Counties Air Basin).

(G) Previously approved on November 15, 1978 in paragraph (c)(41)(x)(A) of this section and now deleted without replacement, Rules 603, 604, 605, and 801 to 804 (Sacramento Valley Air Basin).

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(42) * * *

(i) * * *

(F) Previously approved on August 11, 1978 in paragraph (c)(42)(i)(A) of this section and now deleted without replacement, Rules 104, 106, and 303.

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(iii) * * *

(D) Previously approved on August 4, 1978 in paragraph (c)(42)(iii)(A) of this section and now deleted without replacement, Rules 104 and 110.

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(viii) * * *

(B) Previously approved on September 14, 1978 in paragraph (c)(42)(viii)(A) of this section and now deleted without replacement, Rules 152 and 154.

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(x) * * *

(C) Previously approved on November 6, 1978 in paragraph (c)(42)(x)(A) of this section and now deleted without replacement, Rules 216, 324, and 402.

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(xiv) * * *

(D) Previously approved on December 21, 1978 in paragraph (c)(42)(xiv)(A) of this section and now deleted without replacement, Rule 105 (Mojave Desert AQMD only).

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(44) * * *

(iv) * * *

(D) Previously approved on January 29, 1979 in paragraph (c)(44)(iv)(A) of this section and now deleted without replacement, Rule 1.4.

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(51) * * *

(xi) * * *

(B) Previously approved on January 27, 1981 in paragraph (c)(51)(xi)(A) of this section and now deleted without replacement, Rule 660.

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(xiii) * * *

(C) Previously approved on May 18, 1981 in paragraph (c)(51)(xiii)(A) of this section and now deleted without replacement, Rule 402.

(xiv) * * *

(D) Previously approved on May 18, 1981 in paragraph (c)(51)(xiv)(A) of this section and now deleted without replacement, Rules 801 to 804.

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(xviii) * * *

(B) Previously approved on January 25, 1982 in paragraph (c)(51)(xviii)(A) of this section and now deleted without replacement, Rule 618.

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(xx) * * *

(C) Previously approved on June 18, 1982 in paragraph (c)(51)(xx)(A) of this section and now deleted without replacement, Rule 9.

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(52) * * *

(ii) * * *

(C) Previously approved on January 27, 1981 in paragraph (c)(52)(ii)(B) of this section and now deleted without replacement, Rules 304 and 706.

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(iv) * * *

(F) Previously approved on December 9, 1981 in paragraph (c)(52)(iv)(B) of this section and now deleted without replacement, Rule 301.

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(xi) * * *

(C) Previously approved on May 18, 1981 in paragraph (c)(52)(xi)(A) of this section and now deleted without replacement, Rules 103, 402, and 601 to 604.

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(xv) * * *

(D) Previously approved on December 9, 1981 in paragraph (c)(52)(xv)(B) of this section and now deleted without replacement, Rule 302.

(xvi) * * *

(C) Previously approved on January 26, 1982 in paragraph (c)(52)(xvi)(A) of this section and now deleted without replacement, Rules 7.0, 7.1, and 8.1.

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(54) * * *

(vi) * * *

(B) Previously approved on January 26, 1982 in paragraph (c)(54)(vi)(A) of this section and now deleted without replacement, Rule 1.4.

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(70) * * *

(iv) * * *

(B) Previously approved on May 27, 1982 in paragraph (c)(70)(iv)(A) of this section and now deleted without replacement, Rules 601 to 613.

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(85) * * *

(vi) * * *

(C) Previously approved on April 12, 1982 in paragraph (c)(85)(vi)(A) of this section and now deleted without replacement, Rules 1.3 and 2.9.

(vii) * * *

(B) Previously approved on June 18, 1982 in paragraph (c)(85)(vii)(A) of this section and now deleted without replacement, Rule 210.

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(x) * * *

(B) Previously approved on July 6, 1982 in paragraph (c)(85)(x)(A) of this section and now deleted without replacement, Rule 110.

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(89) * * *

(iii) * * *

(B) New or amended rules 1.3, 3.0–3.7, 3.9, 3.10, 3.13, 4.0–4.5, 4.7 to 4.10, 4.12, 5.4, 6.0, 8.0, 8.2, 9.0–9.5, 9.7, and 9.8.

(C) Previously approved on April 12, 1982 in paragraph (c)(89)(iii)(B) of this section and now deleted without replacement, Rules 8.0, 8.2 and 9.0 to 9.4.

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(92) * * *

(iv) * * *

(B) Previously approved on April 13, 1982 in paragraph (c)(92)(iv)(A) of this section and now deleted without replacement, Rule 300.

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(93) * * *

(iii) * * *

(C) Previously approved on June 18, 1982 in paragraph (c)(93)(iii)(B) of this section and now deleted without replacement, Rule 509.

(iv) * * *

(D) Previously approved on June 18, 1982 in paragraph (c)(93)(iv)(B) of this section and now deleted without replacement, Rule 509.

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(96) * * *

(iii) * * *

(C) Previously approved on January 26, 1982 in paragraph (c)(96)(iii)(A) of this section and now deleted without replacement, Rule 3.

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(98) * * *

(i) * * *

(E) Previously approved on April 12, 1982 in paragraph (c)(98)(i)(B) of this section and now deleted without replacement, Rules 8.0 to 8.2 and 9.0 and 9.4.

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(101) * * *

(ii) * * *

(G) Previously approved on July 6, 1982 in paragraph (c)(101)(ii)(B) of this section and now deleted without replacement, Rules 301 and 302 (including Southeast Desert).

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(103) * * *

(xi) * * *

(B) Previously approved on April 13, 1982 in paragraph (c)(103)(xi)(A) of this section and now deleted without replacement, Rule 301.

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(xiii) * * *

(C) Previously approved on May 27, 1982 in paragraph (c)(103)(xiii)(A) of this section and now deleted without replacement, Rules 318 and 319.

(xiv) * * *

(C) Previously approved on May 27, 1982 in paragraph (c)(103)(xiv)(A) of this section and now deleted without replacement, Rules 301, 302, 306, and 307.

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(xvii) * * *

(C) Previously approved on May 27, 1982 in paragraph (c)(103)(xvii)(A) of this section and now deleted without replacement, Rule 509.

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(119) * * *

(i) * * *

(D) Previously approved on May 27, 1982 in paragraph (c)(119)(i)(A) of this section and now deleted without replacement, Rule 509.

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(124) * * *

(ii) * * *

(B) Previously approved on November 10, 1982 in paragraph (c)(124)(ii)(A) of this section and now deleted without replacement, Rules 660.1, 660.2, and 660.3.

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(125) * * *

(iv) * * *

(C) Previously approved on November 10, 1982 in paragraph (c)(125)(iv)(A) of this section and now deleted without replacement, Rule 2:11.

(v) * * *

(C) Previously approved on November 10, 1982 in paragraph (c)(125)(v)(A) of this section and now deleted without replacement, Rule 104.

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(126) * * *

(ii) * * *

(B) Previously approved on June 1, 1983 in paragraph (c)(126)(ii)(A) of this section and now deleted without replacement, Rule 210D.

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(127) * * *

(v) * * *

(C) Previously approved on August 9, 1985 in paragraph (c)(127)(v)(B) of this section and now deleted without replacement, Rule 301.

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(vii) * * *

(F) Previously approved on November 18, 1983 in paragraph (c)(127)(vii)(A) of this section and now deleted without replacement for implementation in the Antelope Valley Air Pollution Control District and the South Coast Air Quality Management District, Rule 302.

(G) Previously approved on October 19, 1984 in paragraph (c)(127)(vii)(C) of this section and now deleted without replacement for implementation in the Antelope Valley Air Pollution Control District and the South Coast Air Quality Management District, Rule 304.

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(137) * * *

(i) * * *

(C) Previously approved on February 1, 1984 in paragraph (c)(137)(i)(A) of this section and now deleted without replacement, Rules 301.1 and 302 (including Southeast Desert).

(ii) * * *

(E) Previously approved on February 1, 1984 in paragraph (c)(137)(ii)(A) of this section and now deleted without replacement, Rules 104, 113, and 301 (paragraphs a, b, and h).

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(138) * * *

(i) * * *

(C) Previously approved on November 18, 1983 in paragraph (c)(138)(i)(A) of this section and now deleted without replacement, Rules 4–2, 4–11, and 5–3.

(ii) * * *

(E) Previously approved on November 18, 1983 in paragraph (c)(138)(ii)(A) of this section and now deleted without replacement, Rules 609 to 612 (Mountain Counties Air Basin).

(iii) * * *

(B) Previously approved on November 18, 1983 in paragraph (c)(138)(iii)(A) of this section and now deleted without replacement, Rule 301.

(iv) * * *

(B) Previously approved on November 18, 1983 in paragraph (c)(138)(iv)(A) of this section and now deleted without replacement, Rules 900 and 902.

(v) * * *

(E) Previously approved on November 18, 1983 in paragraph (c)(138)(v)(A) of this section and now deleted without replacement, Rules 105, 108, 111, and 301 to 304.

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(140) * * *

(i) * * *

(D) Previously approved on May 3, 1984 in paragraph (c)(140)(i)(A) of this section and now deleted without replacement, Regulation 3: Rules 3–100 through 3–103, 3–200 through 3–211, 3–300, 3–302 through 3–313, and 3–400 through 3–409.

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(iii) * * *

(C) Previously approved on May 3, 1984 in paragraph (c)(140)(iii)(A) of this section and now deleted without replacement, Rule 109.

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(148) * * *

(ii) * * *

(C) Previously approved on May 3, 1984 in paragraph (c)(148)(ii)(A) of this section and now deleted without replacement, Rule 226.

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(153) * * *

(ii) * * *

(D) Previously approved on December 5, 1984 in paragraph (c)(153)(ii)(A) of this section and now deleted without replacement, Rules 500 and 520.

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(154) * * *

(i) * * *

(D) Previously approved on December 5, 1984 in paragraph (c)(154)(i)(A) of this section and now deleted without replacement, Rules 500, 520, and Regulation 2: Rule 502.1.

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(155) * * *

(v) * * *

(C) Previously approved on January 29, 1985 in paragraph (c)(155)(v)(A) of this section and now deleted without replacement, Regulation 2: Rule 502.

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(156) * * *

(ii) * * *

(B) Previously approved on January 29, 1985 in paragraph (c)(156)(ii)(A) of this section and now deleted without replacement, Rule 112.

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(158) * * *

(i) * * *

(C) Previously approved on May 9, 1985 in paragraph (c)(158)(i)(A) of this section and now deleted without replacement, Rule 2–502.2.

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(159) * * *

(iii) * * *

(D) Previously approved on July 13, 1987 in paragraph (c)(159)(iii)(A) of this section and now deleted without replacement, Rule 104.

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(164) * * *

(i) * * *

(A) * * *

(*2*) Previously approved on April 17, 1987 in paragraph (c)(164)(i)(A)(*1*) of this section and now deleted without replacement, Rules 318, 319, and 509.

(B) * * *

(*3*) Previously approved on April 17, 1987 in paragraph (c)(164)(i)(B)(*1*) of this section and now deleted without replacement, Rules 500 and 520.

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(168) * * *

(i) * * *

(A) * * *

(*5*) Previously approved on February 3, 1987 in paragraph (c)(168)(i)(A)(*1*) of this section and now deleted without replacement, Rules 701, 702, 703, and 902.

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(C) * * *

(*3*) Previously approved on February 3, 1987 in paragraph (c)(168)(i)(C)(*1*) of this section and now deleted without replacement, Rule 803.

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(173) * * *

(i) * * *

(B) * * *

(*2*) Previously approved on February 3, 1989 in paragraph (c)(173)(i)(B)(*1*) of this section and now deleted without replacement, Rules 105 and 108.

* * * * *

(D) * * *

(*2*) Previously approved on February 3, 1989 in paragraph (c)(173)(i)(D)(*1*) of this section and now deleted without replacement, Rule 110.

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(177) * * *

(i) * * *

(D) * * *

(*3*) Previously approved on April 16, 1991 in paragraph (c)(177)(i)(D)(*1*) of this section and now deleted without replacement, Rule 112.

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(179) * * *

(i) * * *

(B) * * *

(*2*) Previously approved on November 27, 1990 in paragraph (c)(179)(i)(B)(*1*) of this section and now deleted without replacement, Rule 105.

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(E) * * *

(*4*) Previously approved on November 4, 1996 in paragraph (c)(179)(i)(E)(*1*) of this section and now deleted without replacement, Rule 1.4.

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(246) * * *

(i) * * *

(A) * * *

(*3*) Previously approved on September 16, 1997 in paragraph (c)(246)(i)(A)(*1*) of this section and now deleted without replacement, Rule 223.

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[FR Doc. 02–189 Filed 1–17–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301204; FRL–6817–6]

RIN 2070–AB78

Imidacloprid; Reestablishment of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation reestablishes a time-limited tolerance for the combined residues of the insecticide imidacloprid (1-[6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent in or on blueberries at 1.0 part per million (ppm) for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2003. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on blueberries. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation is effective January 18, 2002. Objections and requests for hearings, identified by docket control number OPP–301204, must be received by EPA on or before March 19, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301204 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection

Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9367; and e-mail address: ertman.andrew@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,'' ''Regulations and Proposed Rules,'' 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/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301204. The official record consists of the documents specifically referenced in this action, 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 Mall #2, 1921 Jefferson Davis Hwy., 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.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of July 21, 1999 (64 FR 39041) (FRL–6088–3), which announced that on its own initiative under section 408 of FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established a time-limited tolerance for the combined residues of imidacloprid (1-[6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, all expressed as parent in or on blueberries at 1.0 ppm, with an expiration date of June 30, 2001. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of imidacloprid on blueberries for this year's growing season due to the continuing emergency with beetles and aphids on blueberries in New Jersey and Michigan. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of imidacloprid on blueberries for control of oriental beetles and blueberry aphids in New Jersey and Japanese beetle grubs in Michigan.

EPA assessed the potential risks presented by residues of imidacloprid in or on blueberries. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of July 21, 1999 (64 FR 39041). Based on that data and information considered, the Agency reaffirms that reestablishment of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is reestablished for an additional 2–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on December 31, 2003, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on blueberries after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA,

you must identify docket control number OPP–301204 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 19, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential 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. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301204, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule reestablishes a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not

alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 7, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.472 [Amended]

2. In § 180.472, amend the table in paragraph (b) by revising the date ''6/1/01'' to read ''12/31/03'' for blueberries.

[FR Doc. 02–1246 Filed 1–17–02; 8:45 am]

BILLING CODE 6560–50–S

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–44 and 102–37

[FPMR Amendment H–210]

RIN 3090–AH20

Donation of Surplus Personal Property

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is revising the Federal Property Management Regulations (FPMR) by moving coverage on donation of surplus personal property into the Federal Management Regulation (FMR). A cross-reference is added to the FPMR to direct readers to the coverage in the FMR. The FMR is written in plain language to provide agencies with updated regulatory material that is easy to read and understand.

EFFECTIVE DATE: January 18, 2002.

FOR FURTHER INFORMATION CONTACT: Peter B. Zuidema, Acting Director, Personal Property Management Policy Division (MTP), 202–501–3846.

SUPPLEMENTARY INFORMATION:

A. Background

The purpose of this final rule is to update, streamline, and clarify FPMR part 101–44 and move it into the Federal Management Regulation (FMR) as FMR part 102–37. This rule is written in a plain language question and answer format. In this format, a question and its answer combine to establish a rule. This means the employee and the agency (Federal holding agency, State Agency for Surplus Property (SASP), public airport, etc.) must follow the language contained in both the question and its answer.

This final rule includes the following changes:

1. The establishment of a uniform dollar threshold ($500) for recipients to report overages or shortages of donated property, in addition to a shortened timeframe (30 days) for reporting such discrepancies to GSA.
2. The removal of the provision that prohibits a SASP from recovering reimbursable costs from the sales proceeds of nondonable property that has been in its inventory for more than 2 years.
3. The change of definition of ''museum'' to provide SASPs with more concrete guidance for making eligibility determinations for museum applicants.
4. The reinstatement of a requirement that SASPs update donee eligibility files at 3-year intervals, plus the addition of a requirement for such updates to include a review of donee screener records.
5. GSA approval of all Red Cross donations made under 40 U.S.C. 484(l).
6. The shift in responsibility from GSA to the Federal Aviation Administration to issue screening credentials for public airports.
7. The consolidation of the Federal and donation screening periods.

A proposed rule was published in the **Federal Register** on April 13, 2000 (65 FR 20014). All public comments received were considered in the formulation of this final rule.

B. Executive Order 12866

GSA has determined that this final rule is not a significant rule for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

A regulatory flexibility analysis is not required under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because there is no requirement that this final rule be published in the **Federal Register** for notice and comment.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose information collection requirements that require the approval of the Office of Management and Budget (OMB).

E. Small Business Regulatory Enforcement Fairness Act

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

List of Subjects in 41 CFR Parts 101–44 and 102–37

Government property management, Homeless, Reporting and recordkeeping requirements, Surplus Government property.

For the reasons set forth in the preamble, GSA amends 41 CFR chapters 101 and 102 as follows:

1. Part 101–44 is revised to read as follows:

PART 101–44 DONATION OF SURPLUS PERSONAL PROPERTY

Authority: 40 U.S.C. 486(c); Sec. 205(c), 63 Stat. 390.

§ 101–44.000 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102–1 through 102–220).

For information on donation of surplus personal property previously contained in this part, see FMR part 102–37 (41 CFR part 102–37).

2. Part 102–37 is added to subchapter B to read as follows:

PART 102–37—DONATION OF SURPLUS PERSONAL PROPERTY

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Authority: 40 U.S.C. 486(c); Sec. 205(c), 63 Stat. 390.

Subpart A—General Provisions

§ 102–37.5 What does this part cover?

This part covers the donation of surplus Federal personal property located within a State, including foreign excess personal property returned to a State for handling as surplus property. For purposes of this part, the term State includes any of the 50 States, as well as the District of Columbia, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.

§ 102–37.10 What is the primary governing authority for this part?

Subsection 203(j)(1) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(j)(1)), as amended (the Property Act), gives the General Services Administration (GSA) discretionary authority to prescribe the necessary regulations for, and to execute the surplus personal property donation program.

§ 102–37.15 Who must comply with the provisions of this part?

You must comply with this part if you are a holding agency or a recipient of Federal surplus personal property approved by GSA for donation (e.g., a State agency for surplus property (SASP) or a public airport).

§ 102–37.20 How do we request a deviation from this part and who can approve it?

See §§ 102–2.60 through 102–2.110 of this chapter to request a deviation from the requirements of this part.

Definitions

§ 102–37.25 What definitions apply to this part?

The following definitions apply to this part:

Cannibalization means to remove serviceable parts from one item of equipment in order to install them on another item of equipment.

Donee means any of the following entities that receive Federal surplus personal property through a SASP:

(1) A service educational activity (SEA).

(2) A public agency (as defined in appendix C of this part) which uses surplus personal property to carry out or promote one or more public purposes. (Public airports are an exception and are only considered donees when they elect to receive surplus property through a SASP, but not when they elect to receive surplus property through the Federal Aviation Administration as discussed in subpart F of this part.)

(3) An eligible nonprofit tax-exempt educational or public health institution (including a provider of assistance to homeless or impoverished families or individuals).

(4) A State or local government agency, or a nonprofit organization or institution, that receives funds appropriated for a program for older individuals.

Holding agency means the executive agency having accountability for, and generally possession of, the property involved.

Period of restriction means the period of time for keeping donated property in use for the purpose for which it was donated.

Property Act means the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended (codified as amended in scattered sections of titles 40 and 41 of the United States Code), the law that centralized Federal property management and disposal functions under the GSA.

Screening means the process of physically inspecting property or reviewing lists or reports of property to determine whether property is usable or needed for donation purposes.

Service educational activity (SEA) means any educational activity designated by the Secretary of Defense as being of special interest to the armed forces; e.g., maritime academies or military, naval, Air Force, or Coast Guard preparatory schools.

Standard Form (SF) 123, Transfer Order Surplus Personal Property means the document used to request and document the transfer of Federal surplus personal property for donation purposes.

State means one of the 50 States, the District of Columbia, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.

State agency for surplus property (SASP) means the agency designated under State law to receive Federal surplus personal property for distribution to eligible donees within the State as provided for in subsection 203(j) of the Property Act (40 U.S.C. 484(j)).

Surplus personal property (surplus property) means excess personal property (as defined in § 102–36.40 of this chapter) not required for the needs of any Federal agency, as determined by GSA.

Surplus release date means the date on which Federal utilization screening of excess personal property has been completed, and the property is available for donation.

Transferee means a public airport receiving surplus property from a holding agency through the Federal Aviation Administration, or a SASP.

You, when used in subparts D and E of this part, means SASP, unless otherwise specified.

Donation Overview

§ 102–37.30 When does property become available for donation?

Excess personal property becomes available for donation the day following the surplus release date. This is the point at which the screening period has been completed without transfer to a Federal agency or other eligible recipient, and the GSA has determined the property to be surplus.

§ 102–37.35 Who handles the donation of surplus property?

(a) The SASPs handle the donation of most surplus property to eligible donees in their States in accordance with this part.

(b) The GSA handles the donation of surplus property to public airports under a program administered by the Federal Aviation Administration (FAA) (see subpart F of this part). The GSA may also donate to the American National Red Cross surplus property that was originally derived from or through the Red Cross (see subpart G of this part).

(c) Holding agencies may donate surplus property that they would otherwise abandon or destroy directly to public bodies in accordance with subpart H of this part.

§ 102–37.40 What type of surplus property is available for donation?

All surplus property (including property held by working capital funds established under 10 U.S.C. 2208 or in similar funds) is available for donation to eligible recipients, except for property in the following categories:

(a) Agricultural commodities, food, and cotton or woolen goods determined from time to time by the Secretary of Agriculture to be commodities requiring special handling with respect to price support or stabilization.

(b) Property acquired with trust funds (e.g., Social Security Trust Funds).

(c) Non-appropriated fund property.

(d) Naval vessels of the following categories: Battleships, cruisers, aircraft carriers, destroyers, and submarines.

(e) Vessels of 1500 gross tons or more which the Maritime Administration determines to be merchant vessels or capable of conversion to merchant use.

(f) Records of the Federal Government.

(g) Property that requires reimbursement upon transfer (such as abandoned or other unclaimed property that is found on premises owned or leased by the Government).

(h) Controlled substances.

(i) Items as may be specified from time to time by the GSA Office of Governmentwide Policy.

§ 102–37.45 How long is property available for donation screening?

Entities authorized to participate in the donation program may screen property, concurrently with Federal agencies, as soon as the property is reported as excess up until the surplus release date. The screening period is normally 21 calendar days, except as noted in § 102–36.95 of this chapter.

§ 102–37.50 What is the general process for requesting surplus property for donation?

The process for requesting surplus property for donation varies, depending on who is making the request.

(a) Donees should submit their requests for property directly to the appropriate SASP.

(b) SASPs and public airports should submit their requests to the appropriate GSA regional office. Requests must be submitted on a Standard Form (SF) 123, Transfer Order Surplus Personal Property, or its electronic equivalent. Public airports must have FAA certify their transfer requests prior to

submission to GSA for approval. GSA may ask SASPs or public airports to submit any additional information required to support and justify transfer of the property.

(c) The American National Red Cross should submit requests to GSA as described in subpart G of this part.

(d) Public bodies, when seeking to acquire property that is being abandoned or destroyed, should follow rules and procedures established by the donor agency (see subpart H of this part).

§ 102–37.55 Who pays for transportation and other costs associated with a donation?

The receiving organization (the transferee) is responsible for any packing, shipping, or transportation charges associated with the transfer of surplus property for donation. Those costs, in the case of SASPs, may be passed on to donees that receive the property.

§ 102–37.60 How much time does a transferee have to pick up or remove surplus property from holding agency premises?

The transferee (or the transferee's agent) must remove property from the holding agency premises within 15 calendar days after being notified that the property is available for pickup, unless otherwise coordinated with the holding agency. If the transferee decides prior to pickup or removal that it no longer needs the property, it must notify the GSA regional office that approved the transfer request.

§ 102–37.65 What happens to surplus property that has been approved for transfer when the prospective transferee decides it cannot use the property and declines to pick it up?

When a prospective transferee decides it cannot use surplus property that has already been approved for transfer and declines to pick it up, the GSA regional office will advise any other SASP or public airport known to be interested in the property to submit a transfer request. If there is no transfer interest, GSA will release the property for other disposal.

§ 102–37.70 How should a transferee account for the receipt of a larger or smaller number of items than approved by GSA on the SF 123?

When the quantity of property received doesn't agree with that approved by GSA on the SF 123, the transferee should handle the overage or shortage as follows:

If . . .	And . . .	Then . . .
(a) More property is received than was approved by GSA for transfer.	The known or estimated acquisition cost of the line item(s) involved is $500 or more.	Submit a SF 123 for the difference to GSA (Identify the property as an overage and include the original transfer order number.) [1]
(b) Less property is received than was approved by GSA for transfer.	The acquisition cost of the missing item(s) is $500 or more.	Submit a shortage report to GSA, with a copy to the holding agency.[1]
(c) The known or estimated acquisition cost of the property is less than $500		Annotate on your receiving and inventory records, a description of the property, its known or estimated acquisition cost, and the name of the holding agency.

[1] Submit the SF 123 or shortage report to the GSA approving office within 30 calendar days of the date of transfer.

§ 102–37.75 What should be included in a shortage report?

The shortage report should include:

(a) The name and address of the holding agency;

(b) All pertinent GSA and holding agency control numbers, in addition to the original transfer order number; and

(c) A description of each line item of property, the condition code, the quantity and unit of issue, and the unit and total acquisition cost.

§ 102–37.80 What happens to surplus property that isn't transferred for donation?

Surplus property not transferred for donation is generally offered for sale under the provisions of part 101–45 of this title. Under the appropriate circumstances (see § 102–36.305 of this chapter), such property might be abandoned or destroyed.

§ 102–37.85 Can surplus property being offered for sale be withdrawn and approved for donation?

Yes, surplus property being offered for sale may be withdrawn for donation if approved by GSA. GSA will not approve requests for the withdrawal of property that has been advertised or listed on a sales offering if that withdrawal would be harmful to the overall outcome of the sale. GSA will only grant such requests prior to sales award, since an award is binding.

Subpart B—General Services Administration (GSA)

§ 102–37.90 What are GSA's responsibilities in the donation of surplus property?

The General Services Administration (GSA) is responsible for supervising and directing the disposal of surplus personal property. In addition to issuing regulatory guidance for the donation of such property, GSA:

(a) Determines when property is surplus to the needs of the Government;

(b) Allocates and transfers surplus property on a fair and equitable basis to State agencies for surplus property (SASPs) for further distribution to eligible donees;

(c) Oversees the care and handling of surplus property while it is in the custody of a SASP;

(d) Approves all transfers of surplus property to public airports, pursuant to the appropriate determinations made by the Federal Aviation Administration (see subpart F of this part);

(e) Donates to the American National Red Cross property (generally blood plasma and related medical materials) originally provided by the Red Cross to a Federal agency, but that has subsequently been determined surplus to Federal needs (see subpart G of this part);

(f) Approves, after consultation with the holding agency, foreign excess

personal property to be returned to the United States for donation purposes;

(g) Coordinates and controls the level of SASP and donee screening at Federal installations;

(h) Imposes appropriate conditions on the donation of surplus property having characteristics that require special handling or use limitations (see § 102–37.455); and

(i) Keeps track of and reports on Federal donation programs (see § 102–37.105).

§ 102–37.95 How will GSA resolve competing transfer requests?

In case of requests from two or more SASPs, GSA will use the allocating criteria in § 102–37.100. When competing requests are received from public airports and SASPs, GSA will transfer property fairly and equitably, based on such factors as need, proposed use, and interest of the holding agency in having the property donated to a specific public airport.

§ 102–37.100 What factors will GSA consider in allocating surplus property among SASPs?

GSA allocates property among the SASPs on a fair and equitable basis using the following factors:

(a) Extraordinary needs caused by disasters or emergency situations.

(b) Requests from the Department of Defense (DOD) for DOD-generated property to be allocated through a SASP for donation to a specific service educational activity.

(c) Need and usability of property, as reflected by requests from SASPs. GSA will also give special consideration to requests transmitted through the SASPs by eligible donees for specific items of property. (Requests for property to be used as is will be given preference over cannibalization requests.)

(d) States in greatest need of the type of property to be allocated where the need is evidenced by a letter of justification from the intended donee.

(e) Whether a SASP has already received similar property in the past, and how much.

(f) Past performance of a SASP in effecting timely pickup or removal of property approved for transfer and making prompt distribution of property to eligible donees.

(g) The property's condition and its original acquisition cost.

(h) Relative neediness of each State based on the State's population and per capita income.

§ 102–37.105 Is GSA required to compile any reports concerning the donation program?

Yes, biennially, GSA must compile a report containing:

(a) A full and independent evaluation of the operation of programs for the donation of surplus property;

(b) Statistical information on the amount of surplus property approved for transfer to the SASPs and donated to eligible non-Federal organizations during the report period (as well as the amount of excess personal property transferred to Federal agencies and provided to grantees and non-Federal organizations); and

(c) Any recommendations GSA wishes to make on the donation program.

Subpart C—Holding Agency

§ 102–37.110 What are a holding agency's responsibilities in the donation of surplus property?

Your donation responsibilities as a holding agency begin when you determine that property is to be declared excess. You must then:

(a) Let GSA know if you have a donee in mind for foreign gift items or airport property, as provided for in § 102–37.525 and § 102–42.95(h) of this chapter;

(b) Cooperate with all entities authorized to participate in the donation program and their authorized representatives in locating, screening, and inspecting excess or surplus property for possible donation;

(c) Set aside surplus property selected by a screener pending GSA approval of the transfer;

(d) Upon receipt of a GSA-approved transfer document, promptly ship or release property to the transferee (or the transferee's designated agent) in accordance with pickup or shipping instructions on the transfer document;

(e) Notify the approving GSA regional office if surplus property to be picked up is not removed within 15 calendar days after you notify the transferee (or its agent) of its availability. (GSA will advise you of further disposal instructions.); and

(f) Perform and bear the cost of care and handling of surplus property pending its disposal, except as provided in § 102–37.115.

§ 102–37.115 May a holding agency be reimbursed for costs incurred incident to a donation?

Yes, you, as a holding agency, may charge the transferee for the direct costs you incurred incident to a donation transfer, such as your packing, handling, crating, and transportation expenses. However, you may not include overhead or administrative costs in these charges.

§ 102–37.120 May a holding agency donate surplus property directly to eligible non-Federal recipients without going through GSA?

Generally, a holding agency may not donate surplus property directly to eligible non-Federal recipients without going through GSA, except for the situations listed in § 102–37.125.

§ 102–37.125 What are some donations that do not require GSA's approval?

(a) Some donations of surplus property that do not require GSA's approval are:

(1) Donations of condemned, obsolete, or other specified material by a military department or the Coast Guard to recipients eligible under 10 U.S.C. 2572, 10 U.S.C. 7306, 10 U.S.C. 7541, 10 U.S.C. 7545, and 14 U.S.C. 641a (see Appendix A of this part for details). However, such property must first undergo excess Federal and surplus donation screening as required in this part and part 102–36 of this chapter;

(2) Donations by holding agencies to public bodies under subpart H of this part;

(3) Donations by the Small Business Administration to small disadvantaged businesses under 13 CFR part 124; and

(4) Donations by holding agencies of law enforcement canines to their handlers under 40 U.S.C. 484(r).

(b) You may also donate property directly to eligible non-Federal recipients under other circumstances if you have statutory authority to do so. All such donations must be included on your annual report to GSA under § 102–36.300 of this chapter.

Subpart D—State Agency for Surplus Property (SASP)

§ 102–37.130 What are a SASP's responsibilities in the donation of surplus property?

As a SASP, your responsibilities in the donation of surplus property are to:

(a) Determine whether or not an entity seeking to obtain surplus property is eligible for donation as a:

(1) Public agency;

(2) Nonprofit educational or public health institution; or

(3) Program for older individuals.

(b) Distribute surplus property fairly, equitably, and promptly to eligible donees in your State based on their relative needs and resources, and ability to use the property, and as provided in your State plan of operation.

(c) Enforce compliance with the terms and conditions imposed on donated property.

§ 102–37.135 How does a SASP become eligible to distribute surplus property to donees?

In order to receive transfers of surplus property, a SASP must:

(a) Have a GSA-approved State plan of operation; and

(b) Provide the certifications and agreements as set forth in §§ 102–37.200 and 102–37.205.

State Plan of Operation

§ 102–37.140 What is a State plan of operation?

A State plan of operation is a document developed under State law and approved by GSA in which the State sets forth a plan for the management and administration of the SASP in the donation of property.

§ 102–37.145 Who is responsible for developing, certifying, and submitting the plan?

The State legislature must develop the plan. The chief executive officer of the State must submit the plan to the Administrator of General Services for acceptance and certify that the SASP is authorized to:

(a) Acquire and distribute property to eligible donees in the State;

(b) Enter into cooperative agreements; and

(c) Undertake other actions and provide other assurances as are required by subsection 203(j)(4) of the Property Act (40 U.S.C. 484(j)) and set forth in the plan.

§ 102–37.150 What must a State legislature include in the plan?

The State legislature must ensure the plan conforms to the provisions of subsection 203(j)(4) of the Property Act (40 U.S.C. 484(j)) and includes the information and assurances set forth in Appendix B of this part. It may also include in the plan other provisions not inconsistent with the purposes of the Property Act and the requirements of this part.

§ 102–37.155 When does a plan take effect?

The plan takes effect on the date GSA notifies the chief executive officer of the State that the plan is approved.

§ 102–37.160 Must GSA approve amendments or modifications to the plan?

Yes, GSA must approve amendments or modifications to the plan.

§ 102–37.165 Do plans or major amendments require public notice?

Yes, proposed plans and major amendments to existing plans require general notice to the public for comment. A State must publish a general notice of the plan or amendment at least 60 calendar days in advance of filing the proposal with GSA and provide interested parties at least 30 calendar days to submit comments before filing the proposal.

§ 102–37.170 What happens if a SASP does not operate in accordance with its plan?

If a SASP does not operate in accordance with its plan, GSA may withhold allocation and transfer of surplus property until the nonconformance is corrected.

Screening and Requesting Property

§ 102–37.175 How does a SASP find out what property is potentially available for donation?

A SASP may conduct onsite screening at various Federal facilities, contact or submit want lists to GSA, or use GSA's or other agencies' computerized inventory system to electronically search for property that is potentially available for donation (see § 102–36.90 for information on GSA's system, FEDS).

§ 102–37.180 Does a SASP need special authorization to screen property at Federal facilities?

Yes, SASP personnel or donee personnel representing a SASP must have a valid screener-identification card (GSA Optional Form 92, Screener's Identification, or other suitable identification approved by GSA) before screening and selecting property at holding agencies. However, SASP or donee personnel do not need a screener-ID card to inspect or remove property previously set aside or approved by GSA for transfer.

§ 102–37.185 How does a SASP obtain screening authorization for itself or its donees?

(a) To obtain screening authorization for itself or donees, a SASP must submit an Optional Form 92 (with the signature and an affixed passport-style photograph of the screener applicant) and a written request to the GSA regional office serving the area in which the intended screener is located. The request must:

(1) State the prospective screener's name and the name and address of the organization he or she represents;

(2) Specify the period of time and location(s) in which screening will be conducted; and

(3) Certify that the applicant is qualified to screen property.

(b) If the request is approved, GSA will complete the Optional Form 92 and return it to the SASP for issuance to the screener.

§ 102–37.190 What records must a SASP maintain on authorized screeners?

You must maintain a current record of all individuals authorized to screen for your SASP, including their names, addresses, telephone numbers, qualifications to screen, and any additional identifying information such as driver's license or social security numbers. In the case of donee screeners, you should place such records in the donee's eligibility file and review for currency each time a periodic review of the donee's file is undertaken.

§ 102–37.195 Does a SASP have to have a donee in mind to request surplus property?

Generally yes, you should have a firm requirement or an anticipated demand for any property that you request.

§ 102–37.200 What certifications must a SASP make when requesting surplus property for donation?

When requesting or applying for property, you must certify that:

(a) You are the agency of the State designated under State law that has legal authority under subsection 203(j) of the Property Act (40 U.S.C. 484(j)) and GSA regulations, to receive property for distribution within the State to eligible donees as defined in this part.

(b) No person with supervisory or managerial duties in your State's donation program is debarred, suspended, ineligible, or voluntarily excluded from participating in the donation program.

(c) The property is usable and needed within the State by:

(1) A public agency for one or more public purposes.

(2) An eligible nonprofit organization or institution which is exempt from taxation under section 501 of the Internal Revenue Code (26 U.S.C. 501), for the purpose of education or public health (including research for any such purpose).

(3) An eligible nonprofit activity for programs for older individuals.

(4) A service educational activity (SEA), for DOD-generated property only.

(d) When property is picked up by, or shipped to, your SASP, you have adequate and available funds, facilities, and personnel to provide accountability, warehousing, proper maintenance, and distribution of the property.

(e) When property is distributed by your SASP to a donee, or when delivery is made directly from a holding agency to a donee pursuant to a State distribution document, you have determined that the donee acquiring the property is eligible within the meaning of the Property Act and GSA

regulations, and that the property is usable and needed by the donee.

§ 102–37.205 What agreements must a SASP make?

With respect to surplus property picked up by or shipped to your SASP, you must agree to the following:

(a) You will make prompt statewide distribution of such property, on a fair and equitable basis, to donees eligible to acquire property under section 203(j) of the Property Act (40 U.S.C. 484(j)) and GSA regulations. You will distribute property only after such eligible donees have properly executed the appropriate certifications and agreements established by your SASP and/or GSA.

(b) Title to the property remains in the United States Government although you have taken possession of it. Conditional title to the property will pass to the eligible donee when the donee executes the required certifications and agreements and takes possession of the property.

(c) You will:

(1) Promptly pay the cost of care, handling, and shipping incident to taking possession of the property.

(2) During the time that title remains in the United States Government, be responsible as a bailee for the property from the time it is released to you or to the transportation agent you have designated.

(3) In the event of any loss of or damage to any or all of the property during transportation or storage at a place other than a place under your control, take the necessary action to obtain restitution (fair market value) for the Government. In the event of loss or damage due to negligence or willful misconduct on your part, repair, replace, or pay to the GSA the fair market value of any such property, or take such other action as the GSA may direct.

(d) You may retain property to perform your donation program functions, but only when authorized by GSA in accordance with the provisions of a cooperative agreement entered into with GSA.

(e) When acting under an interstate cooperative distribution agreement (see § 102–37.335) as an agent and authorized representative of an adjacent State, you will:

(1) Make the certifications and agreements required in § 102–37.200 and this section on behalf of the adjacent SASP.

(2) Require the donee to execute the distribution documents of the State in which the donee is located.

(3) Forward copies of the distribution documents to the corresponding SASP.

(f) You will not discriminate on the basis of race, color, national origin, sex, age, or handicap in the distribution of property, and will comply with GSA regulations on nondiscrimination as set forth in part 101–6, subpart 101–6.2, and part 101–8 of this title.

(g) You will not seek to hold the United States Government liable for consequential or incidental damages or the personal injuries, disabilities, or death to any person arising from the transfer, donation, use, processing, or final disposition of this property. The Government's liability in any event is limited in scope to that provided for by the Federal Tort Claims Act (28 U.S.C. 2671, *et seq.*).

§ 102–37.210 Must a SASP make a drug-free workplace certification when requesting surplus property for donation?

No, you must certify that you will provide a drug-free workplace only as a condition for retaining surplus property for SASP use. Drug-free workplace certification requirements are found at part 105–68, subpart 105–68.6, of this title.

§ 102–37.215 When must a SASP make a certification regarding lobbying?

You are subject to the anti-lobbying certification and disclosure requirements in part 105–69 of this title when all of the following conditions apply:

(a) You have entered into a cooperative agreement with GSA that provides for your SASP to retain surplus property for use in performing donation functions or any other cooperative agreement.

(b) The cooperative agreement was executed after December 23, 1989.

(c) The fair market value of the property requested under the cooperative agreement is more than $100,000.

Justifying Special Transfer Requests

§ 102–37.220 Are there special types of surplus property that require written justification when submitting a transfer request?

Yes, a SASP must obtain written justification from the intended donee, and submit it to GSA along with the transfer request, prior to allocation of:

(a) Aircraft and vessels covered by § 102–37.455;

(b) Items requested specifically for cannibalization;

(c) Foreign gifts and decorations (see part 102–42 of this chapter);

(d) Items containing 50 parts per million or greater of polychlorinated biphenyl (see part 101–42 of this title);

(e) Firearms as described in part 101–42 of this title; and

(f) Any item on which written justification will assist GSA in making allocation to States with the greatest need.

§ 102–37.225 What information or documentation must a SASP provide when requesting a surplus aircraft or vessel?

(a) For each SF 123 that you submit to GSA for transfer of a surplus aircraft or vessel covered by § 102–37.455 include:

(1) A letter of intent, signed and dated by the authorized representative of the proposed donee setting forth a detailed plan of utilization for the property (see § 102–37.230 for information a donee has to include in the letter of intent); and

(2) A letter, signed and dated by you, confirming and certifying the applicant's eligibility and containing an evaluation of the applicant's ability to use the aircraft or vessel for the purpose stated in its letter of intent and any other supplemental information concerning the needs of the donee which supports making the allocation.

(b) For each SF 123 that GSA approves, you must include:

(1) Your distribution document, signed and dated by the authorized donee representative; and

(2) A conditional transfer document, signed by you and the intended donee, and containing the special terms and conditions prescribed by GSA.

§ 102–37.230 What must a letter of intent for obtaining surplus aircraft or vessels include?

A letter of intent for obtaining surplus aircraft or vessels must provide:

(a) A description of the aircraft or vessel requested. If the item is an aircraft, the description must include the manufacturer, date of manufacture, model, and serial number. If the item is a vessel, it must include the type, name, class, size, displacement, length, beam, draft, lift capacity, and the hull or registry number, if known;

(b) A detailed description of the donee's program and the number and types of aircraft or vessels it currently owns;

(c) A detailed description of how the aircraft or vessel will be used, its purpose, how often and for how long. If an aircraft is requested for flight purposes, the donee must specify a source of pilot(s) and where the aircraft will be housed. If an aircraft is requested for cannibalization, the donee must provide details of the cannibalization process (time to complete the cannibalization process, how recovered parts are to be used, method of accounting for usable parts,

disposition of unsalvageable parts, etc.) If a vessel is requested for waterway purposes, the donee must specify a source of pilot(s) and where the vessel will be docked. If a vessel is requested for permanent docking on water or land, the donee must provide details of the process, including the time to complete the process; and

(d) Any supplemental information (such as geographical area and population served, number of students enrolled in educational programs, etc.) supporting the donee's need for the aircraft or vessel.

§ 102–37.235 What type of information must a SASP provide when requesting surplus property for cannibalization?

When a donee wants surplus property to cannibalize, include the following statement on the SF 123: ''Line Item Number(s)_____requested for cannibalization.''. In addition to including this statement, provide a detailed justification concerning the need for the components or accessories and an explanation of the effect removal will have on the item. GSA will approve requests for cannibalization only when it is clear from the justification that disassembly of the item for use of its component parts will provide greater potential benefit than use of the item in its existing form.

§ 102–37.240 How must a transfer request for surplus firearms be justified?

To justify a transfer request for surplus firearms, the requesting SASP must obtain and submit to GSA a letter of intent from the intended donee that provides:

(a) Identification of the donee applicant, including its legal name and complete address and the name, title, and telephone number of its authorized representative;

(b) The number of compensated officers with the power to apprehend and to arrest;

(c) A description of the firearm(s) requested;

(d) Details on the planned use of the firearm(s); and

(e) The number and types of donated firearms received during the previous 12 months through any other Federal program.

Custody, Care, and Safekeeping

§ 102–37.245 What must a SASP do to safeguard surplus property in its custody?

To safeguard surplus property in your custody, you must provide adequate protection of property in your custody, including protection against the hazards of fire, theft, vandalism, and weather.

§ 102–37.250 What actions must a SASP take when it learns of damage to or loss of surplus property in its custody?

If you learn that surplus property in your custody has been damaged or lost, you must always notify GSA and notify the appropriate law enforcement officials if a crime has been committed.

§ 102–37.255 Must a SASP insure surplus property against loss or damage?

No, you are not required to carry insurance on Federal surplus property in your custody. However, if you elect to carry insurance and the insured property is lost or damaged, you must submit a check made payable to GSA for any insurance proceeds received in excess of your actual costs of acquiring and rehabilitating the property prior to its loss, damage, or destruction.

Distribution of Property

§ 102–37.260 How must a SASP document the distribution of surplus property?

All SASPs must document the distribution of Federal surplus property on forms that are prenumbered, provide for donees to indicate the primary purposes for which they are acquiring property, and include the:

(a) Certifications and agreements in §§ 102–37.200 and 102–37.205; and

(b) Period of restriction during which the donee must use the property for the purpose for which it was acquired.

§ 102–37.265 May a SASP distribute surplus property to eligible donees of another State?

Yes, you may distribute surplus property to eligible donees of another State, if you and the other SASP determine that such an arrangement will be of mutual benefit to you and the donees concerned. Where such determinations are made, an interstate distribution cooperative agreement must be prepared as prescribed in § 102–37.335 and submitted to the appropriate GSA regional office for approval. When acting under an interstate distribution cooperative agreement, you must:

(a) Require the donee recipient to execute the distribution documents of its home SASP; and

(b) Forward copies of executed distribution documents to the donee's home SASP.

§ 102–37.270 May a SASP retain surplus property for its own use?

Yes, you can retain surplus property for use in operating the donation program, but only if you have a cooperative agreement with GSA that allows you to do so. You must obtain prior GSA approval before using any surplus property in the operation of the SASP. Make your needs known by submitting a listing of needed property to the appropriate GSA regional office for approval. GSA will review the list to ensure that it is of the type and quantity of property that is reasonably needed and useful in performing SASP operations. GSA will notify you within 30 calendar days whether you may retain the property for use in your operations. Title to any surplus property GSA approves for your retention will vest in your SASP. You must maintain separate records for such property.

Service and Handling Charges

§ 102–37.275 May a SASP accept personal checks and non-official payment methods in payment of service charges?

No, service charge payments must readily identify the donee institution as the payer (or the name of the parent organization when that organization pays the operational expenses of the donee). Personal checks, personal cashier checks, personal money orders, and personal credit cards are not acceptable.

§ 102–37.280 How may a SASP use service charge funds?

Funds accumulated from service charges may be deposited, invested, or used in accordance with State law to:

(a) Cover direct and reasonable indirect costs of operating the SASP;

(b) Purchase necessary equipment for the SASP;

(c) Maintain a reasonable working capital reserve;

(d) Rehabilitate surplus property, including the purchase of replacement parts;

(e) Acquire or improve office or distribution center facilities; or

(f) Pay for the costs of internal and external audits.

§ 102–37.285 May a SASP use service charge funds to support non-SASP State activities and programs?

No, except as provided in § 102–37.495, you must use funds collected from service charges, or from other sources such as proceeds from sale of undistributed property or funds collected from compliance cases, solely for the operation of the SASP and the benefit of participating donees.

Disposing of Undistributed Property

§ 102–37.290 What must a SASP do with surplus property it cannot donate?

(a) As soon as it becomes clear that you cannot donate the surplus property, you should first determine whether or not the property is usable.

(1) If you determine that the undistributed surplus property is not usable, you should seek GSA approval

to abandon or destroy the property in accordance with § 102–37.320.

(2) If you determine that the undistributed surplus property is usable, you should immediately offer it to other SASPs. If other SASPs cannot use the property, you should promptly report it to GSA for redisposal (i.e., disposition through retransfer, sale, or other means).

(b) Normally, any property not donated within a 1-year period should be processed in this manner.

§ 102–37.295 Must GSA approve a transfer between SASPs?

Yes, the requesting SASP must submit a SF 123, Transfer Order Surplus Personal Property, to the GSA regional office in which the releasing SASP is located. GSA will approve or disapprove the request within 30 calendar days of receipt of the transfer order.

§ 102–37.300 What information must a SASP provide GSA when reporting unneeded usable property for disposal?

When reporting unneeded usable property that is not required for transfer to another SASP, provide GSA with the:

(a) Best possible description of each line item of property, its current condition code, quantity, unit and total acquisition cost, State serial number, demilitarization code, and any special handling conditions;

(b) Date you received each line item of property listed; and

(c) Certification of reimbursement requested under § 102–37.315.

§ 102–37.305 May a SASP act as GSA's agent in selling undistributed surplus property (either as usable property or scrap)?

Yes, you may act as GSA's agent in selling undistributed surplus property (either as usable property or scrap) if an established cooperative agreement with GSA permits such an action. You must notify GSA each time you propose to conduct a sale under the cooperative agreement. You may request approval to conduct a sale when reporting the property to GSA for disposal instructions. If no formal agreement exists, you may submit such an agreement at that time for approval.

§ 102–37.310 What must a proposal to sell undistributed surplus property include?

(a) Your request to sell undistributed surplus property must include:

(1) The proposed sale date;

(2) A listing of the property;

(3) Location of the sale;

(4) Method of sale; and

(5) Proposed advertising to be used.

(b) If the request is approved, the GSA regional sales office will provide the necessary forms and instructions for you to use in conducting the sale.

§ 102–37.315 What costs may a SASP recover if undistributed surplus property is retransferred or sold?

(a) When undistributed surplus property is transferred to a Federal agency or another SASP, or disposed of by public sale, you are entitled to recoup:

(1) Direct costs you initially paid to the Federal holding agency, including but not limited to, packing, preparation for shipment, and loading. You will not be reimbursed for actions following receipt of the property, including unloading, moving, repairing, preserving, or storage.

(2) Transportation costs you incurred, but were not reimbursed by a donee, for initially moving the property from the Federal holding agency to your distribution facility or other point of receipt. You must document and certify the amount of reimbursement requested for these costs.

(b) Reimbursable arrangements should be made prior to transfer of the property. In the case of a Federal transfer, GSA will secure agreement of the Federal agency to reimburse your authorized costs, and annotate the amount of reimbursement on the transfer document. You must coordinate and make arrangements for reimbursement when property is transferred to another SASP. If you and the receiving SASP cannot agree on an appropriate reimbursement charge, GSA will determine appropriate reimbursement. The receiving SASP must annotate the reimbursement amount on the transfer document prior to its being forwarded to GSA for approval.

(c) When undistributed property is disposed of by public sale, GSA must approve the amount of sales proceeds you may receive to cover your costs. Generally, this will not exceed 50 percent of the total sales proceeds.

§ 102–37.320 Under what conditions may a SASP abandon or destroy undistributed surplus property?

(a) You may abandon or destroy undistributed surplus property when you have made a written finding that the property has no commercial value or the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale. The abandonment or destruction finding must be sent to the appropriate GSA regional office for approval. You must include in the finding:

(1) The basis for the abandonment or destruction;

(2) A detailed description of the property, its condition, and total acquisition cost;

(3) The proposed method of destruction (burning, burying, etc.) or the abandonment location;

(4) A statement confirming that the proposed abandonment or destruction will not be detrimental or dangerous to public health or safety and will not infringe on the rights of other persons; and

(5) The signature of the SASP director requesting approval for the abandonment or destruction.

(b) GSA will notify you within 30 calendar days whether you may abandon or destroy the property. GSA will provide alternate disposition instructions if it disapproves your request for abandonment or destruction. If GSA doesn't reply to you within 30 calendar days of notification, the property may be abandoned or destroyed.

Cooperative Agreements

§ 102–37.325 With whom and for what purpose(s) may a SASP enter into a cooperative agreement?

Section 203(n) of the Property Act (40 U.S.C. 484(n)) allows GSA, or Federal agencies designated by GSA, to enter into cooperative agreements with SASPs to carry out the surplus property donation program. Such agreements allow GSA, or the designated Federal agencies, to use the SASP's property, facilities, personnel, or services or to furnish such resources to the SASP. For example:

(a) Regional GSA personal property management offices, or designated Federal agencies, may enter into a cooperative agreement to assist a SASP in distributing surplus property for donation. Assistance may include:

(1) Furnishing the SASP with available GSA or agency office space and related support such as office furniture and information technology equipment needed to screen and process property for donation.

(2) Permitting the SASP to retain items of surplus property transferred to the SASP that are needed by the SASP in performing its donation functions (see § 102–37.270).

(b) Regional GSA personal property management offices may help the SASP to enter into agreements with other GSA or Federal activities for the use of Federal telecommunications service or federally-owned real property and related personal property.

(c) A SASP may enter into a cooperative agreement with GSA to conduct sales of undistributed property on behalf of GSA (see § 102–37.305).

§ 102–37.330 Must the costs of providing support under a cooperative agreement be reimbursed by the parties receiving such support?

The parties to a cooperative agreement must decide among themselves the extent to which the costs of the services they provide must be reimbursed. Their decision should be reflected in the cooperative agreement itself. As a general rule, the Economy Act (31 U.S.C. 1535) would require a Federal agency receiving services from a SASP to reimburse the SASP for those services. Since SASPs are not Federal agencies, the Economy Act would not require them to reimburse Federal agencies for services provided by such agencies. In this situation, the Federal agencies would have to determine whether or not their own authorities would permit them to provide services to SASPs without reimbursement. If a Federal agency is reimbursed by a SASP for services provided under a cooperative agreement, it must credit that payment to the fund or appropriation that incurred the related costs.

§ 102–37.335 May a SASP enter into a cooperative agreement with another SASP?

Yes, with GSA's concurrence and where authorized by State law, a SASP may enter into an agreement with an adjacent State to act as its agent and authorized representative in disposing of surplus Federal property. Interstate cooperative agreements may be considered when donees, because of their geographic proximity to the property distribution centers of the adjoining State, could be more efficiently and economically serviced by surplus property facilities in the adjacent State. You and the other SASP must agree to the payment or reimbursement of service charges by the donee and you also must agree to the requirements of § 102–37.205(e).

§ 102–37.340 When may a SASP terminate a cooperative agreement?

You may terminate a cooperative agreement with GSA 60-calendar days after providing GSA with written notice. For other cooperative agreements with other authorized parties, you or the other party may terminate the agreement as mutually agreed. You must promptly notify GSA when such other agreements are terminated.

Audits and Reviews

§ 102–37.345 When must a SASP be audited?

For each year in which a SASP receives $300,000 or more a year in surplus property or other Federal assistance, it must be audited in accordance with the Single Audit Act (31 U.S.C. 7501–7507) as implemented by Office of Management and Budget (OMB) Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations'' (for availability see 5 CFR 1310.3). GSA's donation program should be identified by Catalog of Federal Domestic Assistance number 39.003 when completing the required schedule of Federal assistance.

§ 102–37.350 Does coverage under the single audit process in OMB Circular A–133 exempt a SASP from other reviews of its program?

No, although SASPs are covered under the single audit process in OMB Circular A–133, from time to time the General Accounting Office (GAO), GSA, or other authorized Federal activities may audit or review the operations of a SASP. GSA will notify the chief executive officer of the State of the reasons for a GSA audit. When requested, you must make available financial records and all other records of the SASP for inspection by representatives of GSA, GAO, or other authorized Federal activities.

§ 102–37.355 What obligations does a SASP have to ensure that donees meet Circular A–133 requirements?

SASPs, if they donate $300,000 or more in Federal property to a donee in a fiscal year, must ensure that the donee has an audit performed in accordance with Circular A–133. If a donee receives less than $300,000 in donated property, the SASP is not expected to assume responsibility for ensuring the donee meets audit requirements, beyond making sure the donee is aware that the requirements do exist. It is the donee's responsibility to identify and determine the amount of Federal assistance it has received and to arrange for audit coverage.

Reports

§ 102–37.360 What reports must a SASP provide to GSA?

(a) *Quarterly report on donations.* Submit a GSA Form 3040, State Agency Monthly Donation Report of Surplus Personal Property, to the appropriate GSA regional office by the 25th day of the month following the quarter being reported. (OMB Control Number 3090–0112 has been assigned to this form.) Forms and instructions for completing the form are available from your servicing GSA office.

(b) *Additional reports.* Make other reports GSA may require to carry out its discretionary authority to transfer surplus personal property for donation and to report to the Congress on the status and progress of the donation program.

Liquidating a SASP

§ 102–37.365 What steps must a SASP take if the State decides to liquidate the agency?

Before suspending operations, a SASP must submit to GSA a liquidation plan that includes:

(a) Reasons for the liquidation;

(b) A schedule for liquidating the agency and the estimated date of termination;

(c) Method of disposing of property on hand under the requirements of this part;

(d) Method of disposing of the agency's physical and financial assets;

(e) Retention of all available records of the SASP for a 2-year period following liquidation; and

(f) Designation of another governmental entity to serve as the agency's successor in function until continuing obligations on property donated prior to the closing of the agency are fulfilled.

§ 102–37.370 Do liquidation plans require public notice?

Yes, a liquidation plan constitutes a major amendment of a SASP's plan of operation and, as such, requires public notice.

Subpart E—Donations to Public Agencies, Service Educational Activities (SEAs), and Eligible Nonprofit Organizations

§ 102–37.375 How is the pronoun ''you'' used in this subpart?

The pronoun ''you,'' when used in this subpart, refers to the State agency for surplus property (SASP).

§ 102–37.380 What is the statutory authority for donations of surplus Federal property made under this subpart?

The following statutes provide the authority to donate surplus Federal property to different types of recipients:

(a) Subsection 203(j)(2) of the Property Act (40 U.S.C. 484(j)(2)) authorizes surplus property under the control of the Department of Defense (DOD) to be donated, through SASPs, to educational activities which are of special interest to the armed services (referred to in this part 102–37 as service educational activities or SEAs).

(b) Subsection 203(j)(3) of the Property Act (40 U.S.C. 484(j)(3)) authorizes SASPs to donate surplus property to public agencies and to nonprofit educational or public health institutions, such as:

(1) Medical institutions.

(2) Hospitals.
(3) Clinics.
(4) Health centers.
(5) Drug abuse or alcohol treatment centers.
(6) Providers of assistance to homeless individuals.
(7) Providers of assistance to impoverished families and individuals.
(8) Schools.
(9) Colleges.
(10) Universities.
(11) Schools for the mentally disabled.
(12) Schools for the physically disabled.
(13) Child care centers.
(14) Radio and television stations licensed by the Federal Communications Commission as educational radio or educational television stations.
(15) Museums attended by the public.
(16) Libraries, serving free all residents of a community, district, State or region.

(c) Section 213 of the Older Americans Act of 1965, as amended (42 U.S.C. 3020d), authorizes donations of surplus property to State or local government agencies, or nonprofit organizations or institutions, that receive Federal funding to conduct programs for older individuals.

Donee Eligibility

§ 102–37.385 Who determines if a prospective donee applicant is eligible to receive surplus property under this subpart?

(a) For most public and nonprofit activities, the SASP determines if an applicant is eligible to receive property as a public agency, a nonprofit educational or public health institution, or for a program for older individuals. A SASP may request GSA assistance or guidance in making such determinations.

(b) For applicants that offer courses of instruction devoted to the military arts and sciences, the Defense Department will determine eligibility to receive surplus property through the SASP as a service educational activity or SEA.

§ 102–37.390 What basic criteria must an applicant meet before a SASP can qualify it for eligibility?

To qualify for donation program eligibility through a SASP, an applicant must:

(a) Conform to the definition of one of the categories of eligible entities listed in § 102–37.380 (see appendix C of this part for definitions);

(b) Demonstrate that it meets any approval, accreditation, or licensing requirements for operation of its program;

(c) Prove that it is a public agency or a nonprofit and tax-exempt organization under section 501 of the Internal Revenue Code;

(d) Certify that it is not debarred, suspended, or excluded from any Federal program, including procurement programs; and

(e) Operate in compliance with applicable Federal nondiscrimination statutes.

§ 102–37.395 How can a SASP determine whether an applicant meets any required approval, accreditation, or licensing requirements?

A SASP may accept the following documentation as evidence that an applicant has met established standards for the operation of its educational or health program:

(a) A certificate or letter from a nationally recognized accrediting agency affirming the applicant meets the agency's standards and requirements.

(b) The applicant's appearance on a list with other similarly approved or accredited institutions or programs when that list is published by a State, regional, or national accrediting authority.

(c) Letters from State or local authorities (such as a board of health or a board of education) stating that the applicant meets the standards prescribed for approved or accredited institutions and organizations.

(d) In the case of educational activities, letters from three accredited or State-approved institutions that students from the applicant institution have been and are being accepted.

(e) In the case of public health institutions, licensing may be accepted as evidence of approval, provided the licensing authority prescribes the medical requirements and standards for the professional and technical services of the institution.

(f) The awarding of research grants to the institution by a recognized authority such as the National Institutes of Health, the National Institute of Education, or by similar national advisory council or organization.

§ 102–37.400 What type of eligibility information must a SASP maintain on donees?

In general, you must maintain the records required by your State plan to document donee eligibility (see appendix B of this part). For SEAs, you must maintain separate records that include:

(a) Documentation verifying that the activity has been designated as eligible by DOD to receive surplus DOD property.

(b) A statement designating one or more donee representative(s) to act for the SEA in acquiring property.

(c) A listing of the types of property that are needed or have been authorized by DOD for use in the SEA's program.

§ 102–37.405 How often must a SASP update donee eligibility records?

You must update donee eligibility records as needed, but no less than every 3 years, to ensure that all documentation supporting the donee's eligibility is current and accurate. Annually, you must update files for nonprofit organizations whose eligibility depends on annual appropriations, annual licensing, or annual certification. Particular care must be taken to ensure that all records relating to the authority of donee representatives to receive and receipt for property, or to screen property at Federal facilities, are current.

§ 102–37.410 What must a SASP do if a donee fails to maintain its eligibility status?

If you determine that a donee has failed to maintain its eligibility status, you must terminate distribution of property to that donee, recover any usable property still under Federal restriction (as outlined in § 102–37.465), and take any other required compliance actions.

§ 102–37.415 What should a SASP do if an applicant appeals a negative eligibility determination?

If an applicant appeals a negative eligibility determination, forward complete documentation on the appeal request, including your comments and recommendations, to the applicable GSA regional office for review and coordination with GSA headquarters. GSA's decision will be final.

Conditional Eligibility

§ 102–37.420 May a SASP grant conditional eligibility to applicants who would otherwise qualify as eligible donees, but have been unable to obtain approval, accreditation, or licensing because they are newly organized or their facilities are not yet constructed?

You may grant conditional eligibility to such an applicant provided it submits a statement from any required approving, accrediting, or licensing authority confirming it will be approved, accredited, or licensed.

§ 102–37.425 May a SASP grant conditional eligibility to a not-for-profit organization whose tax-exempt status is pending?

No, under no circumstances may you grant conditional eligibility prior to receiving from the applicant a copy of

a letter of determination by the Internal Revenue Service stating that the applicant is exempt from Federal taxation under section 501 of the Internal Revenue Code.

§ 102–37.430 What property can a SASP make available to a donee with conditional eligibility?

You may only make available surplus property that the donee can use immediately. You may not make available property that will only be used at a later date, for example, after the construction of the donee's facility has been completed.

Terms and Conditions of Donation

§ 102–37.435 For what purposes may donees acquire and use surplus property?

A donee may acquire and use surplus property only for the following authorized purposes:

(a) *Public purposes.* A public agency that acquires surplus property through a SASP must use such property to carry out or to promote one or more public purposes for the people it serves.

(b) *Educational and public health purposes, including related research.* A nonprofit educational or public health institution must use surplus property for education or public health, including research for either purpose and assistance to the homeless or impoverished. While this does not preclude the use of donated surplus property for a related or subsidiary purpose incident to the institution's overall program, the property may not be used for a nonrelated or commercial purpose.

(c) *Programs for older individuals.* An entity that conducts a program for older individuals must use donated surplus property to provide services that are necessary for the general welfare of older individuals, such as social services, transportation services, nutrition services, legal services, and multipurpose senior centers.

§ 102–37.440 May donees acquire property for exchange?

No, a donee may not acquire property with the intent to sell or trade it for other assets.

§ 102–37.445 What certifications must a donee make before receiving property?

Prior to a SASP releasing property to a donee, the donee must certify that:

(a) It is a public agency or a nonprofit organization meeting the requirements of the Property Act and/or regulations of GSA;

(b) It is acquiring the property for its own use and will use the property for authorized purposes;

(c) Funds are available to pay all costs and charges incident to the donation;

(d) It will comply with the nondiscrimination regulations issued under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4), section 606 of title VI of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 476), as amended, section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1688), as amended, and section 303 of the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107); and

(e) It isn't currently debarred, suspended, declared ineligible, or otherwise excluded from receiving the property.

§ 102–37.450 What agreements must a donee make?

Before a SASP may release property to a donee, the donee must agree to the following conditions:

(a) The property is acquired on an ''as is, where is'' basis, without warranty of any kind, and it will hold the Government harmless from any or all debts, liabilities, judgments, costs, demands, suits, actions, or claims of any nature arising from or incident to the donation of the property, its use, or final disposition.

(b) It will return to the SASP, at its own expense, any donated property:

(1) That is not placed in use for the purposes for which it was donated within 1 year of donation; or

(2) Which ceases to be used for such purposes within 1 year after being placed in use.

(c) It will comply with the terms and conditions imposed by the SASP on the use of any item of property having a unit acquisition cost of $5,000 or more and any passenger motor vehicle or other donated item. (Not applicable to SEAs.)

(d) It agrees that, upon execution of the SASP distribution document, it has conditional title only to the property during the applicable period of restriction. Full title to the property will vest in the donee only after the donee has met all of the requirements of this part.

(e) It will comply with conditions imposed by GSA, if any, requiring special handling or use limitations on donated property.

(f) It will use the property for an authorized purpose during the period of restriction.

(g) It will obtain permission from the SASP before selling, trading, leasing, loaning, bailing, cannibalizing, encumbering or otherwise disposing of property during the period of restriction, or removing it permanently for use outside the State.

(h) It will report to the SASP on the use, condition, and location of donated property, and on other pertinent matters as the SASP may require from time to time.

(i) If an insured loss of the property occurs during the period of restriction, GSA or the SASP (depending on which agency has imposed the restriction) will be entitled to reimbursement out of the insurance proceeds of an amount equal to the unamortized portion of the fair market value of the damaged or destroyed item.

Special Handling or Use Conditions

§ 102–37.455 On what categories of surplus property has GSA imposed special handling conditions or use limitations?

GSA has imposed special handling or processing requirements on the property discussed in this section. GSA may, on a case-by-case basis, prescribe additional restrictions for handling or using these items or prescribe special processing requirements on items in addition to those listed in this section.

(a) *Aircraft and vessels.* The requirements of this section apply to the donation of any fixed- or rotary-wing aircraft and donable vessels that are 50 feet or more in length, having a unit acquisition cost of $5,000 or more, regardless of the purpose for which donated. Such aircraft or vessels may be donated to public agencies and eligible nonprofit activities provided the aircraft or vessel is not classified for reasons of national security and any lethal characteristics are removed. The following table provides locations of other policies and procedures governing aircraft and vessels:

For. . .	See. . .
(1) Policies and procedures governing the donation of aircraft parts	Part 101–37, subpart 101–37.6, of this title.

For. . .	See. . .
(2) Documentation needed by GSA to process requests for aircraft or vessels	§ 102–37.225.
(3) Special terms, conditions, and restrictions imposed on aircraft and vessels	§ 102–37.460.
(4) Guidelines on preparing letters of intent for aircraft or vessels	§ 102–37.230.

(b) *Alcohol.* (1) When tax-free or specially denatured alcohol is requested for donation, the donee must have a special permit issued by the Assistant Regional Commissioner of the appropriate regional office, Bureau of Alcohol, Tobacco, and Firearms (BATF), Department of the Treasury, in order to acquire the property. Include the BATF use-permit number on the SF 123, Transfer Order Surplus Personal Property.

(2) You may not store tax-free or specially denatured alcohol in SASP facilities. You must make arrangements for this property to be shipped or transported directly from the holding agency to the designated donee.

(c) *Hazardous materials, firearms, and property with unsafe or dangerous characteristics.* For hazardous materials, firearms, and property with unsafe or dangerous characteristics, see part 101–42 of this title.

(d) *Franked and penalty mail envelopes and official letterhead.* Franked and penalty mail envelopes and official letterhead may not be donated without the SASP certifying that all Federal Government markings will be obliterated before use.

§ 102–37.460 What special terms and conditions apply to the donation of aircraft and vessels?

The following special terms and conditions apply to the donation of aircraft and vessels:

(a) There must be a period of restriction which will expire after the aircraft or vessel has been used for the purpose stated in the letter of intent (see § 102–37.230) for a period of 5 years, except that the period of restriction for a combat-configured aircraft is in perpetuity.

(b) The donee of an aircraft must apply to the FAA for registration of an aircraft intended for flight use within 30 calendar days of receipt of the aircraft. The donee of a vessel must, within 30 calendar days of receipt of the vessel, apply for documentation of the vessel under applicable Federal, State, and local laws and must record each document with the U.S. Coast Guard at the port of documentation. The donee's application for registration or documentation must include a fully executed copy of the conditional transfer document and a copy of its letter of intent. The donee must provide the SASP and GSA with a copy of the FAA registration (and a copy of its FAA Standard Airworthiness Certificate if the aircraft is to be flown as a civil aircraft) or Coast Guard documentation.

(c) The aircraft or vessel must be used solely in accordance with the executed conditional transfer document and the plan of utilization set forth in the donee's letter of intent, unless the donee has amended the letter, and it has been approved in writing by the SASP and GSA and a copy of the amendment recorded with FAA or the U.S. Coast Guard, as applicable.

(d) In the event any of the terms and conditions imposed by the conditional transfer document are breached, title may revert to the Government. GSA may require the donee to return the aircraft or vessel or pay for any unauthorized disposal, transaction, or use.

(e) If, during the period of restriction, the aircraft or vessel is no longer needed by the donee, the donee must promptly notify the SASP and request disposal instructions. A SASP may not issue disposal instructions without the prior written concurrence of GSA.

(f) Military aircraft previously used for ground instruction and/or static display (Category B aircraft, as designated by DOD) or that are combat-configured (Category C aircraft) may not be donated for flight purposes.

(g) For all aircraft donated for nonflight use, the donee must, within 30 calendar days of receipt of the aircraft, turn over to the SASP the remaining aircraft historical records (except the records of the major components/life limited parts; e.g., engines, transmissions, rotor blades, etc., necessary to substantiate their reuse). The SASP in turn must transmit the records to GSA for forwarding to the FAA.

Release of Restrictions

§ 102–37.465 May a SASP modify or release any of the terms and conditions of donation?

You may alter or grant releases from State-imposed restrictions, provided your State plan of operation sets forth the standards by which such actions will be taken. You may not grant releases from, or amendments or corrections to:

(a) The terms and conditions you are required by the Property Act to impose on the use of passenger motor vehicles and any item of property having a unit acquisition cost of $5,000 or more.

(b) Any special handling condition or use limitation imposed by GSA, except with the prior written approval of GSA.

(c) The statutory requirement that usable property be returned by the donee to the SASP if the property has not been placed in use for the purposes for which it was donated within 1 year of donation or ceases to be used by the donee for those purposes within 1 year of being placed in use, except that:

(1) You may grant authority to the donee to cannibalize property items subject to this requirement when you determine that such action will result in increased use of the property and that the proposed action meets the standards prescribed in your plan of operation.

(2) You may, with the written concurrence of GSA, grant donees:

(i) A time extension to place property into use if the delay in putting the property into use was beyond the control and without the fault or negligence of the donee.

(ii) Authority to trade in one donated item for one like item having similar use potential.

§ 102–37.470 At what point may restrictions be released on property that has been authorized for cannibalization?

Property authorized for cannibalization must remain under the period of restriction imposed by the transfer/distribution document until the proposed cannibalization is completed. Components resulting from the cannibalization, which have a unit acquisition cost of $5,000 or more, must remain under the restrictions imposed by the transfer/distribution document. Components with a unit acquisition cost of less than $5,000 may be released upon cannibalization from the additional restrictions imposed by the State. However, these components must continue to be used or be otherwise disposed of in accordance with this part.

§ 102–37.475 What are the requirements for releasing restrictions on property being considered for exchange?

GSA must consent to the exchange of donated property under Federal restrictions or special handling conditions. The donee must have used the donated item for its acquired purpose for a minimum of 6 months prior to being considered for exchange, and it must be demonstrated that the exchange will result in increased utilization value to the donee. As a condition of approval of the exchange, the item being exchanged must have remained in compliance with the terms and conditions of the donation. Otherwise, § 102–37.485 applies. The item acquired by the donee must be:

(a) Made subject to the period of restriction remaining on the item exchanged; and

(b) Of equal or greater value than the item exchanged.

Compliance and Utilization

§ 102–37.480 What must a SASP do to ensure that property is used for the purpose(s) for which it was donated?

You must conduct utilization reviews, as provided in your plan of operation, to ensure that donees are using surplus property during the period of restriction for the purposes for which it was donated. You must fully document your efforts and report all instances of noncompliance (misuse or mishandling of property) to GSA.

§ 102–37.485 What actions must a SASP take if a review or other information indicates noncompliance with donation terms and conditions?

If a review or other information indicates noncompliance with donation terms and conditions, you must:

(a) Promptly investigate any suspected failure to comply with the conditions of donated property;

(b) Notify GSA immediately where there is evidence or allegation of fraud, wrongdoing by a screener, or nonuse, misuse, or unauthorized disposal or destruction of donated property;

(c) Temporarily defer any further donations of property to any donee to be investigated for noncompliance allegations until such time as the investigation has been completed and:

(1) A determination made that the allegations are unfounded and the deferment is removed.

(2) The allegations are substantiated and the donee is proposed for suspension or debarment; and

(d) Take steps to correct the noncompliance or otherwise enforce the conditions imposed on use of the property if a donee is found to be in noncompliance. Enforcement of compliance may involve:

(1) Ensuring the property is used by the present donee for the purpose for which it was donated.

(2) Recovering the property from the donee for:

(i) Redistribution to another donee within the State;

(ii) Transfer through GSA to another SASP; or

(iii) Transfer through GSA to a Federal agency.

(3) Recovering fair market value or the proceeds of disposal in cases of unauthorized disposal or destruction.

(4) Recovering fair rental value for property in cases where the property has been loaned or leased to an ineligible user or used for an unauthorized purpose.

(5) Disposing of by public sale property no longer suitable, usable, or necessary for donation.

§ 102–37.490 When must a SASP coordinate with GSA on compliance actions?

You must coordinate with GSA before selling or demanding payment of the fair market or fair rental value of donated property that is:

(a) Subject to any special handling condition or use limitation imposed by GSA (see § 102–37.455); or

(b) Not properly used within 1 year of donation or which ceases to be properly used within 1 year of being placed in use.

§ 102–37.495 How must a SASP handle funds derived from compliance actions?

You must handle funds derived from compliance actions as follows:

(a) *Enforcement of Federal restrictions.* You must promptly remit to GSA any funds derived from the enforcement of compliance involving a violation of any Federal restriction, for deposit in the Treasury of the United States. You must also submit any supporting documentation indicating the source of the funds and essential background information.

(b) *Enforcement of State restrictions.* You may retain any funds derived from a compliance action involving violation of any State-imposed restriction and use such funds as provided in your State plan of operation.

Returns and Reimbursement

§ 102–37.500 May a donee receive reimbursement for its donation expenses when unneeded property is returned to the SASP?

When a donee returns unneeded property to a SASP, the donee may be reimbursed for all or part of the initial cost of any repairs required to make the property usable if:

(a) The property is transferred to a Federal agency or sold for the benefit of the U.S. Government;

(b) No breach of the terms and conditions of donation has occurred; and

(c) GSA authorizes the reimbursement.

§ 102–37.505 How does a donee apply for and receive reimbursement for unneeded property returned to a SASP?

If the donee has incurred repair expenses for property it is returning to a SASP and wishes to be reimbursed for them, it will inform the SASP of this. The SASP will recommend for GSA approval a reimbursement amount, taking into consideration the benefit the donee has received from the use of the property and making appropriate deductions for that use.

(a) If this property is subsequently transferred to a Federal agency, the receiving agency will be required to reimburse the donee as a condition of the transfer.

(b) If the property is sold, the donee will be reimbursed from the sales proceeds.

Special Provisions Pertaining to SEAs

§ 102–37.510 Are there special requirements for donating property to SEAs?

Yes, only DOD-generated property may be donated to SEAs. When donating DOD property to an eligible SEA, SASPs must observe any restrictions the sponsoring Military Service may have imposed on the types of property the SEA may receive.

§ 102–37.515 Do SEAs have a priority over other SASP donees for DOD property?

Yes, SEAs have a priority over other SASP donees for DOD property, but only if DOD requests GSA to allocate surplus DOD property through a SASP for donation to a specific SEA. In such cases, DOD would be expected to clearly identify the items in question and briefly justify the request.

Subpart F—Donations to Public Airports

§ 102–37.520 What is the authority for public airport donations?

The authority for public airport donations is 49 U.S.C. 47151. 49 U.S.C. 47151 authorizes executive agencies to give priority consideration to requests from a public airport (as defined in 41 U.S.C. 47102) for the donation of surplus property if the Department of Transportation (DOT) considers the property appropriate for airport

purposes and GSA approves the donation.

§ 102–37.525 What should a holding agency do if it wants a public airport to receive priority consideration for excess personal property it has reported to GSA?

A holding agency interested in giving priority consideration to a public airport should annotate its reporting document to make GSA aware of this interest. In an addendum to the document, include the name of the requesting airport, specific property requested, and a brief description of how the airport intends to use the property.

§ 102–37.530 What are FAA's responsibilities in the donation of surplus property to public airports?

In the donation of surplus property to public airports, the Federal Aviation Administration (FAA), acting under delegation from the DOT, is responsible for:

(a) Determining the property requirements of any State, political subdivision of a State, or tax-supported organization for public airport use;

(b) Setting eligibility requirements for public airports and making determinations of eligibility;

(c) Certifying that property listed on a transfer request is desirable or necessary for public airport use;

(d) Advising GSA of FAA officials authorized to certify transfer requests and notifying GSA of any changes in signatory authority;

(e) Determining and enforcing compliance with the terms and conditions under which surplus personal property is transferred for public airport use; and

(f) Authorizing public airports to visit holding agencies for the purpose of screening and selecting property for transfer. This responsibility includes:

(1) Issuing a screening pass or letter of authorization to only those persons who are qualified to screen.

(2) Maintaining a current record (to include names, addresses, and telephone numbers, and additional identifying information such as driver's license or social security numbers) of screeners operating under FAA authority and making such records available to GSA upon request.

(3) Recovering any expired or invalid screener authorizations.

§ 102–37.535 What information must FAA provide to GSA on its administration of the public airport donation program?

So that GSA has information on which to base its discretionary authority to approve the donation of surplus personal property, FAA must:

(a) Provide copies of internal instructions that outline the scope of FAA's oversight program for enforcing compliance with the terms and conditions of transfer; and

(b) Report any compliance actions involving donations to public airports.

Subpart G—Donations to the American National Red Cross

§ 102–37.540 What is the authority for donations to the American National Red Cross?

Subsection 203(l) of the Property Act (40 U.S.C. 484(l)) authorizes GSA to donate to the Red Cross, for charitable use, such property as was originally derived from or through the Red Cross.

§ 102–37.545 What type of property may the American National Red Cross receive?

The Red Cross may receive surplus gamma globulin, dried plasma, albumin, antihemophilic globulin, fibrin foam, surgical dressings, or other products or materials it processed, produced, or donated to a Federal agency.

§ 102–37.550 What steps must the American National Red Cross take to acquire surplus property?

Upon receipt of information from GSA regarding the availability of surplus property for donation, the Red Cross will:

(a) Have 21 calendar days to inspect the property or request it without inspection; and

(b) Be responsible for picking up property donated to it or arranging and paying for its shipment.

§ 102–37.555 What happens to property the American National Red Cross does not request?

Property the Red Cross declines to request will be offered to SASPs for distribution to eligible donees. If such property is transferred, GSA will require the SASP to ensure that all Red Cross labels or other Red Cross identifications are obliterated or removed from the property before it is used.

Subpart H—Donations to Public Bodies in Lieu of Abandonment/Destruction

§ 102–37.560 What is a public body?

A public body is any department, agency, special purpose district, or other instrumentality of a State or local government; any Indian tribe; or any agency of the Federal Government.

§ 102–37.565 What is the authority for donations to public bodies?

Subsection 202(h) of the Property Act (40 U.S.C. 483(h)) authorizes the abandonment, destruction, or donation to public bodies of property which has no commercial value or for which the estimated cost of continued care and handling would exceed the estimated proceeds from its sale.

§ 102–37.570 What type of property may a holding agency donate under this subpart?

Only that property a holding agency has made a written determination to abandon or destroy (see process in part 102–36 of this chapter) may be donated under this subpart. A holding agency may not donate property that requires destruction for health, safety, or security reasons. When disposing of hazardous materials and other dangerous property, a holding agency must comply with all applicable laws and regulations and any special disposal requirements in part 101–42 of this title.

§ 102–37.575 Is there a special form for holding agencies to process donations?

There is no special form for holding agencies to process donations. A holding agency may use any document that meets its agency's needs for maintaining an audit trail of the transaction.

§ 102–37.580 Who is responsible for costs associated with the donation?

The recipient public body is responsible for paying the disposal costs incident to the donation, such as packing, preparation for shipment, demilitarization (as defined in § 102–36.40 of this chapter), loading, and transportation to its site.

Appendix A—Miscellaneous Donation Statutes

The following is a listing of statutes which authorize donations which do not require GSA's approval:

Statute: 10 U.S.C. 2572.

Donor Agency: Any military department (Army, Navy, and Air Force) or the Coast Guard.

Type of Property: Books, manuscripts, works of art, historical artifacts, drawings, plans, models, and condemned or obsolete combat material.

Eligible Recipients: Municipal corporations; soldiers' monument associations; museums, historical societies, or historical institutions of a State or foreign nation; incorporated museums that are operated and maintained for educational purposes only and the charters of which denies them the right to operate for profit; posts of the Veterans of Foreign Wars of the United States or of the American Legion or a unit of any other recognized war veterans' association; local or national units of any war veterans' association of a foreign nation which is recognized by the national government of that nation or a principal subdivision of that nation; and posts of the Sons of Veterans Reserve.

Statute: 10 U.S.C. 7306.

Donor Agency: Department of the Navy.

Type of Property: Any vessel stricken from the Naval Vessel Register or any captured vessel in the possession of the Navy.

Eligible Recipients: States, Commonwealths, or possessions of the United States; the District of Columbia; and not-for-profit or nonprofit entities.

Statute: 10 U.S.C. 7541.

Donor Agency: Department of the Navy.

Type of Property: Obsolete material not needed for naval purposes.

Eligible Recipients: Sea scouts of the Boy Scouts of America; Naval Sea Cadet Corps; and the Young Marines of the Marine Corps League.

Statute: 10 U.S.C. 7545.

Donor Agency: Department of the Navy.

Type of Property: Captured, condemned, or obsolete ordnance material, books, manuscripts, works of art, drawings, plans, and models; other condemned or obsolete material, trophies, and flags; and other material of historic interest not needed by the Navy.

Eligible Recipients: States, territories, commonwealths, or possessions of the United States, or political subdivisions or municipal corporations thereof; the District of Columbia; libraries; historical societies; educational institutions whose graduates or students fought in World War I or World War II; soldiers' monument associations; State museums; museums operated and maintained for educational purposes only, whose charter denies it the right to operate for profit; posts of the Veterans of Foreign Wars of the United States; American Legion posts; recognized war veterans' associations; or posts of the Sons of Veterans Reserve.

Statute: 14 U.S.C. 641(a).

Donor Agency: Coast Guard.

Type of Property: Obsolete or other material not needed for the Coast Guard.

Eligible Recipients: Coast Guard Auxiliary; sea scout service of the Boy Scouts of America; and public bodies or private organizations not organized for profit.

Appendix B—Elements of a State Plan of Operation

The following is the information and assurances that must be included in a SASP's plan of operation:

STATE PLAN REQUIREMENTS

Regarding . . .	The plan must . . .
(a) Designation of a SASP	(1) Name the State agency that will be responsible for administering the plan. (2) Describe the responsibilities vested in the agency which must include the authorities to acquire, warehouse and distribute surplus property to eligible donees, carry out other requirements of the State plan, and provide details concerning the organization of the agency, including supervision, staffing, structure, and physical facilities. (3) Indicate the organizational status of the agency within the State governmental structure and the title of the State official who directly supervises the State agent.
(b) Operational authority	Include copies of existing State statutes and/or executive orders relative to the operational authority of the SASP. Where express statutory authority does not exist or is ambiguous, or where authority exists by virtue of executive order, the plan must include also the opinion of the State's Attorney General regarding the existence of such authority.
(c) Inventory control and accounting system.	(1) Require the SASP to use a management control and accounting system that effectively governs the utilization, inventory control, accountability, and disposal of property. (2) Provide a detailed explanation of the inventory control and accounting system that the SASP will use. (3) Provide that property retained by the SASP to perform its functions be maintained on separate records from those of donable property.
(d) Return of donated property	(1) Require the SASP to provide for the return of donated property from the donee, at the donee's expense, if the property is still usable as determined by the SASP; and (i) The donee has not placed the property into use for the purpose for which it was donated within 1 year of donation; or (ii) The donee ceases to use the property within 1 year after placing it in use. (2) Specify that return of property can be accomplished by: (i) Physical return to the SASP facility, if required by the SASP. (ii) Retransfer directly to another donee, SASP, or Federal agency, as required by the SASP. (iii) Disposal (by sale or other means) as directed by the SASP. (3) Set forth procedures to accomplish property returns to the SASP, retransfers to other organizations, or disposition by sale, abandonment, or destruction.
(e) Financing and service charges	(1) Set forth the means and methods for financing the SASP. When the State authorizes the SASP to assess and collect service charges from participating donees to cover direct and reasonable indirect costs of its activities, the method of establishing the charges must be set forth in the plan. (2) Affirm that service charges, if assessed, are fair and equitable and based on services performed (or paid for) by the SASP, such as screening, packing, crating, removal, and transportation. When the SASP provides minimal services in connection with the acquisition of property, except for document processing and other administrative actions, the State plan must provide for minimal charges to be assessed in such cases and include the bases of computation. (3) Provide that property made available to nonprofit providers of assistance to homeless individuals be distributed at a nominal cost for care and handling of the property. (4) Set forth how funds accumulated from service charges, or from other sources such as sales or compliance proceeds are to be used for the operation of the SASP and the benefit of participating donees. (5) Affirm, if service charge funds are to be deposited or invested, that such deposits or investments are permitted by State law and set forth the types of depositories and/or investments contemplated. (6) Cite State authority to use service charges to acquire or improve SASP facilities and set forth disposition to be made of any financial assets realized upon the sale or other disposal of the facilities. (7) Indicate if the SASP intends to maintain a working capital reserve. If one is to be maintained, the plan should provide the provisions and limitations for it.

STATE PLAN REQUIREMENTS—Continued

Regarding . . .	The plan must . . .
	(8) State if refunds of service charges are to be made to donees when there is an excess in the SASP's working capital reserve and provide details of how such refunds are to be made, such as a reduction in service charges or a cash refund, prorated in an equitable manner.
(f) Terms and conditions on donated property.	(1) Require the SASP to identify terms and conditions that will be imposed on the donee for any item of donated property with a unit acquisition cost of $5,000 or more and any passenger motor vehicle. (2) Provide that the SASP may impose reasonable terms and conditions on the use of other donated property. If the SASP elects to impose additional terms and conditions, it should list them in the plan. If the SASP wishes to provide for amending, modifying, or releasing any terms or conditions it has elected to impose, it must state in the plan the standards it will use to grant such amendments, modifications or releases. (3) Provide that the SASP will impose on the donation of property, regardless of unit acquisition cost, such conditions involving special handling or use limitations as GSA may determine necessary because of the characteristics of the property.
(g) Nonutilized or undistributed property.	Provide that, subject to GSA approval, property in the possession of the SASP which donees in the State cannot use will be disposed of by: (1) Transfer to another SASP or Federal agency. (2) Sale. (3) Abandonment or destruction. (4) Other arrangements.
(h) Fair and equitable distribution	(1) Provide that the SASP will make fair and equitable distribution of property to eligible donees in the State based on their relative needs and resources and ability to use the property. (2) Set forth the policies and detailed procedures for effecting a prompt, fair, and equitable distribution. (3) Require that the SASP, insofar as practicable, select property requested by eligible donees and, if requested by the donee, arrange for shipment of the property directly to the donee.
(i) Eligibility	(1) Set forth procedures for the SASP to determine the eligibility of applicants for the donation of surplus personal property. (2) Provide for donee eligibility records to include at a minimum: (i) Legal name and address of the donee. (ii) Status of the donee as a public agency or as an eligible nonprofit activity. (iii) Details on the scope of the donee's program. (iv) Proof of tax exemption under section 501 of the Internal Revenue Code if the donee is nonprofit. (v) Proof that the donee is approved, accredited, licensed, or meets any other legal requirement for operation of its program(s). (vi) Financial information. (vii) Written authorization by the donee's governing body or chief administrative officer designating at least one person to act for the donee in acquiring property. (viii) Assurance that the donee will comply with GSA's regulations on nondiscrimination. (ix) Types of property needed.
(j) Compliance and utilization	(1) Provide that the SASP conduct utilization reviews for donee compliance with the terms, conditions, reservations, and restrictions imposed by GSA and the SASP on property having a unit acquisition cost of $5,000 or more and any passenger motor vehicle. (2) Provide for the reviews to include a survey of donee compliance with any special handling conditions or use limitations imposed on items of property by GSA. (3) Set forth the proposed frequency of such reviews and provide adequate assurances that the SASP will take effective action to correct noncompliance or otherwise enforce such terms, conditions, reservations, and restrictions. (4) Require the SASP to prepare reports on utilization reviews and compliance actions and provide assurance that the SASP will initiate appropriate investigations of alleged fraud in the acquisition of donated property or misuse of such property.
(k) Consultation with advisory bodies and public and private groups.	(1) Provide for consultation with advisory bodies and public and private groups which can assist the SASP in determining the relative needs and resources of donees, the proposed utilization of surplus property by eligible donees, and how distribution of surplus property can be effected to fill existing needs of donees. (2) Provide details of how the SASP will accomplish such consultation.
(l) Audit	(1) Provide for periodic internal audits of the operations and financial affairs of the SASP. (2) Provide for compliance with the external audit requirements of Office of Management and Budget Circular No. A–133, ''Audits of States, Local Governments, and Non-Profit Organizations'' (available at www.whitehouse.gov/OMB), and make provisions for the SASP to furnish GSA with: (i) Two copies of any audit report made pursuant to the Circular, or with two copies of those sections that pertain to the Federal donation program. (ii) An outline of all corrective actions and scheduled completion dates for the actions. (3) Provide for cooperation in GSA or Comptroller General conducted audits.

STATE PLAN REQUIREMENTS—Continued

Regarding . . .	The plan must . . .
(m) Cooperative agreements	If the SASP wishes to enter into, renew, or revise cooperative agreements with GSA or other Federal agencies: (1) Affirm the SASP's intentions to enter into cooperative agreements. (2) Cite the authority for entering into such agreements.
(n) Liquidation	Provide for the SASP to submit a liquidation plan prior to termination of the SASP activities if the State decides to dissolve the SASP.
(o) Forms	Include copies of distribution documents used by the SASP.
(p) Records	Affirm that all official records of the SASP will be retained for a minimum of 3 years, except that: (1) Records involving property subject to restrictions for more than 2 years must be kept 1 year beyond the specified period of restriction. (2) Records involving property with perpetual restriction must be retained in perpetuity. (3) Records involving property in noncompliance status must be retained for at least 1 year after the noncompliance case is closed.

Appendix C—Glossary of Terms for Determining Eligibility of Public Agencies and Nonprofit Organizations

The following is a glossary of terms for determining eligibility of public agencies and nonprofit organizations:

Accreditation means the status of public recognition that an accrediting agency grants to an institution or program that meets the agency's standards and requirements.

Accredited means approval by a recognized accrediting board or association on a regional, State, or national level, such as a State board of education or health; the American Hospital Association; a regional or national accrediting association for universities, colleges, or secondary schools; or another recognized accrediting association.

Approved means recognition and approval by the State department of education, State department of health, or other appropriate authority where no recognized accrediting board, association, or other authority exists for the purpose of making an accreditation. For an educational institution or an educational program, approval must relate to academic or instructional standards established by the appropriate authority. For a public health institution or program, approval must relate to the medical requirements and standards for the professional and technical services of the institution established by the appropriate authority.

Child care center means a public or nonprofit facility where educational, social, health, and nutritional services are provided to children through age 14 (or as prescribed by State law) and that is approved or licensed by the State or other appropriate authority as a child day care center or child care center.

Clinic means an approved public or nonprofit facility organized and operated for the primary purpose of providing outpatient public health services and includes customary related services such as laboratories and treatment rooms.

College means an approved or accredited public or nonprofit institution of higher learning offering organized study courses and credits leading to a baccalaureate or higher degree.

Conservation means a program or programs carried out or promoted by a public agency for public purposes involving directly or indirectly the protection, maintenance, development, and restoration of the natural resources of a given political area. These resources include but are not limited to the air, land, forests, water, rivers, streams, lakes and ponds, minerals, and animals, fish and other wildlife.

Drug abuse or alcohol treatment center means a clinic or medical institution that provides for the diagnosis, treatment, or rehabilitation of alcoholics or drug addicts. These centers must have on their staffs, or available on a regular visiting basis, qualified professionals in the fields of medicine, psychology, psychiatry, or rehabilitation.

Economic development means a program(s) carried out or promoted by a public agency for public purposes to improve the opportunities of a given political area for the establishment or expansion of industrial, commercial, or agricultural plants or facilities and which otherwise assist in the creation of long-term employment opportunities in the area or primarily benefit the unemployed or those with low incomes.

Education means a program(s) to develop and promote the training, general knowledge, or academic, technical, and vocational skills and cultural attainments of individuals in a community or given political area. Public educational programs may include public school systems and supporting facilities such as centralized administrative or service facilities.

Educational institution means an approved, accredited, or licensed public or nonprofit institution, facility, entity, or organization conducting educational programs or research for educational purposes, such as a child care center, school, college, university, school for the mentally or physically disabled, or an educational radio or television station.

Educational radio or television station means a public or nonprofit radio or television station licensed by the Federal Communications Commission and operated exclusively for noncommercial educational purposes.

Health center means an approved public or nonprofit facility that provides public health services, including related facilities such as diagnostic and laboratory facilities and clinics.

Homeless individual means:

(1) An individual who lacks a fixed, regular, and adequate nighttime residence, or who has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(2) For purposes of this part, the term *homeless individual* does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

Hospital means an approved or accredited public or nonprofit institution providing public health services primarily for inpatient medical or surgical care of the sick and injured and includes related facilities such as laboratories, outpatient departments, training facilities, and staff offices.

Library means a public or nonprofit facility providing library services free to all residents of a community, district, State, or region.

Licensed means recognition and approval by the appropriate State or local authority approving institutions or programs in specialized areas. Licensing generally relates to established minimum public standards of safety, sanitation, staffing, and equipment as they relate to the construction, maintenance, and operation of a health or educational facility, rather than to the academic, instructional, or medical standards for these institutions.

Medical institution means an approved, accredited, or licensed public or nonprofit institution, facility, or organization whose primary function is the furnishing of public health and medical services to the public or promoting public health through the conduct of research, experiments, training, or demonstrations related to cause, prevention, and methods of diagnosis and treatment of

diseases and injuries. The term includes, but is not limited to, hospitals, clinics, alcohol and drug abuse treatment centers, public health or treatment centers, research and health centers, geriatric centers, laboratories, medical schools, dental schools, nursing schools, and similar institutions. The term does not include institutions primarily engaged in domiciliary care, although a separate medical facility within such a domiciliary institution may qualify as a *medical institution.*

Museum means a public or nonprofit institution that is organized on a permanent basis for essentially educational or aesthetic purposes and which, using a professional staff, owns or uses tangible objects, either animate or inanimate; cares for these objects; and exhibits them to the public on a regular basis (at least 1000 hours a year). As used in this part, the term *museum* includes, but is not limited to, the following institutions if they satisfy all other provisions of this definition: Aquariums and zoological parks; botanical gardens and arboretums; nature centers; museums relating to art, history (including historic buildings), natural history, science, and technology; and planetariums. For the purposes of this definition, an institution uses a professional staff if it employs at least one fulltime staff member or the equivalent, whether paid or unpaid, primarily engaged in the acquisition, care, or public exhibition of objects owned or used by the institution. This definition of *museum* does not include any institution that exhibits objects to the public if the display or use of the objects is only incidental to the primary function of the institution.

Nationally recognized accrediting agency means an accrediting agency that the Department of Education recognizes under 34 CFR part 600. (For a list of accrediting agencies, see the Department's web site at http://www.ed.gov/offices/OPE/accreditation/index.html)

Nonprofit means not organized for profit and exempt from Federal income tax under section 501 of the Internal Revenue Code (26 U.S.C. 501).

Parks and recreation means a program(s) carried out or promoted by a public agency for public purposes that involve directly or indirectly the acquisition, development, improvement, maintenance, and protection of park and recreational facilities for the residents of a given political area.

Program for older individuals means a program conducted by a State or local government agency or nonprofit activity that receives funds appropriated for services or programs for older individuals under the Older Americans Act of 1965, as amended, under title IV or title XX of the Social Security Act (42 U.S.C. 601 *et seq.*), or under titles VIII and X of the Economic Opportunity Act of 1964 (42 U.S.C. 2991 *et seq.*) and the Community Services Block Grant Act (42 U.S.C. 9901 *et seq.*).

Provider of assistance to homeless individuals means a public agency or a nonprofit institution or organization that operates a program which provides assistance such as food, shelter, or other services to homeless individuals.

Provider of assistance to impoverished families and individuals means a public or nonprofit organization whose primary function is to provide money, goods, or services to families or individuals whose annual incomes are below the poverty line (as defined in section 673 of the Community Services Block Grant Act) (42 U.S.C. 9902). Providers include food banks, self-help housing groups, and organizations providing services such as the following: Health care; medical transportation; scholarships and tuition assistance; tutoring and literacy instruction; job training and placement; employment counseling; child care assistance; meals or other nutritional support; clothing distribution; home construction or repairs; utility or rental assistance; and legal counsel.

Public agency means any State; political subdivision thereof, including any unit of local government or economic development district; any department, agency, or instrumentality thereof, including instrumentalities created by compact or other agreement between States or political subdivisions; multijurisdictional substate districts established by or pursuant to State law; or any Indian tribe, band, group, pueblo, or community located on a State reservation.

Public health means a program(s) to promote, maintain, and conserve the public's health by providing health services to individuals and/or by conducting research, investigations, examinations, training, and demonstrations. Public health services may include but are not limited to the control of communicable diseases, immunization, maternal and child health programs, sanitary engineering, sewage treatment and disposal, sanitation inspection and supervision, water purification and distribution, air pollution control, garbage and trash disposal, and the control and elimination of disease-carrying animals and insects.

Public health institution means an approved, accredited, or licensed public or nonprofit institution, facility, or organization conducting a public health program(s) such as a hospital, clinic, health center, or medical institution, including research for such programs, the services of which are available to the public.

Public purpose means a program(s) carried out by a public agency that is legally authorized in accordance with the laws of the State or political subdivision thereof and for which public funds may be expended. Public purposes include but are not limited to programs such as conservation, economic development, education, parks and recreation, public health, public safety, programs of assistance to the homeless or impoverished, and programs for older individuals.

Public safety means a program(s) carried out or promoted by a public agency for public purposes involving, directly or indirectly, the protection, safety, law enforcement activities, and criminal justice system of a given political area. Public safety programs may include, but are not limited to those carried out by:

(1) Public police departments.

(2) Sheriffs' offices.

(3) The courts.

(4) Penal and correctional institutions (including juvenile facilities).

(5) State and local civil defense organizations.

(6) Fire departments and rescue squads (including volunteer fire departments and rescue squads supported in whole or in part with public funds).

School (except schools for the mentally or physically disabled) means a public or nonprofit approved or accredited organizational entity devoted primarily to approved academic, vocational, or professional study and instruction, that operates primarily for educational purposes on a full-time basis for a minimum school year and employs a full-time staff of qualified instructors.

School for the mentally or physically disabled means a facility or institution operated primarily to provide specialized instruction to students of limited mental or physical capacity. It must be public or nonprofit and must operate on a full-time basis for the equivalent of a minimum school year prescribed for public school instruction for the mentally or physically disabled, have a staff of qualified instructors, and demonstrate that the facility meets the health and safety standards of the State or local government.

University means a public or nonprofit approved or accredited institution for instruction and study in the higher branches of learning and empowered to confer degrees in special departments or colleges.

Dated: January 2, 2002.

Stephen A. Perry,

Administrator of General Services.

[FR Doc. 02–880 Filed 1–17–02; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 447

[CMS–2134–F]

RIN 0938–AL05

Medicaid Program; Modification of the Medicaid Upper Payment Limit for Non-State Government-Owned or Operated Hospitals

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule modifies the Medicaid upper payment limit (UPL) provisions to remove the 150 percent UPL for inpatient hospital services and outpatient hospital services furnished by non-State government-owned or operated hospitals. This final rule is part of this Administration's efforts to restore fiscal integrity to the Medicaid program and reduce the opportunity for abusive funding practices based on

payments unrelated to actual covered Medicaid services.

EFFECTIVE DATE: These regulations are effective on March 19, 2002.

FOR FURTHER INFORMATION CONTACT: Marge Lee, (410) 786–4361.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1902(a)(30)(A) of the Social Security Act (the Act) requires that Medicaid State plans have methods and procedures relating to the payment for care and services to ensure that payments are consistent with efficiency, economy, and quality of care. This provision is implemented in regulations at 42 CFR part 447 that set upper payment limits (UPLs) for different types of items and services. For certain institutional providers, including hospitals, these upper payment limits apply in the aggregate to all payments to a particular class of providers, and are based on the estimated payment under Medicare payment principles.

In a final rule published on January 12, 2001 in the **Federal Register** (66 FR 3148), we revised the Medicaid UPL for inpatient and outpatient hospitals to require separate UPLs for State-owned or operated facilities, non-State government-owned or operated facilities, and privately owned and operated facilities. In that final rule, we also created an exception for payments to non-State government-owned or operated hospitals. That exception provided that the aggregate Medicaid payments to those hospitals may not exceed 150 percent of a reasonable estimate of the amount that would be paid for the services furnished by these hospitals under Medicare payment principles. At that time, we believed that payments to these public hospitals needed a higher UPL because of their important role in serving the Medicaid population.

Based on further analysis, we do not believe that a higher UPL is necessary to achieve the objective of assuring access for Medicaid patients to the services of public hospitals. Our rationale is partly based on the following:

- We believe that the 100 percent UPL is more than sufficient to ensure adequate access to services for Medicaid beneficiaries at public hospitals. Under this limit, States may pay public providers up to 100 percent of a reasonable estimate of what Medicare would have paid for services provided to Medicaid beneficiaries. States also retain some flexibility to make enhanced payments to selected public hospitals under the aggregate limit.
- We do not believe that the higher payments are necessarily being used to further the mission of these hospitals or their role in serving Medicaid patients. The OIG has issued several reports demonstrating that a portion of the enhanced payments made as part of the UPL process are being transferred directly back to the State via intergovernmental transfers and used for other purposes (which may include funding the State share of other Medicaid expenditures). In cases for which hospitals did retain UPL-related enhanced payments, the OIG found that these same hospitals either did not receive disproportionate share hospital (DSH) payments or if they did, typically returned the DSH payments directly back to the State through intergovernmental transfers. We believe that Medicaid provisions permitting enhanced payments to disproportionate share hospitals should be sufficient to ensure that Medicaid beneficiaries have access to the services of these hospitals.
- Many of the public safety net hospitals affected by this rule qualify as DSH hospitals. The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), enacted on December 21, 2000, provides additional funding to public hospitals by increasing the hospital-specific DSH limits originally set under the Omnibus Budget Reconciliation Act of 1993. States will have the ability to make Medicaid DSH payments to public hospitals up to 175 percent of a hospital's reasonable costs of treating the uninsured and Medicaid beneficiaries for a period of two State fiscal years beginning after September 30, 2002.
- We wish to restore payment equity among hospital providers and across other provider types.

Furthermore, the OIG stated in a report dated September 11, 2001 that the need for the higher UPL for non-State government-owned or operated hospitals has not been adequately supported through an analysis of these hospitals' financial operations. Since the public hospitals are not retaining all of the funds available under the UPL or DSH program, we believe the higher UPL is neither furthering their special mission nor ensuring continued access to these facilities for the Medicaid population. Instead, the main result is that the Federal government is effectively paying more than its share of State Medicaid expenditures.

II. Provisions of the Proposed Regulations

On November 23, 2001, we published a proposed rule in the **Federal Register** (66 FR 58694) proposing to lower the UPL for non-State government-owned or operated hospitals from 150 percent to 100 percent. The proposed rule is part of this Administration's efforts to promote fiscal integrity to the Medicaid program and restore the appropriate balance between the Federal Government and States with respect to funding the Medicaid program. In the November 2001 proposed rule, we proposed to revise §§ 447.272(c) and 447.321(c) to remove the exception in paragraph (c)(1) regarding payments to non-State government-owned or operated hospitals. In § 447.272(c), we proposed to redesignate the exceptions in paragraph (c)(2) to (c)(1) and (c)(3) to (c)(2) for payments to Indian Health Services and tribal facilities and disproportionate share hospitals (subject to a separate limit on payments to disproportionate share hospitals). We also proposed to revise the compliance dates described in §§ 447.272(d) and 447.321(d) to make clear that States would need to comply with the UPL for these non-State government-owned or operated hospitals as of the effective date of the final rule.

In addition to eliminating the higher UPL, we proposed conforming technical changes to §§ 447.272(b) and 447.321(b) that would clarify the single UPL standard generally applicable to aggregate payments to each group of facilities, including non-State government-owned or operated hospitals. This proposal would not change the substantive standard that aggregate payments would be limited to a reasonable estimate of the amount that would be paid for the services furnished by the group of facilities under Medicare payment principles. Except as permitted under the transition periods, payments under an approved State plan would need to be reduced to comply with this limit as of the effective date of the final rule. We stated in the preamble of the proposed rule that we would not approve any State plan amendments that would allow payments in excess of this limit as of the effective date of the final rule. And we referenced a letter to State Medicaid Directors issued November 20, 2001, in which we indicated that we did not intend to approve any amendments submitted after the publication date of the proposed rule that would provide for payments that exceed those permitted under this proposed rule because we did not believe that States should have any reasonable reliance that such plan amendments would be approved.

We did not propose any change to the standards for determining transition periods; thus there would be no change

in the State payment methodologies that qualified for a transition described in §§ 447.272(e) and 447.321(e). However, aggregate payments to non-State government-owned or operated hospitals during the transition period would need to be reduced to 100 percent of a reasonable estimate of the amount that would be paid for the services furnished by this group of facilities under Medicare payment principles rather than 150 percent as described in the final rule published on January 12, 2001. As noted above, we proposed a compliance provision at §§ 447.272(d) and 447.321(d) that would require that State payment methodologies that do not qualify for a transition period must be in compliance with the 100 percent UPL for non-State government-owned or operated hospitals as of the effective date of a subsequent final rule.

We also proposed some minor technical changes to §§ 447.272 and 447.321 redesignating paragraph (e)(2)(ii)(C)(*8*) regarding when a reduction begins as paragraph (e)(2)(iii). We also proposed to redesignate paragraph (e)(2)(iii) as (e)(2)(iv).

We also proposed to remove § 447.272(f)(1)(i) and (f)(1)(ii) and § 447.321(f)(1)(i) and (f)(1)(ii), which describe the reporting requirements for non-State government-owned or operated hospitals, and retain paragraph (f)(1) that describes the reporting requirements for payments made by States in excess of the amount described in paragraph (b) of this section during the transition periods. The reporting requirements for these States would not change.

III. Analysis of and Responses to Public Comments

We received approximately 200 timely comments in response to the November 23, 2001 proposed rule. We received letters from State government officials, county government organizations, beneficiary organizations, health care providers and provider organizations, and private citizens. We reviewed each comment and grouped like or related comments. The comments and our responses are summarized below.

Support for Eliminating the 150 Percent UPL

Comment: Several commenters expressed support for removing the 150 percent UPL for inpatient and outpatient hospital services furnished by non-State government-owned or operated facilities, stating that one group of providers should not have a financial benefit over another group of providers who provide the same type of services.

Response: We agree. Our intent in this rule is to treat all facilities equally, and apply the same aggregate UPL to each group of facilities, regardless of who owns or operates the facilities.

Support for Retaining the 150 Percent UPL

Comment: Several commenters urged us to retain the 150 percent UPL and not publish this final rule.

Response: We believe that the 150 percent provision is not being used to increase real payments to hospitals but instead to replace State funds with Federal funds. We have not accepted this comment because this rule is critical for maintaining the fiscal integrity of the Medicaid program and ensuring that all facilities are treated equally under Federal Medicaid UPL regulations.

Comment: One commenter urged us to withdraw the rule and submit a report to the Congress on how future changes would impact public hospitals.

Response: Reports from the OIG demonstrate that, in many cases, higher upper payment limits are not being used to support the mission of public hospitals. As a result, we believe that the impact of this rule will not be severe for many hospitals, as they have not kept all of the funds generated by the upper payment limits. Moreover, as noted elsewhere in this rule, we are not making any changes to Medicaid DSH payments, which are designed to be the primary vehicle for supporting hospitals that serve a large number of indigent or uninsured patients. The expected impact on hospitals is discussed more fully in the Regulatory Impact Analysis in section VI of this final rule.

Comment: Several commenters expressed concern about the effect of this rule on the health care safety net in specific States. They indicated that a reduction in funds resulting from this final rule would cause hospitals to cut services or close altogether. Further, commenters indicated this rule would cut access to critically needed health services for the uninsured, including immigrants and working families. One commenter pointed out that the reduction in reimbursement rates would produce a crisis in health care in one State, which would result in many more serious illnesses and deaths across that State. Another commenter expressed particular concern with the impact of the rule on children's hospitals.

Response: This rule would permit States to reimburse hospitals for 100 percent of their reasonable costs of providing care to Medicaid patients, based on a reasonable estimate of what Medicare would have paid for services provided to Medicaid patients. Although we previously believed a higher UPL was necessary to ensure the availability of safety net facilities, we have concluded that a 100 percent UPL will achieve that purpose because it is adequate to pay hospitals their reasonable costs of serving Medicaid patients. States also have the ability to pay additional Medicaid payments to safety-net hospitals and receive Federal funding under the Medicaid disproportionate share hospital program. The statutory authority for such payments permits States to recognize those hospitals that treat a high number of Medicaid and low-income patients by increasing Medicaid payments to those hospitals that qualify.

Comment: One commenter noted that the 150 percent UPL was adopted by us in the January 12, 2001 regulation to help mitigate the impact of reduced Federal Medicaid funding available to public hospitals. The commenter was concerned that this modification would withdraw Federal funds available to help States with the special problems facing these hospitals.

Response: For those States that have relied on Federal funds generated through UPL payments to assist public hospitals, relief can be sought from two sources. First, this rule does not remove the transition periods set forth in the January 12, 2001 final regulation for those States and hospitals that have relied on the funding available under the UPL for a number of years. Second, the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), enacted on December 21, 2000, provides additional funding to public hospitals by increasing the hospital-specific disproportionate share hospital limits originally set under the Omnibus Budget Reconciliation Act of 1993. States will have the ability to make Medicaid disproportionate share hospital payments to public hospitals up to 175 percent of a hospital's reasonable costs of treating the uninsured and Medicaid beneficiaries for a period of two State fiscal years beginning after September 30, 2002 and receive Federal matching funds for these higher DSH payments.

Comment: Several commenters pointed out that in the wake of September 11, 2001, rising unemployment will not only increase the number of Medicaid beneficiaries and indigents but will also reduce State tax revenues needed to finance Medicaid costs. Other commenters further added that the decrease is

inappropriate given the increased demands being made on hospitals since September 11, 2001. Another commenter voiced the opinion that issuing this rule is contrary to democratic views and will exacerbate the social problems of our highly diverse society.

Response: We recognize that the events of September 11, 2001 have affected many Americans and caused States to incur costs not otherwise anticipated. We want to stress that this rule addresses only the Federal responsibility to assist States to pay for health care services provided to Medicaid beneficiaries at public hospitals. This rule is not intended to have an adverse effect on reimbursement for Medicaid services provided to Medicaid beneficiaries. Under this rule, States will retain the flexibility to pay these facilities up to 100 percent of a reasonable estimate of what Medicare would have paid for services provided to Medicaid beneficiaries. If the number or severity of Medicaid beneficiaries increases for whatever reason, the payment that can be made consistent with the UPL will likewise increase commensurate with the reasonable cost of serving the Medicaid population in each State. While we understand the situation of States that are faced with reduced budgets and strained tax revenues in the current national economic climate, we want to point out that the Congress established the Medicaid program as a joint Federal and State partnership, where each party shares in the financial responsibility of providing care to Medicaid beneficiaries.

Comment: One commenter noted that this rule will have a significant negative impact on the State's continued ability to draw down Federal funds, and, therefore, will be detrimental to all health and human services.

Response: Under this rule, States will be able to receive Federal funding for hospital expenditures incurred on behalf of Medicaid-eligibles, as permitted under Federal law. While the rule will limit States' ability to receive Federal funding for excessive payments, we believe States will retain flexibility to set fair and appropriate payment rates to public hospitals.

Comment: Several commenters stated that the 150 percent UPL is part of an agreement between Congressional leaders, CMS, and the Office of Management and Budget (OMB). The agreement aimed to protect the fragile network of health care services for low-income individuals. It is neither prudent nor fair to change the rules so quickly and nullify an agreement that was supposed to help ensure health care for those in need.

Response: We have a responsibility to interpret and apply the provisions of the Medicaid statute, including the requirement at section 1902(a)(30)(A) of the Social Security Act that payments under State plans must be consistent with efficiency, economy and quality of care. Whether or not any particular individuals had an agreement in the past about how this requirement should apply is not at issue.

Comment: One commenter suggested that we add a requirement that public hospitals have a net gain of at least two-thirds of the additional Federal funds collected under hospital-based UPL plans in order to ensure that public hospitals are, in fact, primary beneficiaries of any UPL arrangements.

Response: It is not clear what the commenter believes would be the legal authority for CMS to limit a hospital's use of its own funds. Furthermore, while the suggested approach allows public hospitals to retain the Federal funds, it does not limit other public hospital revenues from being transferred from the hospital to the State government. Federal funds, once received by the hospital, are fungible. We do not believe this alternative would increase the net funding available to these hospitals, nor do we believe that this alternative would improve access to hospital services for Medicaid beneficiaries. We do not believe this alternative would decrease the Federal share of the Medicaid program expenditures for these hospitals. Therefore, we believe the reduction of the UPL from 150 percent to 100 percent will be sufficient to maintain the fiscal integrity of the Medicaid Program and ensure that all facilities are treated equally under Federal Medicaid UPL regulations.

Comment: One commenter noted that the Congress, in passing BIPA, in effect required us to retain the 150 percent UPL for non-State government-owned or operated hospitals. The new proposed rule lowering the UPL is clearly contrary to the intent of the Congress in passing section 705 of BIPA because the Congress clearly wanted to provide a transition period for States down to the 150 percent UPL without causing economic dislocations to non-State government-owned hospitals.

Response: We do not agree that the statute at section 705(a) of BIPA requires that we retain the 150 percent UPL forever simply because it was in the October 10, 2000 proposed rule. Section 705 of BIPA required that we publish a rule based on the proposed rule, but did not remove agency discretion as to the contents of the final rule except to the extent of requiring a transition period not specified in the proposed rule. We published that final rule, fulfilling those BIPA requirements. Section 705 of BIPA did not preclude the agency from revisiting and revising its rule.

Comment: Several commenters indicated that our timing could not be worse with this rule given the economic turndown, workforce downsizing, and Medicaid experiencing a financial deficit due to a rise in health care costs. One commenter expressed concern that this rule would make it difficult for hospitals to attract and keep quality workers.

Response: This rule allows States to pay hospitals up to 100 percent of the reasonable costs of serving Medicaid patients, based on a reasonable estimate of what Medicare would have paid for the services provided to Medicaid patients. Also, as noted in an earlier response, if the number or severity of Medicaid beneficiaries increases, for whatever reason, the payment that can be made consistent with the UPL will likewise increase commensurate with the reasonable cost of serving the Medicaid population in each State.

Comment: One commenter noted that President Bush wants more funding for the military, but, at the same time, is willing to slash the country's public health care system. The commenter viewed this policy as indicating a lack of compassion for the country's poor. Another commenter considers it irresponsible for the Department and the Administration to be considering a rule change that is sure to have inhumane and tragic results.

Response: This rule is not a statement of public policy on funding for this nation's health care system. This rule also does not intend to cut funds to care for the country's poor, but is intended to promote fiscal integrity and restore an appropriate balance between the Federal government and States with respect to funding the Medicaid program. Since the publication of the January 12, 2001 rule, many States have increased payments to non-State government-owned hospitals and requested hospitals transfer a portion of those payments back to the State, county, or local governments or used Federal monies to supplant State monies for these payments. Therefore, these enhanced payments are not being used by the hospital to provide additional services to Medicaid beneficiaries, but are being transferred back to the State government for purposes not necessarily related to providing Medicaid services to Medicaid beneficiaries.

Comment: One commenter recommended that we leave the 150 percent UPL intact for those States that transfer the Federal funds, through intergovernmental transfers, to the public hospitals and not back into the State general fund. Another commenter urged us to create an exception to the 100 percent UPL for those States that operate under cost-neutral waivers.

Response: Because of the administrative difficulty in identifying and tracking Federal funds once the State draws down the Federal share for Medicaid expenditures, it is unrealistic to consider implementing a regulation that permits the 150 percent UPL to remain for some States, but eliminates it for others. Furthermore, the reduction to a 100 percent UPL applies to all States, regardless of whether they operate under cost neutral waivers, except to the extent that the State is entitled to a transition period, discussed in detail below.

Comment: One commenter noted that the 150 percent limit should remain and that CMS has no basis for the exclusion of long term care facilities from consideration for a more flexible UPL. Additionally, this commenter requested that the 150 percent UPL be expanded to include Medicaid payments to nursing facilities.

Response: Modifying the upper payment limit for nursing home facilities is outside the scope of this rule and contrary to our intent to preserve the fiscal integrity of the Medicaid program. Therefore, we do not accept this comment.

Intergovernmental Transfers

Comment: One commenter pointed out that some States have used intergovernmental transfers (IGT) of funds to take advantage of the flexibility in past and current UPL rules to draw down excess Federal dollars. The commenter recommended that we should adopt rules that will prevent States from requiring hospitals to transfer a sizable portion of enhanced payments back to the State for other purposes. At the same time, the commenter pointed out that limiting a State's ability to finance its Medicaid program using IGT payments may result in reduced access to services for Medicaid beneficiaries. Other commenters noted that a regulation to require non-State government-owned or operated hospitals to retain their Medicaid funding would be more prudent.

Response: Under section 1903(w)(6)(A) of the Social Security Act, the Congress limited authority to regulate States' certain uses of IGTs. We have clear authority to limit the State payment levels that are not consistent with efficiency, economy, and quality of care because they exceed the amount appropriate for the Medicaid services being furnished. These limits are a reasonable measure to protect the overall fiscal integrity of the Federal Medicaid program.

Comment: The proposed rule, by lowering the UPL to 100 percent of what reasonable Medicare payments would be, effectively eliminates the use of intergovernmental transfers and thus permits the Secretary to do indirectly what section 1903(w)(6) of the Act prohibits the Secretary from doing directly.

Response: We are not restricting the States' use of funds transferred or certified from units of government. This reduction in the UPL restricts the States' payment to non-State government-owned or operated hospitals. The State still maintains control as to what government funding sources it may use to make Medicaid payments.

Transition Periods

Comment: One commenter noted that the transition periods permitted under previous rules should be eliminated or reduced.

Response: We are retaining the transition periods outlined in previously published rules in this final rule. We continue to believe that States that have had longstanding reliance on these funds need time to find other funding sources to replace the money generated by the UPL payment mechanisms. However, we want to reiterate our position with regard to States that have had payment methodologies in effect that provide for payments to non-State government-owned or operated hospitals up to the 150 percent UPL. These States were not previously entitled to a transition period and regardless of the effective date of such payment methodologies, we are not establishing a new transition period during which these States may make payments in excess of the 100 percent UPL. We have modified the regulation text at §§ 447.272(e) and 447.321(e) to clarify that States with payment methodologies that provide for payments to non-State government-owned or operated hospitals up to the 150 percent UPL do not qualify for a transition period. Such States must reduce such payments to comply with the 100 percent UPL as of the effective date of this rule.

Comment: Several commenters pointed out that States have already factored Medicaid monies gained through the 150 percent UPL into their State budgets for health care expenditures. Other commenters pointed out that at the very least States that relied on the final rule in developing their biennial budgets should be afforded a transition. Several commenters further noted that it is unfair to allow transition periods for some facilities to come into compliance with the 100 percent UPL, but not permit States that recently began using the 150 percent UPL to use similar transition periods. They believe it unfairly penalizes States that have more recently used the 150 percent UPL funds. Several commenters also noted that not allowing a transition period from the 150 percent UPL to the 100 percent UPL is arbitrary and capricious.

Response: Although we acknowledge that States may have established budgets based on the 150 percent UPL, the higher UPL has only been in effect since March 2001. The impact of the reduced funding available to public hospitals through the rule published on January 12, 2001 is mitigated by the transition periods contained in that rule, as well as those in the rule published on September 5, 2001. Furthermore, the transition periods contained in prior regulations apply equally to all States and all State payment methodologies. The transition periods are designed to mitigate the impact of the creation of new categories of providers subject to an aggregate 100 percent UPL. All States that meet the requirements of one or more transition periods will be able to reduce their payments gradually based on the schedules in the transition periods. However, as previously noted, the 150 percent UPL has only been in place since March 2001, and, therefore, States have not developed the same reasonable reliance on that higher UPL as they have on payments that were in place for several years. In the absence of any reasonable reliance on higher payment levels, we do not agree that additional modification of the transition periods is required.

Comment: One commenter requested that we clarify our intention in applying the 100 percent UPL to States that qualify for a transition period.

Response: For States that qualify for the 5 and 8 year transition periods, the maximum amount allowable during each transition period will be based on a percentage of the 100 percent UPL during each year. For example, during the 8-year transition period, for State FY 2006, a State may pay up to the 100 percent UPL for State FY 2006, plus 55 percent of the State's excess payment above 100 percent during the base year. Had we not published this rule, the State would be able to pay up to the 150

percent UPL for State FY 2006, plus 55 percent of the State's excess payment above 150 percent during the base year. For States that qualify for the 2-year transition period, payments must be reduced to the 100 percent UPL as of October 1, 2002.

Reporting Requirements

Comment: One commenter pointed out that the 150 percent UPL was put in place less than one year ago. When the higher UPL was established, we also created requirements for States to report to us how they were spending Medicaid funds under the 150 percent UPL. The commenter recommended that we delay implementing a reduction in the 150 percent UPL until we have evaluated those reports. Another commenter recommended that we allow more time to evaluate the effects of the January 12, 2001 final rule to allow a more balanced response to any legitimate concerns that might be found to exist.

Response: Our reporting requirements are not sufficiently detailed to allow us to evaluate State spending in the manner suggested by the commenters. Regardless, our decision to reduce the UPL for public hospitals to 100 percent is not based on the reporting requirements associated with the higher UPL. Based on a number of detailed reports by the OIG, it has become clear that Federal funding being claimed for excessive payments was not always being used by the public hospitals themselves; instead a portion of the Federal funding was being used to substitute for State funding. This is clearly inappropriate in the context of a joint Federal-State program and we do not see any reason to delay reducing the UPL to a level that would limit these abuses.

Comment: One commenter suggested that if additional reporting is required, the staffing for preparing the data and reports should be eligible for enhanced Federal match at 90 percent due to the extensive additional workload. Another commenter urged that the reporting requirements be strengthened to include the level of IGTs or other funds provided by or on behalf of health care providers in UPL arrangements.

Response: We have evaluated the impact of the reporting requirements in the regulatory impact section below. As noted in a previous comment, we are decreasing the reporting requirements in this regulation. As we also previously noted, this rule does not address the States' abilities to transfer funds. Accordingly, such a reporting requirement would have no bearing on the intent of this final rule.

Impact on State Plan Amendments

Commenter: One commenter has asked what effect this final rule will have on those 150 percent UPL State plans submitted before publication of the proposed rule, but which have not been approved.

Response: We reviewed and approved numerous State plans submitted before we issued the proposed rule that permitted 150 percent UPL payments. These amendments were reviewed based upon the current regulation in effect at the time of review. Unless these amendments qualify for a transition period, however, as of the effective date of this rule, no payments may be made that exceed the revised UPL. The requirements contained in this regulation will not take effect until 60 days after the publication of the regulation and, at that time, we will disapprove any pending amendments that would provide for payments that exceed the UPL in effect. Any new State plan amendments submitted on or after the effective date will be disapproved to the extent that payments would exceed the revised UPL.

Commenter: One commenter stated that States with already approved State plans that allow UPL payments up to 150 percent should be exempted from the proposed rule.

Response: We can not legally exempt from this rule States with approved State plan amendments supporting a higher UPL. We will handle all States equally with respect to the UPL. We can and have allowed States that qualify for transition periods to continue to have those transition periods at a lower level of Federal funding.

Miscellaneous

Comment: Several commenters indicated that we should consider the number of proposals the OIG has made including requiring annual audits of UPL calculations; providing definitive guidance on calculating the UPL that is uniform to all States; and requiring States to demonstrate that the enhanced payments are actually made available to the facilities and that these payments are for approved Medicaid services only. Another commenter indicated that we have an obligation to analyze the problem much more thoroughly and exercise our already broad authority to control the UPL problem using more appropriate methods targeted to the situation. For example, we could issue guidelines to clarify how States are actually calculating their upper payment limits and that Medicaid payments are reasonable and are being retained by the provider. Other commenters suggested alternatives to issuing a final rule. For example, we could reinstate the previous practice of requiring States to submit assurances that the UPL has not been exceeded.

Response: We want to curtail unnecessary spending in a way that results in the least amount of burden administratively on the States and the Federal government. The quickest way to reduce unnecessary spending is to stop the funding stream soon after the States begin to rely on it. In addition, we are considering increasing our oversight activities with respect to evaluating States' enhanced payments. The majority of the State plan proposals submitted since the effective date of the January 12, 2001 rule required hospitals to either fund the State's share of the costs of the 150 percent UPL payment or transfer part of the UPL payment back to the State or local government. In our view, the 100 percent UPL is adequate reimbursement as long as the States allow hospitals to retain the Medicaid payment. Furthermore, we do not see how creating a requirement that States submit assurances would result in the savings anticipated in this final rule.

Comment: One commenter suggested that abuses of the system be corrected on a case-by-case basis instead of by imposition of a broad based policy.

Response: We feel strongly that the problem being corrected in this rule is of national importance and is most appropriately addressed by this rule, rather than pursuing abuses based on other authorities on a case-by-case basis. As noted earlier, we want to limit any unnecessary spending that would result in burdensome administrative proceedings for the States and the Federal government. To track and evaluate each case of possible abuse would also require additional resources not currently available.

Comment: One commenter suggested that we have not met the requirements of the Administrative Procedure Act (APA) in publishing this rule. The commenter noted that relevant case law regarding the APA permits an agency to change a regulation if it can demonstrate good cause for making the change and can clearly explain the reasons for its departure from its prior stance. The commenter noted that before the January 12, 2001 rule took effect, the President announced a proposal to modify this UPL. The commenter believes we cannot articulate a reasonable basis for our policy reversal and, as a result, we cannot meet the requirements of the APA.

Response: We disagree. In publishing this rule, we have adhered to the law. In publishing this rule, we have based

our actions on a review of the OIG reports pertaining to UPL payments as well as our own review of the new State plan amendments submitted after the January 2001 rule took effect and our further analysis of the requirements of the Medicaid statute. This additional information and analysis underlay the President's proposal to modify the UPL, and the proposal has been promulgated using full notice and comment procedures. Therefore, this regulatory action to modify the UPL does not violate the APA.

Comment: One commenter stated that in attempting to implement the proposed regulation immediately, we are violating rulemaking requirements for the effective date of a regulation. In addition, the commenter believes that we are attempting to evade the rulemaking requirements contained in Executive Order 12866 by failing to make a serious effort to evaluate existing law and regulations.

Response: We have not implemented these proposed regulations to date, nor do we have any intention of so doing until the effective date stated in this rule. This effective date is consistent with all requirements of law. Furthermore the results intended to be achieved by this rule are fully consistent with the Medicaid statute and we believe are necessary to ensure the fiscal integrity of the Medicaid program. The Medicaid statute contains a formula for the Federal and State shares of expenditures; as explained above, the 150 percent UPL has been a means for States to effectively claim a higher Federal share than warranted. The payments that States are permitted to make to hospitals consistent with the revised UPL are sufficient to pay the full reasonable costs to hospitals of serving the Medicaid population, and will assure access to those hospitals for Medicaid beneficiaries. The revised UPL will assure that payments will be consistent with ''efficiency, economy and quality of care'' as required by section 1902(a)(30)(A) of the Social Security Act. The Medicaid statute has specific provisions for the additional payments to assist disproportionate share hospitals but does not contemplate other general assistance to hospitals, or use of excessive payments as mechanisms to finance general State obligations. In section VI below, we set forth our full regulatory impact analysis.

IV. Provisions of the Final Regulations

We are adopting the provisions of the regulations text in the November 23, 2001 proposed rule as final. In response to comments, we have modified §§ 447.272(e) and 447.321(e) to clarify that States with payment methodologies that provide for payments to non-State government-owned or operated hospitals up to the 150 percent of the UPL do not qualify for a transition period.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we have solicited public comment on each of these issues for the information collection requirements discussed below.

Section 447.272 Inpatient Services: Application of Upper Payment Limits

Under paragraph (f), *Reporting requirements for payments during the transition periods,* States that are eligible for a transition period described in § 447.272(e), and that make payments that exceed the limit under § 447.272(b) must report annually the following information to CMS:

(1) The total Medicaid payments made to each facility for services furnished during the entire State fiscal year.

(2) A reasonable estimate of the amount that would be paid for the services furnished by the facility under Medicare payment principles.

We estimate that there would be 57 reports filed the first year and that they would take 8 hours, for a total of 456 hours. The number of reports and corresponding burden would decrease each year.

Section 447.321 Outpatient Hospital and Clinic Services: Application of Upper Payment Limits

Under paragraph (f), *Reporting requirements for payments during the transition periods,* States that are eligible for a transition period described in § 447.321(e), and that make payments that exceed the limit under § 447.321(b), would have to report annually the following information to CMS:

(1) The total Medicaid payments made to each facility for services furnished during the entire State fiscal year.

(2) A reasonable estimate of the amount that would be paid for the services furnished by the facility under Medicare payment principles.

We estimate that there would be 31 reports filed the first year under this section and that it would take 8 hours to complete one report, for a total of 248 hours. The number of reports and corresponding burden would decrease over the next 8 years.

The particular information collection requirements contained in these two sections were published in the January 12, 2001 final rule. We are revising these requirements by eliminating the reporting requirement that States report hospital expenditures up to the 150 percent UPL, consistent with its elimination in this final rule. This would reduce the reporting burden by 31 reports (for the 31 States noted in section VI.B of this final rule) and 248 hours of burden.

We submitted an emergency request for approval of the information collection requirements associated with the January 12, 2001 final rule to OMB for review of the requirements in §§ 447.272 and 447.321. These sections have been approved by OMB under OMB number 0938–0855 through May 2002 and are now in effect. We plan to submit a revised request for approval to OMB shortly that incorporates the elimination of the reporting requirement that States report hospital expenditures up to 150 percent of the UPL. This change will not become effective until approved by OMB.

VI. Regulatory Impact Analysis

A. Introduction

We have examined the impact of this final rule as required by Executive Order (EO) 12866, the Unfunded Mandates Reform Act of 1995, and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). EO 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects

($100 million or more in any one year). We consider this a major rule and provide an analysis below.

B. Overall Impact

We have identified approximately 31 States with State plan amendments that may provide for payments to non-State government-owned or operated hospitals for inpatient or outpatient services in excess of the 100 percent UPL. These plans currently account for approximately $3 billion in Federal spending annually. This estimate is based on State-reported Federal fiscal information submitted with State plan amendments and State expenditure information, where available. In addition, we expect that, absent rulemaking, additional States would submit amendments to increase spending above the 100 percent UPL in the future. Estimates of these increased costs, both current and future, are included in the President's FY 2002 Medicaid budget baseline. Based on these budget estimates, we estimate that removing the higher UPL for non-State government-owned or operated hospitals reduces potential Federal costs by about $9 billion over fiscal years 2002 through 2006.

C. Impact on Small Entities and Rural Hospitals

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million to $25 million (see 65 FR 69432) or less annually. For purposes of the RFA, all hospitals are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant number of small entities, including small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

The purpose of this rule is to promote fiscal integrity to the Medicaid program and restore an appropriate balance between the Federal government and States with respect to funding the Medicaid program. This rule is necessary because, as the OIG concluded in a report dated September 11, 2001, States' use of intergovernmental transfers as part of enhanced payment programs was a financing mechanism designed to maximize Federal Medicaid reimbursements, thus effectively avoiding Federal/State matching requirements.

We believe the UPL in this final rule may potentially have a significant impact on small entities, including rural hospitals. Nationwide, we believe there are approximately 1,275 non-State government-owned or operated hospitals that could potentially be affected by this rule. We included facilities in all 50 States in this estimate because although not every State is currently making enhanced payments to non-State government-owned or operated hospitals, this rule will prevent new proposals from all States in the future. We believe that the 100 percent payment limit permits States to set fair and appropriate rates to non-State government-owned or operated hospitals for services provided to Medicaid beneficiaries. Even if States were paying rates to public hospitals to help subsidize the cost of care to non-Medicaid eligible individuals, the impact of this final rule will be mitigated due to several factors:

- First, if these hospitals are treating large numbers of indigent patients, they should be eligible to qualify as a disproportionate share hospital. Under both the Medicaid and Medicare program, supplemental funding is available to assist hospitals that serve a disproportionate share of indigent patients. In Federal fiscal year 2000, the Federal government provided more than $8.4 billion in financial assistance to safety net hospitals through the Medicaid DSH program. As noted previously, the Congress provided additional funding to public safety net hospitals by increasing the hospital-specific DSH limits from 100 percent to 175 percent of a hospital's reasonable costs of treating the uninsured and Medicaid beneficiaries for a period of two fiscal years beginning after September 30, 2002.
- Second, payment methodologies in excess of the January 12, 2001 final rule may qualify for one of the transition periods described in §§ 447.272(e) and 447.321(e). State payment methodologies that qualify for one of the transition periods would continue to qualify under this final rule; the only difference is that payments to non-State government-owned or operated hospitals must be reduced over the transition period to a 100 percent UPL rather than a 150 percent UPL. Currently, we believe that two States qualify for the 8-year transition period, four States for the 5-year transition period, and two States for the 2-year transition period. From 2002 through 2006, these States will require approximately $2.9 billion because of the transition periods allowed for in the rule.
- Third, the OIG issued a report on September 11, 2001 stating that the higher UPL for non-State government-owned or operated hospitals has not been adequately supported through an analysis of these hospitals' financial operations. To the extent that States now pay providers efficient rates that are retained by these providers, we do not believe States will be able to further reduce these rates.

We received comments on the impact analysis stating that we did not adequately consider the impact on these entities and that in fact monies paid under the 150 percent UPL were in fact retained by these facilities. The commenters also noted that the OIG did not specifically look at the 150 percent UPL. In addition, commenters noted that CMS did not effectively analyze the effects of the 150 percent UPL before issuing this new rule.

We believe that the OIG reports confirmed our subsequent analysis that States did not use these excess funds as part of the proper State and Federal match for the Medicaid program for any facilities, including non-State government-owned and operated hospitals. In fact, the OIG concluded that even in those cases where UPL enhanced payments were retained by public hospitals, these hospitals would instead return the majority of any Medicaid DSH payments to their State via intergovernmental transfers. States appear to have been replacing DSH payments with UPL enhanced payments, even though Medicaid DSH payments are specifically intended to help hospitals that provide care to a large number of Medicaid beneficiaries and uninsured patients.

D. Other Alternatives Considered

Section 1902(a)(30) of the Act requires in part that Medicaid service payments be consistent with efficiency and economy. In addition to the interpretation we are providing in this final rule, we considered several other alternatives to ensure that Medicaid service payments are consistent with efficiency and economy. In this section, we will explain these other alternatives and why we did not select them.

1. Maintain a Higher Upper Limit for Non-State Government-Owned or Operated Facilities

Under this option, we would set the upper payment limit for non-State government-owned or operated hospitals at a level between 100 percent and 150 percent. There are several reasons for not pursuing this option. As we have stated earlier, we believe that payments above the 100 percent UPL have resulted in excessive payments to these hospitals that have either been returned to the State via intergovernmental transfers or used to replace DSH funding returned to the State. The information available to date indicates that States are combining higher payments to public hospitals with intergovernmental transfers to effectively raise their Federal match rate. Furthermore, both the Medicaid and Medicare program include disproportionate share programs that are intended to assist facilities in providing care and services to indigent patients.

2. ''Grandfathering'' Existing Arrangements

Under this option, we would not approve any new plan amendments after the effective date of the final rule but would allow those that have been approved to continue operating. This would permit States that are currently making excessive payments to non-State government-owned or operated hospitals to continue making those payments indefinitely. However, allowing some States to permanently continue making excessive payments solely because they were approved before this rule is published and effective would be inconsistent with our responsibility to administer the Medicaid program in an equitable manner.

3. Create a Facility-Specific Upper Payment Limit

Under this option, Medicaid spending would be limited to a provider-specific application of Medicare payment principles. FFP would not be available on the amount of Medicaid service payments in excess of what a provider would have been paid using Medicare payment principles. These limits would be applied to all hospitals, or just to public hospitals where the incentives for overpayment are significant. While a facility-specific limitation may be the most effective method to ensure State service payments are consistent with economy and efficiency, implementation of such an option would require significant additional reporting and recordkeeping requirements to verify compliance.

We believe that the transition periods provided to States in the January 12, 2001 rule, the 2-year increase in the DSH payment limit for public safety net hospitals enacted by the Congress, and the elimination of any reporting requirements on hospitals, should minimize the significant economic impact on small entities.

E. The Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies perform an assessment of anticipated costs and benefits before proposing any rule that may result in a mandated expenditure in any one year by State, local, or Tribal governments, in the aggregate, or by private sector, of $110 million. Because this final rule does not mandate any new spending requirements or costs, but rather limits aggregate payments to a group of hospitals, we do not believe it has any unfunded mandate implications.

F. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We do not believe this final rule in any way imposes substantial direct compliance costs on State and local governments or preempts or supersedes State or local law. However, we realize the reform of upper payment limits is an issue in which some States are very interested. Therefore, in addition to providing States with an opportunity to comment on the proposed rule, we have tried to afford States ample opportunities to express their interest and concerns as we have moved forward in developing reforms.

G. Executive Order 12866

In accordance with the provisions of executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs-health, health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

For reasons set forth in the preamble, the Centers for Medicare and Medicaid Services amends 42 CFR, chapter IV, part 447 as follows:

PART 447—PAYMENTS FOR SERVICES

1. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Amend § 447.272 as follows:
a. Revise paragraph (b).
b. Remove paragraph (c)(1).
c. Redesignate paragraph (c)(2) as (c)(1).
d. Redesignate paragraph (c)(3) as (c)(2).
e. Revise paragraph (d).
f. Revise paragraph (e)(1)(ii).
g. Redesignate paragraph (e)(2)(iii) as (e)(2)(iv).
h. Redesignate paragraph (e)(2)(ii)(C)(*8*) as paragraph (e)(2)(iii).
i. Add paragraph (e)(2)(v).
j. Revise paragraph (f).
The addition and revisions read as follows:

§ 447.272 Inpatient services: Application of upper payment limits.

* * * * *

(b) *General rules.* (1) Upper payment limit refers to a reasonable estimate of the amount that would be paid for the services furnished by the group of facilities under Medicare payment principles in subchapter B of this chapter.

(2) Except as provided in paragraph (c) of this section, aggregate Medicaid payments to a group of facilities within one of the categories described in paragraph (a) of this section may not exceed the upper payment limit described in paragraph (b)(1) of this section.

* * * * *

(d) *Compliance dates.* Except as permitted under paragraph (e) of this section, a State must comply with the upper payment limit described in paragraph (b)(1) of this section by one of the following dates:

(1) *For non-State government-owned or operated hospitals*—March 19, 2002.

(2) *For all other facilities*—March 13, 2001.

(e) *Transition periods*—* * *

(1) * * *

(ii) *UPL* stands for the upper payment limit described in paragraph (b)(1) of this section for the referenced year.

* * * * *

(2) *General rules.* * * *

(v) A State with an approved State plan amendment payment provision that makes payments up to 150 percent of the UPL described in paragraph (b)(1) of this section to providers described in

paragraph (a)(2) of this section does not qualify for a transition period.

(f) *Reporting requirements for payments during the transition periods.* States that are eligible for a transition period described in paragraph (e) of this section, and that make payments that exceed the upper payment limit under paragraph (b)(1) of this section, must report annually the following information to CMS:

(1) The total Medicaid payments made to each facility for services furnished during the entire State fiscal year.

(2) A reasonable estimate of the amount that would be paid for the services furnished by the facility under Medicare payment principles.

3. Amend § 447.321 as follows:

a. Revise paragraphs (b) through (d).

b. Revise paragraph (e)(1)(ii).

c. Redesignate paragraph (e)(2)(iii) as (e)(2)(iv).

d. Redesignate paragraph (e)(2)(ii)(C)(*8*) as paragraph (e)(2)(iii).

e. Add paragraph (e)(2)(v).

f. Revise paragraph (f).

The addition and revisions read as follows:

§ 447.321 Outpatient hospital and clinic services: Application of upper payment limits.

* * * * *

(b) *General rules.* (1) Upper payment limit refers to a reasonable estimate of the amount that would be paid for the services furnished by the group of facilities under Medicare payment principles in subchapter B of this chapter.

(2) Except as provided in paragraph (c) of this section, aggregate Medicaid payments to a group of facilities within one of the categories described in paragraph (a) of this section may not exceed the upper payment limit described in paragraph (b)(1) of this section.

(c) *Exception—Indian Health Services and tribal facilities.* The limitation in paragraph (b) of this section does not apply to Indian Health Services facilities and tribal facilities that are funded through the Indian Self-Determination and Education Assistance Act (Public Law 93–638).

(d) *Compliance dates.* Except as permitted under paragraph (e) of this section, a State must comply with the upper payment limit described in paragraph (b)(1) of this section by one of the following dates:

(1) *For non-State government-owned or operated hospitals*—March 19, 2002.

(2) *For all other facilities*—March 13, 2001.

(e) *Transition periods*—* * *

(1) * * *

(ii) *UPL* stands for the upper payment limit described in paragraph (b)(1) of this section for the referenced year.

* * * * *

(2) *General rules.** * *

(v) A State with an approved State plan amendment payment provision that makes payments up to 150 percent of the UPL described in paragraph (b)(1) of this section to providers described in paragraph (a)(2) of this section does not qualify for a transition period.

(f) *Reporting requirements for payments during the transition periods.* States that are eligible for a transition period described in paragraph (e) of this section, and that make payments that exceed the limit under paragraph (b)(1) of this section, must report annually the following information to CMS:

(1) The total Medicaid payments made to each facility for services furnished during the entire State fiscal year.

(2) A reasonable estimate of the amount that would be paid for the services furnished by the facility under Medicare payment principles.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: January 14, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: January 15, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–1482 Filed 1–17–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket RSPA–97–2995; Notice 9]

Pipeline Drug Testing; Random Testing Rate

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of random drug testing rate.

SUMMARY: Each year, a minimum percentage of covered pipeline employees must be randomly tested for prohibited drugs. The percentage, either 50 percent or 25 percent, depends on the positive rate of random testing reported to RSPA in the previous year. In accordance with applicable standards, we have determined that the positive rate of random testing reported this year for testing in calendar year 2000 was less than 1.0 percent. Therefore, in calendar year 2002, the minimum annual percentage rate for random drug testing is 25 percent of covered employees.

DATES: Effective January 1, 2002, through December 31, 2002, at least 25 percent of covered employees must be randomly drug tested.

FOR FURTHER INFORMATION CONTACT: L. M. Furrow by phone at 202–366–4559, by fax at 202–366–4566, by mail at U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, or by e-mail at *buck.furrow@rspa.dot.gov.*

SUPPLEMENTARY INFORMATION: Operators of gas, hazardous liquid, and carbon dioxide pipelines and operators of liquefied natural gas facilities must annually submit Management Information System (MIS) reports of drug testing done in the previous calendar year (49 CFR 199.119(a)). One of the uses of this information is to calculate the minimum annual percentage rate at which operators must randomly drug test all covered employees during the next calendar year (49 CFR 199.105(c)(2)). If the minimum annual percentage rate for random drug testing is 50 percent, we may lower the rate to 25 percent if we determine that the positive rate reported for random tests for two consecutive calendar years is less than 1.0 percent (49 CFR 199.105(c)(3)). If the minimum annual percentage rate is 25 percent, we will increase the rate to 50 percent if we determine that the positive rate reported for random tests for any calendar year is equal to or greater than 1.0 percent (49 CFR 199.105(c)(4)). Part 199 defines ''positive rate'' as ''the number of positive results for random drug tests * * * plus the number of refusals of random tests * * *, divided by the total number of random drug tests * * * plus the number of refusals of random tests. * * *''

Through calendar year 1996, the minimum annual percentage rate for random drug testing in the pipeline industry was 50 percent of covered employees. Based on MIS reports of random testing done in 1994 and 1995, we lowered the minimum rate from 50 to 25 percent for calendar year 1997 (61 FR 60206—November 27, 1996). The minimum rate remained at 25 percent in calendar years 1998 (62 FR 59297—Nov. 3, 1997); 1999 (63 FR 58324—Oct. 30, 1998); 2000 (64 FR 66788—Nov. 30, 1999), and 2001 (65 FR 81409—Dec. 26, 2000).

Using the MIS reports received this year for drug testing done in calendar year 2000, we calculated the positive rate of random testing to be 0.6 percent. Since the positive rate continues to be less than 1.0 percent, we are announcing that the minimum annual percentage rate for random drug testing is 25 percent of covered employees for the period January 1, 2002, through December 31, 2002.

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60117, and 60118; 49 CFR 1.53.

Issued in Washington, DC, on December 31, 2001.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 02–261 Filed 1–17–02; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register
Vol. 67, No. 13
Friday, January 18, 2002

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–05]

Proposed Modification of Class E Airspace; St. James, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class E airspace at St. James, MN. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 15, and an RNAV SIAP to Rwy 33, have been developed for St. James Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action would increase the radius of the existing controlled airspace for St. James Municipal Airport.

DATES: Comments must be received on or before February 17, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 01–AGL–05, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 01–AGL–05.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at St. James, MN, for St. James Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005: Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 St. James, MN [REVISED]
St. James Municipal Airport, MN
(lat. 43°59′11″N., long. 94°33′29″W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the St. James Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on December 5, 2001.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–1012 Filed 1–17–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–227]

RIN 2115–AA97

Safety and Security Zones; High Interest Vessels—Boston Harbor, Weymouth Fore River, and Salem Harbor, Massachusetts

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard proposes to establish safety and security zones for vessels determined to be high interest vessels (HIVs) by the Captain of the Port (COTP), Boston. The safety and security zones would close all waters of Boston Harbor, the Weymouth Fore River Channel, and Salem Harbor 1000 yards ahead and astern and 200 yards on each side of an HIV in transit or at anchor. The zones will prohibit entry into or movement within this portion of the COTP Boston zone without Captain of the Port authorization. These safety and security zones are needed to safeguard the vessels, the public, and the surrounding area from sabotage or other subversive acts, accidents, or other events of a similar nature.

DATES: Comments and related material must reach the Coast Guard on or before February 28, 2002. The public meeting will be held on February 20, 2002 from 11 a.m. to 1 p.m. Further public meetings will be scheduled if necessary.

ADDRESSES: You may mail comments and related material to Marine Safety Office Boston, 455 Commercial Street, Boston, MA. Marine Safety Office Boston maintains the public docket for this rulemaking. Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of the docket and will be available for inspection or copying at Marine Safety Office Boston between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The public meeting will be held at the Black Falcon Cruise Terminal, located at One Black Falcon Avenue Boston, Massachusetts.

FOR FURTHER INFORMATION CONTACT: LT Dave Sherry, Marine Safety Office Boston, Maritime Security Operations Division, at (617) 223–3067.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–01–227), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your comments reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

The Coast Guard plans to hold a public meeting within the comment period on February 20, 2002 from 11 a.m. to 1 p.m. at the Black Falcon Cruise Terminal, located at One Black Falcon Avenue Boston, Massachusetts, to discuss the proposed high interest vessel security zones. This date coincide with the monthly Port Operators Group meeting, which provides the best forum to discuss the proposed rulemaking. For information regarding this meeting contact LT Dave Sherry at the address listed under **ADDRESSES.** If you wish to hold additional meetings, you may contact LT Dave Sherry with a request in writing explaining why one would be beneficial. If we determine an additional meeting would aid in this rulemaking, we will extend the comment period and hold one at a time and place announced by a later notice in the **Federal Register**. Those who wish to comment on the proposed rulemaking but cannot attend the public meeting may submit written comments to LT Dave Sherry at the address listed under **ADDRESSES.**

Background and Purpose

On September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, Massachusetts and flown into the World Trade Center in New York, New York inflicting catastrophic human casualties and property damage. A similar attack was conducted on the Pentagon on the same day. National security and intelligence officials warn that future terrorist attacks are likely. Due to these heightened security concerns, safety and security zones are prudent for vessels which may be likely targets of terrorist acts. This regulation proposes to establish safety and security zones for high interest vessels (HIVs). These zones would close all waters of Boston Harbor, the Weymouth Fore River Channel, and Salem Harbor 1000 yards ahead and astern, and 200 yards on each side of an HIV in transit or at anchor.

For the purposes of this rule, high interest vessels operating in Boston Harbor, Salem Harbor or the Weymouth Fore River, include the following: Barges or ships carrying gasoline, chlorine, anhydrous ammonia, or any other bulk hazardous chemicals or other cargo deemed to be high interest by the Captain of the Port; passenger vessels; or any other vessels deemed to be of high interest by the Captain of the Port, Boston under the circumstances. For purposes of this rule, neither small passenger vessels regulated by 33 Code of Federal Regulations, subchapter T, nor liquefied natural gas carrier vessels will be considered HIVs.

Whether a vessel is considered high interest is determined by the Captain of the Port (COTP) Boston based on the potential threat posed by the vessel to the safety and/or security to the maritime community, the crews or passengers of the HIVs, and the surrounding communities from subversive or terrorist attack.

These proposed safety and security zones would prohibit entry into or movement in all waters 1000 yards ahead or astern, and 200 yards on each side of any HIV in the following waters of the Boston Captain of the Port Zone: (1) All waters of Boston Inner Harbor,

including the waters of the Mystic River, Chelsea River, and Reserved Channel west of a line running from Deer Island Light at position 42°20′25″N, 070°57′15″W to Long Island at position 42°19′48″N, 070°57′15″W, and west of the Long Island Bridge, running from Long Island to Moon Head; (2) in Salem Inner Harbor, all waters southwest of a line running from Juniper Point at position 42°32′02″N, 070°51′52″W and Fluen Point at position 42°31′16″N, 070°51′12″W; and (3) all waters of the Weymouth Fore River Channel, Hingham Bay and Hull Bay south of a line running from Windmill Point at position 42°18′14″N, 070°55′19″W to Peddocks Island at position 42°18′10″N, 070°55′38″W and a east of a line running across West Gut from West Head at position 42°17′13″N, 070°56′55″W and Nut Island at position 42°16′48″N, 070°57′15″W.

The safety and security zones are necessary to protect the HIVs, their crews and/or passengers, others in the maritime community, and the surrounding communities from subversive or terrorist attack against a vessel which could, by the nature of its cargo or the destructive capability of the vessel structure itself, potentially cause serious negative impact to vessels, the port, or the environment. Safety and security zones are necessary to protect passenger vessels due to the their potential as a target of subversive or terrorist attack from the water, which could result in numerous casualties.

The Captain of the Port anticipates some impact on vessel traffic due to this proposed regulation. However, the safety and security zones are deemed necessary for the protection of life and property within the COTP Boston zone. Public notifications will be made prior to the effective period via local notice to mariners and marine information broadcasts.

No person or vessel may enter or remain in a prescribed safety or security zone at any time without the permission of the Captain of the Port. Each person or vessel in a safety or security zone shall obey any direction or order of the Captain of the Port. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port.

Any violation of any safety or security zone proposed herein, is punishable by, among others, civil penalties (not to exceed $25,000 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than $100,000), in rem liability against the offending vessel, and license sanctions. This regulation is proposed under the authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225 and 1226.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this proposed regulation will prevent traffic from transiting a portion of Boston Harbor, the Weymouth Fore River Channel, and Salem Harbor during HIV operations, the effect of this regulation will not be significant due to the minimal time that vessels will be restricted from the area, vessels can pass safely around the zones, and advance notifications will be made to the local maritime community by marine information broadcasts.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Boston Harbor, the Weymouth Fore River Channel, and Salem Harbor during HIV operations. This proposed rule will not have a significant economic impact on a substantial number of small entities because the zone is limited in duration, vessels can pass safely around the zones, and the Coast Guard will issue marine information broadcasts before the effective period widely available to users of the harbor.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Dave Sherry at the address listed under **ADDRESSES.**

Collection of Information

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

Federalism

The Coast Guard analyzed this proposed rule under Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lD, this proposed rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add § 165.114 to read as follows:

§ 165.114 Safety and Security Zones: High Interest Vessel-Boston Harbor, Weymouth fore River, and Salem Harbor, Massachusetts.

(a) *Location.* The following waters within the Boston Captain of the Port Zone 1000 yards ahead and astern, and 200 yards on each side of any High Interest vessel are established as safety and security zones: (1) All waters of Boston Inner Harbor, including the waters of the Mystic River, Chelsea River, and Reserved Channel west of a line running from Deer Island Light at position 42°20′25″N, 070°57′15″W to Long Island at position 42°19′48″N, 070°57′15″W, and west of the Long Island Bridge, running from Long Island to Moon Head; (2) in Salem Inner Harbor, all waters southwest of a line running from Juniper Point at position 42°32′02″N, 070°51′52″W and Fluen Point at position 42°31′16″N, 070°51′12″W; and (3) all waters of the Weymouth Fore River Channel, Hingham Bay and Hull Bay south of a line running from Windmill Point at position 42°18′14″N, 070°55′19″W to Peddocks Island at position 42°18′10″N, 070°55′38″W and a east of a line running across West Gut from West Head at position 42°17′13″N, 070°56′55″W and Nut Island at position 42°16′48″N, 070°57′15″W.

(b) *High interest vessels.* For the purposes of this rule, high interest vessels operating in Boston Harbor, Salem Harbor or the Weymouth Fore River, include the following: barges or ships carrying gasoline, chlorine, anhydrous ammonia, or any other bulk hazardous chemicals or other cargo deemed to be high interest by the Captain of the Port; passenger vessels; or any other vessels deemed to be of high interest by the Captain of the Port, Boston under the circumstances. For purposes of this rule, neither small passenger vessels regulated by 33 CFR, chapter 1, subchapter T, nor liquefied natural gas carrier vessels will be considered HIVs

(c) *Regulations.*

(1) In accordance with the general regulations in §§ 165.23 and 165.33, entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: January 9, 2002.

B.M. Salerno,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 02–1358 Filed 1–15–02; 3:13 pm]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 167

[USCG–2001–11201]

Port Access Routes Study; Along the Sea Coast and in the Approaches to the Cape Fear River and Beaufort Inlet, NC

AGENCY: Coast Guard, DOT.

ACTION: Notice of study; request for comments.

SUMMARY: The Coast Guard is conducting a Port Access Routes Study (PARS) to evaluate the need for vessel routing or other vessel traffic management measures along the sea coast of North Carolina and in the approaches to the Cape Fear River and Beaufort Inlet. The goal of the study is to help reduce the risk of marine casualties and increase vessel traffic management efficiency in the study area. The recommendations of the study may lead to future rulemaking action or appropriate international agreements.

DATES: Comments and related material must reach the Docket Management Facility on or before March 19, 2002.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2001–11201), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this document. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will

become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of study, call Tom Flynn, Project Officer, Aids to Navigation and Waterways Management Branch, Fifth Coast Guard District, telephone 757–398–6229, e-mail *TWflynn@lantd5.uscg.mil*; or George Detweiler, Office of Vessel Traffic Management, Coast Guard, telephone 202–267–0574, e-mail *Gdetweiler@comdt.uscg.mil*. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this study by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this notice of study (USCG–2001–11201), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this study, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Definitions

The following definitions should help you review this notice:

Area to be avoided (ATBA) means a routing measure comprising an area within defined limits in which either navigation is particularly hazardous or it is exceptionally important to avoid casualties and which should be avoided by all ships, or certain classes of ships.

Deep-water route is a route within defined limits, which has been accurately surveyed for clearance of sea bottom, and submerged obstacles as indicated on nautical charts.

Inshore traffic zone is a routing measure comprising a designated area between the landward boundary of a traffic separation scheme and the adjacent coast, to be used in accordance with the provisions of Rule 10(d), as amended, of the International Regulations for Preventing Collisions at Sea, 1972 (COLREGS).

Precautionary area means a routing measure comprising an area within defined limits where ships must navigate with particular caution and within which the direction of traffic flow may be recommended.

Recommended route means a route of undefined width, for the convenience of ships in transit, which is often marked by centerline buoys.

Recommended track is a route which has been specifically examined to ensure so far as possible that it is free of dangers and along which ships are advised to navigate.

Regulated Navigation Area (RNA) is a water area within a defined boundary for which regulations for vessels navigating within the area have been established under 33 CFR part 165.

Roundabout is a routing measure comprising a separation point or circular separation zone and a circular separation zone and a circular traffic lane within defined limits. Traffic within the roundabout is separated by moving in a counterclockwise direction around the separation point or zone.

Separation zone or separation line means a zone or line separating the traffic lanes in which ships are proceeding in opposite or nearly opposite directions; or from the adjacent sea area; or separating traffic lanes designated for particular classes of ships proceeding in the same direction.

Traffic lane means an area within defined width in which one-way traffic is established. Natural obstacles, including those forming separation zones, may constitute a boundary.

Traffic separation scheme (TSS) means a routing measure aimed at the separation of opposing streams of traffic by appropriate means and by the establishment of traffic lanes.

Two-way route is a route within defined limits inside which two-way traffic is established, aimed at providing safe passage of ships through waters where navigation is difficult or dangerous.

Vessel routing system means any system of one or more routes or routing measures aimed at reducing the risk of casualties; it includes traffic separation schemes, two-way routes, recommended tracks, areas to be avoided, inshore traffic zones, roundabouts, precautionary areas, and deep-water routes.

Background and Purpose

Port Access Route Study Requirements. Under the Ports and Waterways Safety Act (PWSA), the Secretary of Transportation may designate necessary fairways and TSS's to provide safe access routes for vessels proceeding to and from U.S. ports (33 U.S.C. 1223 (c)). The Secretary's authority to make these designations was delegated to the Commandant, U.S. Coast Guard, in 49 Code of Federal Regulations (CFR) 1.46. The designation of fairways and TSS's recognizes the paramount right of navigation over all other uses in the designated areas.

The PWSA requires the Coast Guard to conduct a study of port-access routes before establishing or adjusting fairways or TSS's. Through the study process, we must coordinate with Federal, State, and foreign state agencies (as appropriate) and consider the views of maritime community representatives, environmental groups, and other interested stakeholders. A primary purpose of this coordination is, to the extent practicable, to reconcile the need for safe access routes with other reasonable waterway uses.

Initial port access route study. The approaches to the Cape Fear River and Beaufort Inlet, NC were last studied in 1981, and the final results were published in the **Federal Register** on July 22, 1982 (47 FR 31766). The study concluded that ''there is no need to impose new ship routing measures such as TSS's or shipping safety fairways where fixed structures would be prohibited, in any'' area off the North Carolina coast.

Why is a new port access route study necessary? Vessel size, traffic density and channel depth and width have changed since the 1981 study. Major channel depth, width and alignment changes are currently underway in the Cape Fear River and port of Wilmington, NC. A PARS was initiated in 1996 (61 FR 35703; July 8, 1996), but was not completed due to personnel and funding issues.

The U.S. Army Corps of Engineers' (ACoE) report, ''Waterborne Commerce

of the United States'' reports that, from 1981 to 1999, annual trips to and from the Port of Wilmington, NC, increased from 10,060 to 24,190 or 140% and the number of trips to and from Morehead City, NC, decreased from 7,842 to 3,388 or 57%. Since 1981 the Army Corps of Engineers maintained Federal Navigation Project for the Cape Fear River ocean bar channel has increased the channel depth from 38 feet to 40 feet. Dredging is currently underway in the Cape Fear River, which will deepen the channels from the Atlantic Ocean to Wilmington to 42 feet and to 44 feet over the ocean bar. The project depth for Beaufort Inlet/Morehead City has increased from 42 feet to 45 feet.

Timeline, area, and process of this PARS. The Fifth Coast Guard District will conduct this PARS to determine the need to modify existing routing measures and the effects of potential modifications in the study area. The study will begin immediately and we anticipate the study will be completed by January 31, 2002.

The study area will encompass the area bounded by a line connecting the following geographic points (All coordinates are NAD 1983):

Latitude	Longitude
34°40′N	77°00′W
34°40′N	76°15′W
34°10′N	76°15′W
33°15′N	77°30′W
33°00′N	78°20′W
33°50′N	78°20′W
33°50′N	77°55′W

The study area encompasses the approaches to the Cape Fear River and Beaufort Inlet, as well as the area offshore of North Carolina used by commercial and public vessels transiting to and from these ports.

As part of this study, we will consider previous studies, analyses of vessel traffic density, and agency and stakeholder experience in vessel traffic management, navigation, ship handling, and effects of weather. We encourage you to participate in the study process by submitting comments in response to this notice.

We will publish the results of the PARS in the **Federal Register**. It is possible that the study may validate continued applicability of existing vessel routing measures and conclude that no changes are necessary. It is also possible that the study may recommend one or more changes to enhance navigational safety and vessel traffic management efficiency. Study recommendations may lead to future rulemakings or appropriate international agreements.

Potential Study Recommendations

We are attempting to determine the scope of any safety problems associated with vessel transits in the study area. We expect that information gathered during the study will identify any problems and appropriate solutions. The study may recommend that we—

- Maintain the current vessel routing measures;
- Establish a TSS in the Approaches to the Cape Fear River;
- Establish a TSS in the Approaches to Beaufort Inlet;
- Establish a TSS off North Carolina encompassing the routes typically used by merchant and naval vessels transiting the study area;
- Establish a Precautionary Area(s) near either or both Approaches;
- Establish an Inshore Traffic Zone(s) near either or both approaches;
- Establish an Area to be Avoided (ATBA) in shallow areas where the risk of grounding is present;
- Create Anchorage Grounds(s); and
- Establish a Regulated Navigation Area (RNA) with specific vessel operating requirements to ensure safe navigation near shallow water.

Questions

To help us conduct the port access route study, we request comments on the following questions, although comments on other issues addressed in this document are also welcome. In responding to a question, please explain your reasons for each answer, and follow the instructions under ''Request for Comments'' above.

1. What navigational hazards do vessels operating in the study area face? Please describe.

2. Are there strains on the current vessel routing system (increasing traffic density, for example)? If so, please describe.

3. Are modifications to existing vessel routing measures needed to address hazards and strains and improve traffic management efficiency in the study area? Why or why not? If so, what measures should the study of port-access routes address for potential implementation?

4. What costs and benefits are associated with the measures listed as potential study recommendations? What measures do you think are most cost-effective?

5. What impacts, both positive and negative, would changes to existing routing measures or new routing measures have on the study area?

Dated: December 27, 2001.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 02–1371 Filed 1–17–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3430 and 3470

[WO–320–1430–PB–24 1A]

RIN 1004–AD43

Coal Management: Noncompetitive Leases; Coal Management Provisions and Limitations

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The purposes of this proposed rule are to correct a technical error relating to coal lease modifications made in a final rule published on September 28, 1999 (64 FR 52239)(the 1999 rule), and to amend the regulations to reflect the statutory increase in the maximum acreage of Federal leases for coal that may be held by an individual or entity in any one state as well as nationally.

This rule would revise the regulations of the Bureau of Land Management (BLM) to reflect correction of a technical error regarding the requirement of a public hearing and publication (in the **Federal Register** and a general circulation newspaper) of a notice of availability of environmental analysis documents for coal lease modifications. This error was made in conjunction with the BLM's September 1999 regulatory revisions incorporating public participation procedures into the competitive coal leasing regulations.

DATES: Comments on the proposed rule must be received or postmarked by February 19, 2002, to be assured consideration in developing a final rule.

ADDRESSES: Mail: Director (630), Bureau of Land Management, Administrative Record, Room 401 LS, 1849 C Street, NW, Washington, DC 20240. Personal or messenger delivery: Room 401, 1620 L Street, NW, Washington, DC 20036.

For information about the requirements for filing comments and how to file comments electronically, see the **SUPPLEMENTARY INFORMATION** section under ''Public Comment Procedures and Information.''

FOR FURTHER INFORMATION CONTACT: Mary Linda Ponticelli at (202) 452–0350.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures and Information
II. Background
III. Discussion of the Rule
IV. Procedural Matters

I. Public Comment Procedures and Information

A. How Do I Comment on the Proposed Rule?

If you wish to comment, you may submit your comments by any one of several methods.

- You may mail comments to Director (630), Bureau of Land Management, Administrative Record, Room 401 LS, 1849 C Street, NW, Washington, DC 20240.
- You may deliver comments to Room 401, 1620 L Street, NW, Washington, DC 20036.

Please make your written comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing.

BLM may not necessarily consider or include in the Administrative Record for the final rule comments that you send after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I Review Comments Submitted by Others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under ''**ADDRESSES**: Personal or messenger delivery'' during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays.

Individual respondents may request confidentiality, which we will honor to the extent allowable by law. If you wish to withhold your name or address, except for the city or town, you must state this prominently at the beginning of your comment. 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.

II. Background

On September 28, 1999, in conjunction with a settlement agreement in the lawsuit, *Natural Resources Defense Council, et al.* v. *Jamison, et al.,* Civil No. 82–2763 (D. D.C.), the Bureau of Land Management (BLM) issued a final rule (64 FR 52239) to establish regulatory procedures by which the public may participate in the Bureau of Land Management's regional coal leasing process. We issued the final rule, which became effective on October 28, 1999, to satisfy terms of a July 1997 settlement agreement (Civil No. 82–2763 (D.C. Circuit No. 93–5029) in which the Department agreed to identify in BLM's regulations the points where the public may participate in regional coal leasing decisions. In addition, the final rule amended the regulations in part 3400 to conform to statutory changes under the Unfunded Mandates Reform Act of 1995, exempting several types of meetings from Federal Advisory Committee Act requirements.

A. Lease Modifications

Section 3432.3, which addresses the terms and conditions of a coal lease modification, currently requires compliance with the provisions of 43 CFR 3425.3. At the time we wrote the regulations in subpart 3432 governing lease modifications, former § 3425.3(a), addressing lease modification terms and conditions, similarly provided that BLM could not modify a lease until you met the requirements of § 3425.3. Former § 3425.3 required BLM to prepare an environmental assessment or impact statement before approving a lease modification.

To incorporate public participation procedures addressed in BLM's Competitive Coal Leasing Handbook, the 1999 regulatory revision to 43 CFR 3425.3 included the additional requirements of—

(1) A public hearing, and

(2) publication of notices of availability of the environmental analysis document for coal leasing.

By means of the cross-reference in § 3432.3(c), these new requirements imposed on new lease sales in § 3425.3 by the 1999 rule automatically applied to lease modifications under § 3432.3. We did not intend this to be the effect of the 1999 rule.

In revising the competitive coal leasing regulations (43 CFR part 3420) to incorporate public participation procedures for competitive leasing, we intended to impose the requirements of a public hearing and publication of notices of availability of draft environmental analysis documents only on new coal lease sales, not on non-competitive coal lease modifications issued under subpart 3432. Therefore, our failure to remove the cross reference in § 3432.3(c) to the requirements of § 3425.3 when we revised the latter in 1999 was a technical error, which we propose to correct in this rule.

Lease modifications often ensure the recovery and receipt of fair market value of small areas of unleased Federal coal that may be discovered during the mining of an adjacent Federal coal lease. In many cases, BLM must process a modification expeditiously to avoid the bypass of unleased Federal coal. Unlike competitive coal leasing, where the lease acreage may be up to 5,120 acres, the maximum allowable acreage for lease modifications is a total of 160 acres per lease, regardless of the number of times BLM modifies the lease. Due to variability in exploration data and the coal geology, these small areas of unleased Federal coal are not easily identified with the limited data available when we originally configure a lease. Such areas typically cannot be developed as an independent lease because of their size and configuration. Therefore, incorporation of these areas into an existing coal lease through a coal lease modification facilitates achieving fair market value and maximum economic recovery of Federal coal resources.

Section 3432.3(c) provides that BLM cannot approve a lease modification until the lessee or operator complies with the provisions of § 3425.3. Although § 3425.3 currently contains specific procedures relating to the preparation of environmental analysis documents, its focus is competitive lease sales. Since the 1999 revised version of § 3425.3 applies exclusively to competitive coal leasing, it is not intended to apply to a lease modification. The change in this proposed rule would eliminate the recently imposed requirement of publication of notices of availability and a public hearing for environmental analysis documents relating to coal lease modifications. This is in keeping with the intent of the *Natural Resources Defense Council* lawsuit settlement agreement, which did not extend to non-competitive coal lease modifications. It is also consistent with the preamble to the existing rule (64 FR 12142, March 11, 1999), which stated: ''This proposed rule does not substantially change the leasing-on-application process.''

B. Acreage Limitation

On October 23, 2000, the United States Senate passed S. 2300, which became Public Law 106–463 on November 7, 2000. This law, known as the Coal Competition Act of 2000, amended Section 27(a) of the Mineral Leasing Act (30 U.S.C. 184(a)) to increase the amount of acreage of

Federal coal leases, or permits that an individual or entity may hold in a single state from 46,080 acres to 75,000 acres and raised the national acreage limit from 100,000 acres to 150,000 acres.

As noted in Public Law 106–463, the Federal lands containing some of the nation's large commercial deposits of coal are located in Utah, Montana, and Wyoming. The acreage limitations are causing difficulty for coal producers in Wyoming and Utah. The sub-bituminous coal from these mines is low in sulfur, making it the cleanest burning coal for energy production. The present acreage limitation of 46,080 acres per state for Federal coal leases has been in place since 1964, and was not changed with the passage of the Federal Coal Leasing Amendments Act of 1976. Congress recently raised the acreage limits for other minerals. For example, currently, the single-state lease acreage limit of 46,080 acres for coal is less than the single-state Federal lease limit for potassium (96,000 acres) and for oil and gas (246,080 acres).

Congress determined that the per-state increase in acreage to 75,000 acres and the national acreage increase to 150,000 acres is warranted by modern mine technology, changes in industry economics, greater global competition, and need to conserve the Federal resource. Increased acreage limits will help existing coal lessees avoid premature closure, make better long-term business decisions about infrastructure investments based on the certainty of more available acreage, and otherwise maintain the vitality of the domestic coal industry. Furthermore, the increase in acreage limits will ensure continuation of valuable revenues to Federal and state governments and energy to the American public from coal production on Federal lands.

The amount of acreage that any lessee or operator controls will have no effect on the MLA requirement to produce commercial quantities of coal within 10 years of lease issuance. The statutory penalty for not having met this requirement is cancellation of the lease (30 U.S.C. 184(h)(1)).

III. Discussion of the Rule

In order to correct the previously discussed technical error relating to lease modifications, we plan to amend regulation 43 CFR 3432.3 by removing the cross reference to 43 CFR 3425.3 and revising subsection (c). We have also added a new paragraph (d) to require review by the Secretary of Agriculture if the proposed coal lease modification affects National Forest System lands. This is not a new requirement. It appears in § 3425.3(b) of the current regulations, where it applies to new leases. The previous § 3432.3 applied this requirement to modifications as well by means of a cross-reference. Since this proposed rule removes the cross-reference, we need to add the requirement itself to § 3432.3. There is no substantive change in the regulations, other than removing the unintended requirement for notice and a hearing on proposed coal lease modifications.

This rule also amends § 3472.1–3 to reflect the new coal lease acreage limits set by Public Law 106–463 by removing the references to the previous acreage limits, and substituting the new numbers established by Public Law 106–463.

IV. Procedural Matters

National Environmental Policy Act

BLM has prepared an environmental assessment (EA) and has found that this proposed rule would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). As discussed above, this rule would implement a technical correction to the public participation rule completed on September 28, 1999 (64 FR 52239) and a change to the Mineral Leasing Act which was made by Congress. The amendment of the Mineral Leasing Act changed the acreage limitations for coal leases. As stated in the EA, the proposed rule should lead to more efficient production and economic recovery of the coal resource. However, it should not in and of itself lead to new mining. While more efficient mining may have environmental consequences, BLM will consider these consequences on a case-by-case basis in preparing environmental analyses before issuing a new coal lease or modifying an existing one. Therefore, a detailed statement under NEPA is not required. We have placed the EA and the Finding of No Significant Impact (FONSI) on file in our Administrative Record at the address specified in the **ADDRESSES** section. We invite the public to review these documents and suggest that anyone wishing to submit comments in response to the EA and FONSI do so in accordance with the Written Comments section above.

Executive Order 12866, Regulatory Planning and Review

This proposed rule is not a significant regulatory action and was not subject to review by Office of Management and Budget under Executive Order 12866. This rule will not have an annual effect of $100 million or more on the economy. The rule affects coal leasing in only two ways: shortening the lease modification procedure, and increasing lease acreage limitations.

Further, historically, lease modifications have not had significant economic effects on the economy. In Fiscal Year 2000, there were 311 coal leases of various kinds, generating royalties of $315,166,348 on production of 392,943,074 tons of federal coal, with an average market value of $7.92 per ton, from 461,883 acres of public lands. Of these leases, in FY 2000, only 2 leases were subjects of lease modification. Since the maximum acreage that can be added by a modification is 160 for the life of the lease, it is clear that the economic effect of lease modifications is tiny compared with the coal program as a whole. The largest number of lease modifications that BLM has processed in the past few years has been 6, in FY 1998, affecting a total of 733 acres. Analyzing this strictly from averages, and using the value from FY 2000, the market value of coal affected by these modifications should have been about $4,738,000 in FY 1998, assuming, of course, that it all would have been immediately available for mining in that year. Total value for other recent years, based on the lower numbers and acreages of lease modifications shown in the accompanying chart, should have been only a fraction of this value. The following table summarizes lease modifications over the past few years.

BLM COAL LEASE MODIFICATIONS, FY1997–FY2001

State	FY1997		FY1998		FY1999		FY2000		FY2001 (through 06–30–2001)	
	Lease mods	Acres	Lease mods	Acres	Lease mods	Acres	Lease mods	Acres	Lease mods	Acres
Colorado	1	100	1	160	.....	.....	2	288	.....	.....
Kentucky	.....	.....	.....	.....	.....	.....	.....	.....	1	160
Montana	.....	.....	3	303	1	10	.....	.....	.....	.....
Utah	1	133	2	240	2	200	.....	.....	1	122
Total	2	233	6	703	3	210	2	288	2	282

Of course, since we do not know precisely how much coal was produced from the lease modifications shown, we state these dollar figures only to provide a sense of how small the effect of lease modifications is, compared with the threshold in the executive order. Further, the effect of the mistake that we are correcting in this rule was only to extend the time required and increase the cost of processing a lease modification. Therefore, the effects of this proposed rule amount to a financial benefit to the coal industry due to reducing the time required for lease modifications and the administrative cost of processing them for both industry and BLM, which will be something less than the value of the modification itself.

The estimated additional costs to the lessee for processing a lease modification application inadvertently imposed by the 1999 rule were based on a delay of 2 to 3 months for allowing public input. The reduced costs to BLM and the lease modification applicant from avoiding these delays are difficult to segregate and quantify. As a minimum, we estimate the savings in processing costs (for **Federal Register** processing and document preparation) will approach $10,000 per lease modification application. Assuming a average number of lease modification applications per year of 3, the total savings may be nearly $30,000.

The other element of savings created by this proposed rule is the reduction in opportunity costs. The unintended consequence of the 1999 rule was that some operators may not have been able to develop the resources contained in the lease modifications in a timely manner, or at all. Those costs would have been imposed if, due to the additional processing time, the lease modification could not be completed in time to allow recovery of the resources. If the lease modification is not processed in time for the coal it contains to be mined with the rest of the coal in the lease, the public will lose revenues from bonus payments and royalties. We estimate that this proposed rule will enable the public to avoid bonus and royalty revenue losses of about $2,200 per acre on average, and with an expected 3 modifications at a maximum of 160 acres each, the total revenue impact is about $1,056,000 per year, which, though substantial, is less than 1 percent of the total coal royalty revenues for FY 2000, and far less than the $100 million annual threshold in the Executive Order.

The second change only matches our regulations to what the law already requires BLM to do. We cannot quantify the economic impact of increasing the acreage limitations, because it would involve what would amount to speculation about future coal leases or mergers of current coal lessees. We do, however, see this a positive for industry in that it will allow greater flexibility for coal operators to maintain coal reserves that are readily available for production and consumption. Currently, lessees can be required to wait as long as 10 years before they can relinquish a lease after production has ended to allow for proof of successful reclamation. The acreage in a lease that has been mined out but not reclaimed counts the same to the state and national acreage limitations as a new lease that has never been mined.

The rule will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. Economic recovery of coal will be enhanced, bypasses will be minimized, and efficiency of mining will be improved. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor does it raise novel legal or policy issues.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the regulations clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading.)

(5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the rule? How could this description be more helpful in making the rule easier to understand? Please send any comments you have on the clarity of the regulations to the address specified in the **ADDRESSES** section.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. This rule, as described above, merely implements a statutory change to the regulations that apply to leasing Federal coal resources, and the rule change itself will not have a significant impact on any small entities. Rather, it is the legislation which affects these entities. The regulations make no substantive change beyond what Congress has already enacted. Further, the rule corrects a technical error in the final rule published on September 28, 1999 (64 FR 52239), which was fully

Congress has already enacted. Further, the rule corrects a technical error in the final rule published on September 28, 1999 (64 FR 52239), which was fully analyzed for RFA compliance when published. Therefore, BLM has determined under the RFA that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This proposed rule is not a ''major rule'' as defined at 5 U.S.C. 804(2). This rule merely makes a technical correction in the final rule published on September 28, 1999 (64 FR 52239), and implements a change to the state acreage limits that has been made by Congress. This rule is limited to making BLM's regulations consistent with the law.

Unfunded Mandates Reform Act

This proposed rule would not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year; nor would this proposed rule have a significant or unique effect on state, local, or tribal governments or the private sector. As discussed above, this rule would merely change BLM's coal leasing regulations regarding acreage limitations to comply with Public Law 106–463 and make a technical correction to the coal leasing regulations regarding lease modifications. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

This rule would not represent a government action capable of interfering with constitutionally protected property rights. The rule would be limited to changes reflecting Congress's amendment raising the state and nationwide acreage limits for coal leases, and correcting a technical error relating to regulations governing coal lease modifications. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

This rule 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. The rule would be limited to changes to reflect Congress's amendment raising the acreage limits for coal leases and to correct a technical error pertaining to coal lease modifications. Therefore, in accordance with Executive Order 13132, BLM has determined that this rule would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule would not be a significant energy action. It will not have an adverse effect on energy supplies. The rule should have a favorable effect on energy production. It should improve efficiency in production by increasing acreage limitations and by removing procedural requirements inadvertently and erroneously applied to lease modifications in an earlier rule.

Paperwork Reduction Act

This rule would not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

In accordance with E.O. 13175, we have found that this proposed rule would not include policies that have tribal implications. Since this rule would not propose significant changes to BLM policy and would not specifically involve Indian reservation lands, we have determined that the government-to-government relationships should remain unaffected.

Principal Author

The principal author of this rule is Mary Linda Ponticelli of the Solid Minerals Group, assisted by Ted Hudson of the Regulatory Affairs Group, Bureau of Land Management, Washington, DC.

List of Subjects

43 CFR Part 3430

Administrative practice and procedure; Coal; Government contracts; Intergovernmental relations; Mines; Public lands—mineral resources; Public lands—rights-of-way; Reporting and recordkeeping requirements.

43 CFR Part 3470

Coal; Government contracts; Mineral royalties; Mines; Public lands—mineral resources; Reporting and recordkeeping requirements; Surety bonds.

Dated: January 2, 2002.

J. Steven Griles,

Deputy Secretary of the Interior.

Under the authorities cited below, and for the reasons stated in the Supplementary Information, BLM proposes to amend Subchapter C, Chapter II, Subtitle B of Title 43 of the Code of Federal Regulations, as follows:

PART 3430—NONCOMPETITIVE LEASES

1. The authority citation for part 3430 continues to read as follows:

Authority: 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351–359; 30 U.S.C. 521–531; 30 U.S.C. 1201 *et seq.*; and 43 U.S.C. 1701 *et seq.*

Subpart 3432—Lease Modifications

2. Amend § 3432.3 by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 3432.3 Terms and conditions.

* * * * *

(c) Before modifying a lease, BLM will prepare an environmental assessment or environmental impact statement covering the proposed lease area in accordance with 40 CFR parts 1500 through 1508.

(d) For coal lease modification applications involving lands in the National Forest System, BLM will submit the lease modification application to the Secretary of Agriculture for consent, for completion or consideration of an environmental assessment, for the attachment of appropriate lease stipulations, and for making any other findings prerequisite to lease issuance.

PART 3470—COAL MANAGEMENT PROVISIONS AND LIMITATIONS

3. The authority citation for part 3470 continues to read as follows:

Authority: 30 U.S.C. 189 and 359 and 43 U.S.C. 1733 and 1740.

b. removing from the second sentence of paragraph (a)(2) the term ''100,000 acres'' and adding in its place the term ''150,000 acres.''

[FR Doc. 02–1339 Filed 1–17–02; 8:45 am]

BILLING CODE 4310–84–P

Proposed Rules

Federal Register
Vol. 67, No. 13
Friday, January 18, 2002

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–05]

Proposed Modification of Class E Airspace; St. James, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class E airspace at St. James, MN. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 15, and an RNAV SIAP to Rwy 33, have been developed for St. James Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action would increase the radius of the existing controlled airspace for St. James Municipal Airport.

DATES: Comments must be received on or before February 17, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 01–AGL–05, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 01–AGL–05.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at St. James, MN, for St. James Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005: Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 St. James, MN [REVISED]
St. James Municipal Airport, MN
(lat. 43°59′11″N., long. 94°33′29″W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the St. James Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on December 5, 2001.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–1012 Filed 1–17–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–227]

RIN 2115–AA97

Safety and Security Zones; High Interest Vessels—Boston Harbor, Weymouth Fore River, and Salem Harbor, Massachusetts

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard proposes to establish safety and security zones for vessels determined to be high interest vessels (HIVs) by the Captain of the Port (COTP), Boston. The safety and security zones would close all waters of Boston Harbor, the Weymouth Fore River Channel, and Salem Harbor 1000 yards ahead and astern and 200 yards on each side of an HIV in transit or at anchor. The zones will prohibit entry into or movement within this portion of the COTP Boston zone without Captain of the Port authorization. These safety and security zones are needed to safeguard the vessels, the public, and the surrounding area from sabotage or other subversive acts, accidents, or other events of a similar nature.

DATES: Comments and related material must reach the Coast Guard on or before February 28, 2002. The public meeting will be held on February 20, 2002 from 11 a.m. to 1 p.m. Further public meetings will be scheduled if necessary.

ADDRESSES: You may mail comments and related material to Marine Safety Office Boston, 455 Commercial Street, Boston, MA. Marine Safety Office Boston maintains the public docket for this rulemaking. Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of the docket and will be available for inspection or copying at Marine Safety Office Boston between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The public meeting will be held at the Black Falcon Cruise Terminal, located at One Black Falcon Avenue Boston, Massachusetts.

FOR FURTHER INFORMATION CONTACT: LT Dave Sherry, Marine Safety Office Boston, Maritime Security Operations Division, at (617) 223–3067.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–01–227), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your comments reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

The Coast Guard plans to hold a public meeting within the comment period on February 20, 2002 from 11 a.m. to 1 p.m. at the Black Falcon Cruise Terminal, located at One Black Falcon Avenue Boston, Massachusetts, to discuss the proposed high interest vessel security zones. This date coincide with the monthly Port Operators Group meeting, which provides the best forum to discuss the proposed rulemaking. For information regarding this meeting contact LT Dave Sherry at the address listed under **ADDRESSES.** If you wish to hold additional meetings, you may contact LT Dave Sherry with a request in writing explaining why one would be beneficial. If we determine an additional meeting would aid in this rulemaking, we will extend the comment period and hold one at a time and place announced by a later notice in the **Federal Register**. Those who wish to comment on the proposed rulemaking but cannot attend the public meeting may submit written comments to LT Dave Sherry at the address listed under **ADDRESSES.**

Background and Purpose

On September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, Massachusetts and flown into the World Trade Center in New York, New York inflicting catastrophic human casualties and property damage. A similar attack was conducted on the Pentagon on the same day. National security and intelligence officials warn that future terrorist attacks are likely. Due to these heightened security concerns, safety and security zones are prudent for vessels which may be likely targets of terrorist acts. This regulation proposes to establish safety and security zones for high interest vessels (HIVs). These zones would close all waters of Boston Harbor, the Weymouth Fore River Channel, and Salem Harbor 1000 yards ahead and astern, and 200 yards on each side of an HIV in transit or at anchor.

For the purposes of this rule, high interest vessels operating in Boston Harbor, Salem Harbor or the Weymouth Fore River, include the following: Barges or ships carrying gasoline, chlorine, anhydrous ammonia, or any other bulk hazardous chemicals or other cargo deemed to be high interest by the Captain of the Port; passenger vessels; or any other vessels deemed to be of high interest by the Captain of the Port, Boston under the circumstances. For purposes of this rule, neither small passenger vessels regulated by 33 Code of Federal Regulations, subchapter T, nor liquefied natural gas carrier vessels will be considered HIVs.

Whether a vessel is considered high interest is determined by the Captain of the Port (COTP) Boston based on the potential threat posed by the vessel to the safety and/or security to the maritime community, the crews or passengers of the HIVs, and the surrounding communities from subversive or terrorist attack.

These proposed safety and security zones would prohibit entry into or movement in all waters 1000 yards ahead or astern, and 200 yards on each side of any HIV in the following waters of the Boston Captain of the Port Zone: (1) All waters of Boston Inner Harbor,

including the waters of the Mystic River, Chelsea River, and Reserved Channel west of a line running from Deer Island Light at position 42°20′25″N, 070°57′15″W to Long Island at position 42°19′48″N, 070°57′15″W, and west of the Long Island Bridge, running from Long Island to Moon Head; (2) in Salem Inner Harbor, all waters southwest of a line running from Juniper Point at position 42°32′02″N, 070°51′52″W and Fluen Point at position 42°31′16″N, 070°51′12″W; and (3) all waters of the Weymouth Fore River Channel, Hingham Bay and Hull Bay south of a line running from Windmill Point at position 42°18′14″N, 070°55′19″W to Peddocks Island at position 42°18′10″N, 070°55′38″W and a east of a line running across West Gut from West Head at position 42°17′13″N, 070°56′55″W and Nut Island at position 42°16′48″N, 070°57′15″W.

The safety and security zones are necessary to protect the HIVs, their crews and/or passengers, others in the maritime community, and the surrounding communities from subversive or terrorist attack against a vessel which could, by the nature of its cargo or the destructive capability of the vessel structure itself, potentially cause serious negative impact to vessels, the port, or the environment. Safety and security zones are necessary to protect passenger vessels due to the their potential as a target of subversive or terrorist attack from the water, which could result in numerous casualties.

The Captain of the Port anticipates some impact on vessel traffic due to this proposed regulation. However, the safety and security zones are deemed necessary for the protection of life and property within the COTP Boston zone. Public notifications will be made prior to the effective period via local notice to mariners and marine information broadcasts.

No person or vessel may enter or remain in a prescribed safety or security zone at any time without the permission of the Captain of the Port. Each person or vessel in a safety or security zone shall obey any direction or order of the Captain of the Port. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port.

Any violation of any safety or security zone proposed herein, is punishable by, among others, civil penalties (not to exceed $25,000 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than $100,000), in rem liability against the offending vessel, and license sanctions. This regulation is proposed under the authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225 and 1226.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this proposed regulation will prevent traffic from transiting a portion of Boston Harbor, the Weymouth Fore River Channel, and Salem Harbor during HIV operations, the effect of this regulation will not be significant due to the minimal time that vessels will be restricted from the area, vessels can pass safely around the zones, and advance notifications will be made to the local maritime community by marine information broadcasts.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Boston Harbor, the Weymouth Fore River Channel, and Salem Harbor during HIV operations. This proposed rule will not have a significant economic impact on a substantial number of small entities because the zone is limited in duration, vessels can pass safely around the zones, and the Coast Guard will issue marine information broadcasts before the effective period widely available to users of the harbor.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Dave Sherry at the address listed under **ADDRESSES.**

Collection of Information

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

Federalism

The Coast Guard analyzed this proposed rule under Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lD, this proposed rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add § 165.114 to read as follows:

§ 165.114 Safety and Security Zones: High Interest Vessel-Boston Harbor, Weymouth fore River, and Salem Harbor, Massachusetts.

(a) *Location.* The following waters within the Boston Captain of the Port Zone 1000 yards ahead and astern, and 200 yards on each side of any High Interest vessel are established as safety and security zones: (1) All waters of Boston Inner Harbor, including the waters of the Mystic River, Chelsea River, and Reserved Channel west of a line running from Deer Island Light at position 42°20′25″N, 070°57′15″W to Long Island at position 42°19′48″N, 070°57′15″W, and west of the Long Island Bridge, running from Long Island to Moon Head; (2) in Salem Inner Harbor, all waters southwest of a line running from Juniper Point at position 42°32′02″N, 070°51′52″W and Fluen Point at position 42°31′16″N, 070°51′12″W; and (3) all waters of the Weymouth Fore River Channel, Hingham Bay and Hull Bay south of a line running from Windmill Point at position 42°18′14″N, 070°55′19″W to Peddocks Island at position 42°18′10″N, 070°55′38″W and a east of a line running across West Gut from West Head at position 42°17′13″N, 070°56′55″W and Nut Island at position 42°16′48″N, 070°57′15″W.

(b) *High interest vessels.* For the purposes of this rule, high interest vessels operating in Boston Harbor, Salem Harbor or the Weymouth Fore River, include the following: barges or ships carrying gasoline, chlorine, anhydrous ammonia, or any other bulk hazardous chemicals or other cargo deemed to be high interest by the Captain of the Port; passenger vessels; or any other vessels deemed to be of high interest by the Captain of the Port, Boston under the circumstances. For purposes of this rule, neither small passenger vessels regulated by 33 CFR, chapter 1, subchapter T, nor liquefied natural gas carrier vessels will be considered HIVs

(c) *Regulations.*

(1) In accordance with the general regulations in §§ 165.23 and 165.33, entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: January 9, 2002.

B.M. Salerno,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 02–1358 Filed 1–15–02; 3:13 pm]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 167

[USCG–2001–11201]

Port Access Routes Study; Along the Sea Coast and in the Approaches to the Cape Fear River and Beaufort Inlet, NC

AGENCY: Coast Guard, DOT.

ACTION: Notice of study; request for comments.

SUMMARY: The Coast Guard is conducting a Port Access Routes Study (PARS) to evaluate the need for vessel routing or other vessel traffic management measures along the sea coast of North Carolina and in the approaches to the Cape Fear River and Beaufort Inlet. The goal of the study is to help reduce the risk of marine casualties and increase vessel traffic management efficiency in the study area. The recommendations of the study may lead to future rulemaking action or appropriate international agreements.

DATES: Comments and related material must reach the Docket Management Facility on or before March 19, 2002.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2001–11201), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this document. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will

become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of study, call Tom Flynn, Project Officer, Aids to Navigation and Waterways Management Branch, Fifth Coast Guard District, telephone 757–398–6229, e-mail *TWflynn@lantd5.uscg.mil*; or George Detweiler, Office of Vessel Traffic Management, Coast Guard, telephone 202–267–0574, e-mail *Gdetweiler@comdt.uscg.mil*. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this study by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this notice of study (USCG–2001–11201), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this study, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Definitions

The following definitions should help you review this notice:

Area to be avoided (ATBA) means a routing measure comprising an area within defined limits in which either navigation is particularly hazardous or it is exceptionally important to avoid casualties and which should be avoided by all ships, or certain classes of ships.

Deep-water route is a route within defined limits, which has been accurately surveyed for clearance of sea bottom, and submerged obstacles as indicated on nautical charts.

Inshore traffic zone is a routing measure comprising a designated area between the landward boundary of a traffic separation scheme and the adjacent coast, to be used in accordance with the provisions of Rule 10(d), as amended, of the International Regulations for Preventing Collisions at Sea, 1972 (COLREGS).

Precautionary area means a routing measure comprising an area within defined limits where ships must navigate with particular caution and within which the direction of traffic flow may be recommended.

Recommended route means a route of undefined width, for the convenience of ships in transit, which is often marked by centerline buoys.

Recommended track is a route which has been specifically examined to ensure so far as possible that it is free of dangers and along which ships are advised to navigate.

Regulated Navigation Area (RNA) is a water area within a defined boundary for which regulations for vessels navigating within the area have been established under 33 CFR part 165.

Roundabout is a routing measure comprising a separation point or circular separation zone and a circular separation zone and a circular traffic lane within defined limits. Traffic within the roundabout is separated by moving in a counterclockwise direction around the separation point or zone.

Separation zone or separation line means a zone or line separating the traffic lanes in which ships are proceeding in opposite or nearly opposite directions; or from the adjacent sea area; or separating traffic lanes designated for particular classes of ships proceeding in the same direction.

Traffic lane means an area within defined width in which one-way traffic is established. Natural obstacles, including those forming separation zones, may constitute a boundary.

Traffic separation scheme (TSS) means a routing measure aimed at the separation of opposing streams of traffic by appropriate means and by the establishment of traffic lanes.

Two-way route is a route within defined limits inside which two-way traffic is established, aimed at providing safe passage of ships through waters where navigation is difficult or dangerous.

Vessel routing system means any system of one or more routes or routing measures aimed at reducing the risk of casualties; it includes traffic separation schemes, two-way routes, recommended tracks, areas to be avoided, inshore traffic zones, roundabouts, precautionary areas, and deep-water routes.

Background and Purpose

Port Access Route Study Requirements. Under the Ports and Waterways Safety Act (PWSA), the Secretary of Transportation may designate necessary fairways and TSS's to provide safe access routes for vessels proceeding to and from U.S. ports (33 U.S.C. 1223 (c)). The Secretary's authority to make these designations was delegated to the Commandant, U.S. Coast Guard, in 49 Code of Federal Regulations (CFR) 1.46. The designation of fairways and TSS's recognizes the paramount right of navigation over all other uses in the designated areas.

The PWSA requires the Coast Guard to conduct a study of port-access routes before establishing or adjusting fairways or TSS's. Through the study process, we must coordinate with Federal, State, and foreign state agencies (as appropriate) and consider the views of maritime community representatives, environmental groups, and other interested stakeholders. A primary purpose of this coordination is, to the extent practicable, to reconcile the need for safe access routes with other reasonable waterway uses.

Initial port access route study. The approaches to the Cape Fear River and Beaufort Inlet, NC were last studied in 1981, and the final results were published in the **Federal Register** on July 22, 1982 (47 FR 31766). The study concluded that ''there is no need to impose new ship routing measures such as TSS's or shipping safety fairways where fixed structures would be prohibited, in any'' area off the North Carolina coast.

Why is a new port access route study necessary? Vessel size, traffic density and channel depth and width have changed since the 1981 study. Major channel depth, width and alignment changes are currently underway in the Cape Fear River and port of Wilmington, NC. A PARS was initiated in 1996 (61 FR 35703; July 8, 1996), but was not completed due to personnel and funding issues.

The U.S. Army Corps of Engineers' (ACoE) report, ''Waterborne Commerce

of the United States'' reports that, from 1981 to 1999, annual trips to and from the Port of Wilmington, NC, increased from 10,060 to 24,190 or 140% and the number of trips to and from Morehead City, NC, decreased from 7,842 to 3,388 or 57%. Since 1981 the Army Corps of Engineers maintained Federal Navigation Project for the Cape Fear River ocean bar channel has increased the channel depth from 38 feet to 40 feet. Dredging is currently underway in the Cape Fear River, which will deepen the channels from the Atlantic Ocean to Wilmington to 42 feet and to 44 feet over the ocean bar. The project depth for Beaufort Inlet/Morehead City has increased from 42 feet to 45 feet.

Timeline, area, and process of this PARS. The Fifth Coast Guard District will conduct this PARS to determine the need to modify existing routing measures and the effects of potential modifications in the study area. The study will begin immediately and we anticipate the study will be completed by January 31, 2002.

The study area will encompass the area bounded by a line connecting the following geographic points (All coordinates are NAD 1983):

Latitude	Longitude
34°40′N	77°00′W
34°40′N	76°15′W
34°10′N	76°15′W
33°15′N	77°30′W
33°00′N	78°20′W
33°50′N	78°20′W
33°50′N	77°55′W

The study area encompasses the approaches to the Cape Fear River and Beaufort Inlet, as well as the area offshore of North Carolina used by commercial and public vessels transiting to and from these ports.

As part of this study, we will consider previous studies, analyses of vessel traffic density, and agency and stakeholder experience in vessel traffic management, navigation, ship handling, and effects of weather. We encourage you to participate in the study process by submitting comments in response to this notice.

We will publish the results of the PARS in the **Federal Register**. It is possible that the study may validate continued applicability of existing vessel routing measures and conclude that no changes are necessary. It is also possible that the study may recommend one or more changes to enhance navigational safety and vessel traffic management efficiency. Study recommendations may lead to future rulemakings or appropriate international agreements.

Potential Study Recommendations

We are attempting to determine the scope of any safety problems associated with vessel transits in the study area. We expect that information gathered during the study will identify any problems and appropriate solutions. The study may recommend that we—

- Maintain the current vessel routing measures;
- Establish a TSS in the Approaches to the Cape Fear River;
- Establish a TSS in the Approaches to Beaufort Inlet;
- Establish a TSS off North Carolina encompassing the routes typically used by merchant and naval vessels transiting the study area;
- Establish a Precautionary Area(s) near either or both Approaches;
- Establish an Inshore Traffic Zone(s) near either or both approaches;
- Establish an Area to be Avoided (ATBA) in shallow areas where the risk of grounding is present;
- Create Anchorage Grounds(s); and
- Establish a Regulated Navigation Area (RNA) with specific vessel operating requirements to ensure safe navigation near shallow water.

Questions

To help us conduct the port access route study, we request comments on the following questions, although comments on other issues addressed in this document are also welcome. In responding to a question, please explain your reasons for each answer, and follow the instructions under ''Request for Comments'' above.

1. What navigational hazards do vessels operating in the study area face? Please describe.

2. Are there strains on the current vessel routing system (increasing traffic density, for example)? If so, please describe.

3. Are modifications to existing vessel routing measures needed to address hazards and strains and improve traffic management efficiency in the study area? Why or why not? If so, what measures should the study of port-access routes address for potential implementation?

4. What costs and benefits are associated with the measures listed as potential study recommendations? What measures do you think are most cost-effective?

5. What impacts, both positive and negative, would changes to existing routing measures or new routing measures have on the study area?

Dated: December 27, 2001.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 02–1371 Filed 1–17–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3430 and 3470

[WO–320–1430–PB–24 1A]

RIN 1004–AD43

Coal Management: Noncompetitive Leases; Coal Management Provisions and Limitations

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The purposes of this proposed rule are to correct a technical error relating to coal lease modifications made in a final rule published on September 28, 1999 (64 FR 52239)(the 1999 rule), and to amend the regulations to reflect the statutory increase in the maximum acreage of Federal leases for coal that may be held by an individual or entity in any one state as well as nationally.

This rule would revise the regulations of the Bureau of Land Management (BLM) to reflect correction of a technical error regarding the requirement of a public hearing and publication (in the **Federal Register** and a general circulation newspaper) of a notice of availability of environmental analysis documents for coal lease modifications. This error was made in conjunction with the BLM's September 1999 regulatory revisions incorporating public participation procedures into the competitive coal leasing regulations.

DATES: Comments on the proposed rule must be received or postmarked by February 19, 2002, to be assured consideration in developing a final rule.

ADDRESSES: Mail: Director (630), Bureau of Land Management, Administrative Record, Room 401 LS, 1849 C Street, NW, Washington, DC 20240. Personal or messenger delivery: Room 401, 1620 L Street, NW, Washington, DC 20036.

For information about the requirements for filing comments and how to file comments electronically, see the **SUPPLEMENTARY INFORMATION** section under ''Public Comment Procedures and Information.''

FOR FURTHER INFORMATION CONTACT: Mary Linda Ponticelli at (202) 452–0350.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures and Information
II. Background
III. Discussion of the Rule
IV. Procedural Matters

I. Public Comment Procedures and Information

A. How Do I Comment on the Proposed Rule?

If you wish to comment, you may submit your comments by any one of several methods.

- You may mail comments to Director (630), Bureau of Land Management, Administrative Record, Room 401 LS, 1849 C Street, NW, Washington, DC 20240.
- You may deliver comments to Room 401, 1620 L Street, NW, Washington, DC 20036.

Please make your written comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing.

BLM may not necessarily consider or include in the Administrative Record for the final rule comments that you send after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I Review Comments Submitted by Others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under ''**ADDRESSES**: Personal or messenger delivery'' during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays.

Individual respondents may request confidentiality, which we will honor to the extent allowable by law. If you wish to withhold your name or address, except for the city or town, you must state this prominently at the beginning of your comment. 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.

II. Background

On September 28, 1999, in conjunction with a settlement agreement in the lawsuit, *Natural Resources Defense Council, et al.* v. *Jamison, et al.,* Civil No. 82–2763 (D. D.C.), the Bureau of Land Management (BLM) issued a final rule (64 FR 52239) to establish regulatory procedures by which the public may participate in the Bureau of Land Management's regional coal leasing process. We issued the final rule, which became effective on October 28, 1999, to satisfy terms of a July 1997 settlement agreement (Civil No. 82–2763 (D.C. Circuit No. 93–5029) in which the Department agreed to identify in BLM's regulations the points where the public may participate in regional coal leasing decisions. In addition, the final rule amended the regulations in part 3400 to conform to statutory changes under the Unfunded Mandates Reform Act of 1995, exempting several types of meetings from Federal Advisory Committee Act requirements.

A. Lease Modifications

Section 3432.3, which addresses the terms and conditions of a coal lease modification, currently requires compliance with the provisions of 43 CFR 3425.3. At the time we wrote the regulations in subpart 3432 governing lease modifications, former § 3425.3(a), addressing lease modification terms and conditions, similarly provided that BLM could not modify a lease until you met the requirements of § 3425.3. Former § 3425.3 required BLM to prepare an environmental assessment or impact statement before approving a lease modification.

To incorporate public participation procedures addressed in BLM's Competitive Coal Leasing Handbook, the 1999 regulatory revision to 43 CFR 3425.3 included the additional requirements of—

(1) A public hearing, and

(2) publication of notices of availability of the environmental analysis document for coal leasing.

By means of the cross-reference in § 3432.3(c), these new requirements imposed on new lease sales in § 3425.3 by the 1999 rule automatically applied to lease modifications under § 3432.3. We did not intend this to be the effect of the 1999 rule.

In revising the competitive coal leasing regulations (43 CFR part 3420) to incorporate public participation procedures for competitive leasing, we intended to impose the requirements of a public hearing and publication of notices of availability of draft environmental analysis documents only on new coal lease sales, not on non-competitive coal lease modifications issued under subpart 3432. Therefore, our failure to remove the cross reference in § 3432.3(c) to the requirements of § 3425.3 when we revised the latter in 1999 was a technical error, which we propose to correct in this rule.

Lease modifications often ensure the recovery and receipt of fair market value of small areas of unleased Federal coal that may be discovered during the mining of an adjacent Federal coal lease. In many cases, BLM must process a modification expeditiously to avoid the bypass of unleased Federal coal. Unlike competitive coal leasing, where the lease acreage may be up to 5,120 acres, the maximum allowable acreage for lease modifications is a total of 160 acres per lease, regardless of the number of times BLM modifies the lease. Due to variability in exploration data and the coal geology, these small areas of unleased Federal coal are not easily identified with the limited data available when we originally configure a lease. Such areas typically cannot be developed as an independent lease because of their size and configuration. Therefore, incorporation of these areas into an existing coal lease through a coal lease modification facilitates achieving fair market value and maximum economic recovery of Federal coal resources.

Section 3432.3(c) provides that BLM cannot approve a lease modification until the lessee or operator complies with the provisions of § 3425.3. Although § 3425.3 currently contains specific procedures relating to the preparation of environmental analysis documents, its focus is competitive lease sales. Since the 1999 revised version of § 3425.3 applies exclusively to competitive coal leasing, it is not intended to apply to a lease modification. The change in this proposed rule would eliminate the recently imposed requirement of publication of notices of availability and a public hearing for environmental analysis documents relating to coal lease modifications. This is in keeping with the intent of the *Natural Resources Defense Council* lawsuit settlement agreement, which did not extend to non-competitive coal lease modifications. It is also consistent with the preamble to the existing rule (64 FR 12142, March 11, 1999), which stated: ''This proposed rule does not substantially change the leasing-on-application process.''

B. Acreage Limitation

On October 23, 2000, the United States Senate passed S. 2300, which became Public Law 106–463 on November 7, 2000. This law, known as the Coal Competition Act of 2000, amended Section 27(a) of the Mineral Leasing Act (30 U.S.C. 184(a)) to increase the amount of acreage of

Federal coal leases, or permits that an individual or entity may hold in a single state from 46,080 acres to 75,000 acres and raised the national acreage limit from 100,000 acres to 150,000 acres.

As noted in Public Law 106–463, the Federal lands containing some of the nation's large commercial deposits of coal are located in Utah, Montana, and Wyoming. The acreage limitations are causing difficulty for coal producers in Wyoming and Utah. The sub-bituminous coal from these mines is low in sulfur, making it the cleanest burning coal for energy production. The present acreage limitation of 46,080 acres per state for Federal coal leases has been in place since 1964, and was not changed with the passage of the Federal Coal Leasing Amendments Act of 1976. Congress recently raised the acreage limits for other minerals. For example, currently, the single-state lease acreage limit of 46,080 acres for coal is less than the single-state Federal lease limit for potassium (96,000 acres) and for oil and gas (246,080 acres).

Congress determined that the per-state increase in acreage to 75,000 acres and the national acreage increase to 150,000 acres is warranted by modern mine technology, changes in industry economics, greater global competition, and need to conserve the Federal resource. Increased acreage limits will help existing coal lessees avoid premature closure, make better long-term business decisions about infrastructure investments based on the certainty of more available acreage, and otherwise maintain the vitality of the domestic coal industry. Furthermore, the increase in acreage limits will ensure continuation of valuable revenues to Federal and state governments and energy to the American public from coal production on Federal lands.

The amount of acreage that any lessee or operator controls will have no effect on the MLA requirement to produce commercial quantities of coal within 10 years of lease issuance. The statutory penalty for not having met this requirement is cancellation of the lease (30 U.S.C. 184(h)(1)).

III. Discussion of the Rule

In order to correct the previously discussed technical error relating to lease modifications, we plan to amend regulation 43 CFR 3432.3 by removing the cross reference to 43 CFR 3425.3 and revising subsection (c). We have also added a new paragraph (d) to require review by the Secretary of Agriculture if the proposed coal lease modification affects National Forest System lands. This is not a new requirement. It appears in § 3425.3(b) of the current regulations, where it applies to new leases. The previous § 3432.3 applied this requirement to modifications as well by means of a cross-reference. Since this proposed rule removes the cross-reference, we need to add the requirement itself to § 3432.3. There is no substantive change in the regulations, other than removing the unintended requirement for notice and a hearing on proposed coal lease modifications.

This rule also amends § 3472.1–3 to reflect the new coal lease acreage limits set by Public Law 106–463 by removing the references to the previous acreage limits, and substituting the new numbers established by Public Law 106–463.

IV. Procedural Matters

National Environmental Policy Act

BLM has prepared an environmental assessment (EA) and has found that this proposed rule would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). As discussed above, this rule would implement a technical correction to the public participation rule completed on September 28, 1999 (64 FR 52239) and a change to the Mineral Leasing Act which was made by Congress. The amendment of the Mineral Leasing Act changed the acreage limitations for coal leases. As stated in the EA, the proposed rule should lead to more efficient production and economic recovery of the coal resource. However, it should not in and of itself lead to new mining. While more efficient mining may have environmental consequences, BLM will consider these consequences on a case-by-case basis in preparing environmental analyses before issuing a new coal lease or modifying an existing one. Therefore, a detailed statement under NEPA is not required. We have placed the EA and the Finding of No Significant Impact (FONSI) on file in our Administrative Record at the address specified in the **ADDRESSES** section. We invite the public to review these documents and suggest that anyone wishing to submit comments in response to the EA and FONSI do so in accordance with the Written Comments section above.

Executive Order 12866, Regulatory Planning and Review

This proposed rule is not a significant regulatory action and was not subject to review by Office of Management and Budget under Executive Order 12866. This rule will not have an annual effect of $100 million or more on the economy. The rule affects coal leasing in only two ways: shortening the lease modification procedure, and increasing lease acreage limitations.

Further, historically, lease modifications have not had significant economic effects on the economy. In Fiscal Year 2000, there were 311 coal leases of various kinds, generating royalties of $315,166,348 on production of 392,943,074 tons of federal coal, with an average market value of $7.92 per ton, from 461,883 acres of public lands. Of these leases, in FY 2000, only 2 leases were subjects of lease modification. Since the maximum acreage that can be added by a modification is 160 for the life of the lease, it is clear that the economic effect of lease modifications is tiny compared with the coal program as a whole. The largest number of lease modifications that BLM has processed in the past few years has been 6, in FY 1998, affecting a total of 733 acres. Analyzing this strictly from averages, and using the value from FY 2000, the market value of coal affected by these modifications should have been about $4,738,000 in FY 1998, assuming, of course, that it all would have been immediately available for mining in that year. Total value for other recent years, based on the lower numbers and acreages of lease modifications shown in the accompanying chart, should have been only a fraction of this value. The following table summarizes lease modifications over the past few years.

BLM COAL LEASE MODIFICATIONS, FY1997–FY2001

State	FY1997		FY1998		FY1999		FY2000		FY2001 (through 06–30–2001)	
	Lease mods	Acres	Lease mods	Acres	Lease mods	Acres	Lease mods	Acres	Lease mods	Acres
Colorado	1	100	1	160	.....	.....	2	288	.....	.....
Kentucky	.....	.....	.....	.....	.....	.....	.....	.....	1	160
Montana	.....	.....	3	303	1	10	.....	.....	.....	.....
Utah	1	133	2	240	2	200	.....	.....	1	122
Total	2	233	6	703	3	210	2	288	2	282

Of course, since we do not know precisely how much coal was produced from the lease modifications shown, we state these dollar figures only to provide a sense of how small the effect of lease modifications is, compared with the threshold in the executive order. Further, the effect of the mistake that we are correcting in this rule was only to extend the time required and increase the cost of processing a lease modification. Therefore, the effects of this proposed rule amount to a financial benefit to the coal industry due to reducing the time required for lease modifications and the administrative cost of processing them for both industry and BLM, which will be something less than the value of the modification itself.

The estimated additional costs to the lessee for processing a lease modification application inadvertently imposed by the 1999 rule were based on a delay of 2 to 3 months for allowing public input. The reduced costs to BLM and the lease modification applicant from avoiding these delays are difficult to segregate and quantify. As a minimum, we estimate the savings in processing costs (for **Federal Register** processing and document preparation) will approach $10,000 per lease modification application. Assuming a average number of lease modification applications per year of 3, the total savings may be nearly $30,000.

The other element of savings created by this proposed rule is the reduction in opportunity costs. The unintended consequence of the 1999 rule was that some operators may not have been able to develop the resources contained in the lease modifications in a timely manner, or at all. Those costs would have been imposed if, due to the additional processing time, the lease modification could not be completed in time to allow recovery of the resources. If the lease modification is not processed in time for the coal it contains to be mined with the rest of the coal in the lease, the public will lose revenues from bonus payments and royalties. We estimate that this proposed rule will enable the public to avoid bonus and royalty revenue losses of about $2,200 per acre on average, and with an expected 3 modifications at a maximum of 160 acres each, the total revenue impact is about $1,056,000 per year, which, though substantial, is less than 1 percent of the total coal royalty revenues for FY 2000, and far less than the $100 million annual threshold in the Executive Order.

The second change only matches our regulations to what the law already requires BLM to do. We cannot quantify the economic impact of increasing the acreage limitations, because it would involve what would amount to speculation about future coal leases or mergers of current coal lessees. We do, however, see this a positive for industry in that it will allow greater flexibility for coal operators to maintain coal reserves that are readily available for production and consumption. Currently, lessees can be required to wait as long as 10 years before they can relinquish a lease after production has ended to allow for proof of successful reclamation. The acreage in a lease that has been mined out but not reclaimed counts the same to the state and national acreage limitations as a new lease that has never been mined.

The rule will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. Economic recovery of coal will be enhanced, bypasses will be minimized, and efficiency of mining will be improved. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor does it raise novel legal or policy issues.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the regulations clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading.)

(5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the rule? How could this description be more helpful in making the rule easier to understand? Please send any comments you have on the clarity of the regulations to the address specified in the **ADDRESSES** section.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. This rule, as described above, merely implements a statutory change to the regulations that apply to leasing Federal coal resources, and the rule change itself will not have a significant impact on any small entities. Rather, it is the legislation which affects these entities. The regulations make no substantive change beyond what Congress has already enacted. Further, the rule corrects a technical error in the final rule published on September 28, 1999 (64 FR 52239), which was fully

Congress has already enacted. Further, the rule corrects a technical error in the final rule published on September 28, 1999 (64 FR 52239), which was fully analyzed for RFA compliance when published. Therefore, BLM has determined under the RFA that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This proposed rule is not a ''major rule'' as defined at 5 U.S.C. 804(2). This rule merely makes a technical correction in the final rule published on September 28, 1999 (64 FR 52239), and implements a change to the state acreage limits that has been made by Congress. This rule is limited to making BLM's regulations consistent with the law.

Unfunded Mandates Reform Act

This proposed rule would not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year; nor would this proposed rule have a significant or unique effect on state, local, or tribal governments or the private sector. As discussed above, this rule would merely change BLM's coal leasing regulations regarding acreage limitations to comply with Public Law 106–463 and make a technical correction to the coal leasing regulations regarding lease modifications. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

This rule would not represent a government action capable of interfering with constitutionally protected property rights. The rule would be limited to changes reflecting Congress's amendment raising the state and nationwide acreage limits for coal leases, and correcting a technical error relating to regulations governing coal lease modifications. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

This rule 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. The rule would be limited to changes to reflect Congress's amendment raising the acreage limits for coal leases and to correct a technical error pertaining to coal lease modifications. Therefore, in accordance with Executive Order 13132, BLM has determined that this rule would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule would not be a significant energy action. It will not have an adverse effect on energy supplies. The rule should have a favorable effect on energy production. It should improve efficiency in production by increasing acreage limitations and by removing procedural requirements inadvertently and erroneously applied to lease modifications in an earlier rule.

Paperwork Reduction Act

This rule would not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

In accordance with E.O. 13175, we have found that this proposed rule would not include policies that have tribal implications. Since this rule would not propose significant changes to BLM policy and would not specifically involve Indian reservation lands, we have determined that the government-to-government relationships should remain unaffected.

Principal Author

The principal author of this rule is Mary Linda Ponticelli of the Solid Minerals Group, assisted by Ted Hudson of the Regulatory Affairs Group, Bureau of Land Management, Washington, DC.

List of Subjects

43 CFR Part 3430

Administrative practice and procedure; Coal; Government contracts; Intergovernmental relations; Mines; Public lands—mineral resources; Public lands—rights-of-way; Reporting and recordkeeping requirements.

43 CFR Part 3470

Coal; Government contracts; Mineral royalties; Mines; Public lands—mineral resources; Reporting and recordkeeping requirements; Surety bonds.

Dated: January 2, 2002.

J. Steven Griles,

Deputy Secretary of the Interior.

Under the authorities cited below, and for the reasons stated in the Supplementary Information, BLM proposes to amend Subchapter C, Chapter II, Subtitle B of Title 43 of the Code of Federal Regulations, as follows:

PART 3430—NONCOMPETITIVE LEASES

1. The authority citation for part 3430 continues to read as follows:

Authority: 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351–359; 30 U.S.C. 521–531; 30 U.S.C. 1201 *et seq.*; and 43 U.S.C. 1701 *et seq.*

Subpart 3432—Lease Modifications

2. Amend § 3432.3 by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 3432.3 Terms and conditions.

* * * * *

(c) Before modifying a lease, BLM will prepare an environmental assessment or environmental impact statement covering the proposed lease area in accordance with 40 CFR parts 1500 through 1508.

(d) For coal lease modification applications involving lands in the National Forest System, BLM will submit the lease modification application to the Secretary of Agriculture for consent, for completion or consideration of an environmental assessment, for the attachment of appropriate lease stipulations, and for making any other findings prerequisite to lease issuance.

PART 3470—COAL MANAGEMENT PROVISIONS AND LIMITATIONS

3. The authority citation for part 3470 continues to read as follows:

Authority: 30 U.S.C. 189 and 359 and 43 U.S.C. 1733 and 1740.

b. removing from the second sentence of paragraph (a)(2) the term ''100,000 acres'' and adding in its place the term ''150,000 acres.''

[FR Doc. 02–1339 Filed 1–17–02; 8:45 am]

BILLING CODE 4310–84–P

Notices

Federal Register
Vol. 67, No. 13
Friday, January 18, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV02–981–1 NC]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for Almonds Grown in California, Marketing Order 981.

DATES: Comments on this notice must be received by March 19, 2002.

ADDITIONAL INFORMATION OR COMMENTS: Contact Valerie L. Emmer-Scott, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Tel: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *moab.docketclerk@usda.gov.*

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

SUPPLEMENTARY INFORMATION:

Title: Almonds Grown in California, Marketing Order 981.

OMB Number: 0581–0071.

Expiration Date of Approval: August 31, 2002.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be resolved individually. Order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674), marketing order programs are established if favored in referendum among producers. The handling of the commodity is regulated. The Department of Agriculture (USDA) is authorized to oversee the order's operations and issue regulations recommended by a committee of representatives from each commodity industry. The Almond Board of California (Board) is responsible for locally administering the program.

The information collection requirements in this request are essential to carry out the intent of the AMAA, to provide the respondents the type of service they request, and to administer the California almond marketing order program (7 CFR part 981), which has been operating since 1950.

The California almond marketing order authorizes the issuance of quality and volume control regulations, as well as inspection requirements. Regulatory provisions apply to almonds shipped within and outside of the production area, except those specifically exempt. The order also has authority for production and marketing research and development projects, including paid advertising. Handlers who advertise may receive credit for their advertising expenses according to specific requirements.

The order, and rules and regulations issued thereunder, require handlers and growers to submit certain information. Much of this information is compiled by the Board in aggregate and provided to the industry to assist in marketing decisions.

The Board has developed forms as a means for persons to file required information with the Board relating to almond supplies, shipments, dispositions, and other information needed to effectively carry out the purpose of the AMAA and order. As shipments of California almonds are normally year-round, these forms are utilized accordingly. A USDA form is used to allow growers to vote on amendments or continuance of the marketing order. In addition, almond growers and handlers who are nominated by their peers to serve as representatives on the Board must file nomination forms with the USDA.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarter's staff, and authorized employees of the Board. Authorized Board employees and the industry are the primary users of the information and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.33 hours per response.

Respondents: California almond growers, handlers and accepted users of inedible almonds.

Estimated Number of Respondents: 7,150.

Estimated Number of Responses per Respondent: 1.04.

Estimated Total Annual Burden on Respondents: 2,445 hours.

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

Comments should reference OMB No. 0581–0071 and the California Almond Marketing Order No. 981, and be mailed to Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Tel: (202) 720–2491, Fax: (202) 720–8938; Fax:

(202) 720–8938; or e-mail: *moab.docketclerk@usda.gov.* All comments received will be available for public inspection during regular business hours at the same address.

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

Dated: January 14, 2002.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 02–1289 Filed 1–17–02; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–113–1]

Notice of Request for Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: New information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to initiate a new information collection activity for self-certification medical statements.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by March 19, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–113–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–113–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 01–113–1'' on the subject line.

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

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

FOR FURTHER INFORMATION CONTACT: For information on self-certification medical statements, contact Ms. Linda Lane, Personnel Management Specialist, Human Resources Division, MRPBS, room 1724, South Building, 14th Street and Independence Avenue SW., Washington, DC 20250; (202) 720–3519. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Self-Certification Medical Statement.

OMB Number: 0579–XXXX.

Type of Request: Approval of a new information collection.

Abstract: The Marketing and Regulatory Programs (MRP) agencies of the U.S. Department of Agriculture facilitate the domestic and international marketing of U.S. agricultural products and protect the health of domestic animal and plant resources. The MRP agencies are the Agricultural Marketing Service (AMS), the Animal and Plant Health Inspection Service (APHIS), and the Grain Inspection, Packers and Stockyards Administration (GIPSA). Resource management and administrative services, including human resource management, for the three MRP agencies are provided by the MRP Business Services unit of APHIS, which is the lead agency in providing administrative support for MRP.

In accordance with 5 CFR part 339, Federal agencies are authorized to obtain medical information from applicants for and employees in positions that have approved medical standards. Medical standards may be established for positions for which the duties are arduous or hazardous or require a certain level of health status or fitness.

Certain positions in MRP agencies have medical standards. An example of such a position is the agricultural commodity grader position in AMS. Each year, AMS hires a number of agricultural commodity graders. These employees work under dusty conditions, around moving machinery and slippery surfaces, and in areas with high noise levels. They have direct contact with meat and dairy products, fresh and processed fruits and vegetables, and poultry products intended for human consumption or cotton and tobacco products intended for human use. Medical standards have also been established for positions in APHIS that involve contact with wild animals.

The MRP agencies require a self-certification statement from applicants for these positions regarding their fitness for the positions. The MRP agencies need this information to determine whether the applicants can perform the duties of the positions. Inability to collect this information would adversely affect the MRP agencies' ability to recruit and hire qualified individuals and carry out their missions.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.1666 hours per response.

Respondents: Applicants to MRP positions with approved medical standards.

Estimated annual number of respondents: 300.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 300.

Estimated total annual burden on respondents: 50 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual

number of responses multiplied by the reporting burden per response.)

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

Done in Washington, DC, this 14th day of January 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–1340 Filed 1–17–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Request for Extension of Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Commodity Credit Corporation (CCC) to request an extension of an approved information collection to support the Tobacco Importer Assessments. This extension does not involve any revisions to the program rules.

DATES: Submit comments about this notice on or before March 19, 2002.

ADDRESSES: Mail or hand-deliver public comments regarding this notice to Director, Tobacco and Peanuts Division, FSA, USDA, 1400 Independence Avenue, SW, Room 5750–S, STOP 0514, Washington, DC 20250–0514. Comments may be sent by facsimile to (202) 720–0549. Comments may be sent by e-mail to: *tob_comments@wdc.fsa.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Ann Wortham, Tobacco and Peanuts Division, (202) 720–2715.

SUPPLEMENTARY INFORMATION:

Title: Importer Assessments.

OMB Control Number: 0560–0148.

Expiration Date: December 31, 2001.

Type of Request: Extension of a Currently Approved Information Collection.

Abstract: The information collected under OMB Control Number 0560–0148 constitutes all of the information required by CCC to effectively administer the statutory provisions for assessments on imported tobacco. Information collected from importers of unmanufactured tobacco is necessary to determine the amounts of assessments due and that the assessments are paid in a timely manner. The Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, amended sections 106, 106A, and 106B, of the Agricultural Act of 1949, to require the payment of importer no-net-cost (INNC) assessments on imported unmanufactured tobacco. INNC assessments apply only to burley and flue-cured tobacco. Information is collected on form CCC–100, Importer Enter and Assessment Worksheet. The data reported thereon includes the importer's name and address, the importer's number, and the tobacco's entry number, Harmonized Tariff Schedule (HTS) number, as well as the quantity of tobacco, and amounts of assessments remitted.

Estimate of Burden: Public reporting burden for this collection of information is estimated at 45 minutes per response.

Respondents: Importers of unmanufactured tobacco for consumption in the United States, who may be individuals, small businesses, or large tobacco leaf dealers and cigarette manufacturers.

Estimated Number of Respondents: 40.

Estimated Number of Responses Per Respondent: 18.

Estimated Total Annual Burden on Respondents: 540 hours.

Request for Comment: Comment on the above notice is sought. Topics for comment may include, but need not be limited to: (a) Whether the collection of information is necessary for the proper performance of the functions of CCC, including whether the information will have practical utility; (b) the accuracy of CCC's estimate of burden including the validity of the methodology and assumptions used; (c) enhancing the quality, utility, and clarity of the information collected; and (d) minimizing the burden of the collection of information on respondents, including the use of appropriate automated electronic, mechanical, or other forms of informational technology.

Comments should be sent the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Director, Tobacco and Peanuts Division, at the addresses listed above. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Signed at Washington, DC, on December 31, 2001.

James R. Little,

Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–1359 Filed 1–17–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

North Mt. Baker-Snoqualmie Resource Advisory Committee; Meetings

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The North Mt. Baker-Snoqualmie Resource Advisory Committee (RAC) will meet twice during the month of February 2002. The first meeting is scheduled for Wednesday, February 6, 2002, at the Skagit County Hearing Room B, 700 South 2nd St., in Mt. Vernon, WA 98273. The second meeting is scheduled for Thursday, February 21, 2002, at the Whatcom County Courthouse, Multipurpose Room, 311 Grand Ave., in Bellingham, WA 98225.

The February 6 meeting will begin at 9:30 a.m. and continue until about 3:30 p.m. Agenda items to be covered include: (1) Background on the Secure Rural Schools and Community Self-Determination Act of 2000, (2) Organization of the North Mt. Baker-Snoqualmie Resource Advisory Committee, and (3) Future program of work for the North Mt. Baker-Snoqualmie Resource Advisory Committee.

The February 21, 2002 meeting will begin at 9:30 a.m. and continue until about 3:30 p.m. The topics to be covered at the meeting include the process for reviewing and recommending projects and beginning the review of project proposals for Title II funding provided by the Secure Rural Schools and Community Self-Determination Act of 2000.

All North Mt. Baker-Snoqualmie Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

The North Mt. Baker-Snoqualmie Resource Advisory Committee advises Whatcom and Skagit Counties on projects, reviews project proposals, and makes recommendations to the Forest Supervisor for projects to be funded by Title II dollars. The North Mt. Baker-Snoqualmie Resource Advisory Committee was established to carry out the requirements of the Secure Rural

Schools and Community Self-Determination Act of 2000.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Jon Vanderheyden, Designated Federal Official, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 810 Stated Route 20, Sedro Woolley, Washington 98284 (360–856–5700, Extension 201).

Dated: January 11, 2002.

Jon Vanderheyden,

Designated Federal Official.

[FR Doc. 02–1310 Filed 1–17–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Siuslaw Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siuslaw Resource Advisory Committee (RAC) will meet on February 7 and 8, 2002. The meeting will begin at 9 a.m. in the Siuslaw Valley Fire & Rescue Station, 2625 Highway 101 N., Florence, OR. Draft agenda items include: Assigning Priorities to Title II Projects; and Public Forum. The meeting is expected to adjourn at 4 p.m. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Linda Stanley, Community Development Specialist, Siuslaw National Forest, 541/750–7210 or write to Forest Supervisor, Siuslaw National Forest, PO Box 1148, Corvallis, OR 97339.

Dated: January 11, 2002.

Gloria D. Brown,

Forest Supervisor.

[FR Doc. 02–1311 Filed 1–17–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Pellaphalia Creek Watershed, Leake County, MS

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Pellaphalia Creek Watershed, Leake County, Mississippi.

FOR FURTHER INFORMATION CONTACT: Homer L. Wilkes, State Conservationist, Natural Resources Conservation Service, Suite 1321, A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, Telephone: 601–965–5205.

SUPPLEMENTARY INFORMATION: The environmental assessment of this Federal assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Homer L. Wilkes, State Conservationist had determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a watershed plan to reduce flood damage to the disadvantaged residents of a rural Leake County community in the Pellaphalia Creek Watershed. The planned works of improvement consists of installing one Class I Dike (levee) and elevating one residence above the 100-year elevation.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Homer L. Wilkes. No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: January 11, 2002.

Homer L. Wilkes,

State Conservationist.

[FR Doc. 02–1288 Filed 1–17–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Maximum Dollar Amount on Awards Under the Rural Economic Development Loan and Grant Program for Fiscal Year 2002

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service hereby announces the maximum dollar amount on loan and grant awards under the Rural Economic Development Loan and Grant (REDLG) program for fiscal year (FY) 2002. The maximum dollar award on zero-interest loans for FY 2002 is $450,000. The maximum dollar award on grants for FY 2002 is $200,000. The maximum loan and grant awards stated in this notice are effective for loans and grants made during the fiscal year beginning October 1, 2001, and ending September 30, 2002. REDLG loans and grants are available to Rural Utilities Service electric and telephone utilities to assist in developing rural areas from an economic standpoint.

FOR FURTHER INFORMATION CONTACT: Patricia Wing, Loan Specialist, Rural Business-Cooperative Service, USDA, STOP 3225, Room 6870, 1400 Independence Avenue, SW., Washington, DC 20250. Telephone: (202) 720–9558. FAX: (202) 720–6561.

SUPPLEMENTARY INFORMATION: The maximum loan and grant awards are determined in accordance with 7 CFR 1703.28. The maximum loan and grant awards are calculated as 3.0 percent of the projected program levels, rounded to the nearest $10,000; however, as specified in 7 CFR 1703.28(b), regardless of the projected total amount that will be available, the maximum size may not be lower than $200,000. The projected program level during FY 2002 for zero-interest loans is $14.966 million and the projected program level for grants is $4 million. Applying the specified 3.0 percent to the program level for loans, rounded to the nearest $10,000, results in the maximum loan award of $450,000. Applying the specified 3.0 percent to the program level for grants results in an amount lower than $200,000. Therefore, the maximum grant award for FY 2002 will be $200,000.

Dated: December 7, 2001.

John Rosso,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 02–1286 Filed 1–17–02; 8:45 am]

BILLING CODE 3410–XY–U

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

Determination of the 2001 Fiscal Year Interest Rates on Rural Telephone Bank Loans

AGENCY: Rural Telephone Bank, USDA.

ACTION: Notice of 2001 fiscal year interest rates determination.

SUMMARY: In accordance with 7 CFR 1610.10, the Rural Telephone Bank (Bank) fiscal year 2001 cost of money rates have been established as follows: 5.95% and 5.17% for advances from the liquidating account and financing account, respectively (fiscal year is the period beginning October 1 and ending September 30).

Except for loans approved from October 1, 1987, through December 21, 1987, where borrowers elected to remain at interest rates set at loan approval, all loan advances made during fiscal year 2001 under Bank loans approved in fiscal years 1988 through 1991 shall bear interest at the rate of 5.95% (the liquidating account rate). All loan advances made during fiscal year 2001 under Bank loans approved during or after fiscal year 1992 shall bear interest at the rate of 5.17% (the financing account rate).

The calculation of the Bank's cost of money rates for fiscal year 2001 for the liquidating account and the financing account are provided in Tables 1 and 2. Since the calculated rates are greater than the minimum rate (5.00%) allowed under 7 U.S.C. 948(b)(3)(A), the cost of money rates for the liquidating account and financing account are set at 5.95% and 5.17%, respectively. The methodology required to calculate the cost of money rates is established in 7 CFR 1610.10(c).

FOR FURTHER INFORMATION CONTACT: Jonathan P. Claffey, Deputy Assistant Administrator, Telecommunications Program, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1590, South Building, Washington, DC 20250, telephone number (202) 720–9556.

SUPPLEMENTARY INFORMATION: The Federal Credit Reform Act of 1990 (''Credit Reform'') (2 U.S.C. 661a, *et seq.*) implemented a system to reform the budgetary accounting and management of Federal credit programs. Bank loans approved on or after October 1, 1991, are accounted for in a different manner than Bank loans approved prior to fiscal year 1992. As a result, the Bank must calculate two cost of money rates: (1) The cost of money rate for advances made from the liquidating account (advances made during fiscal year 2001 on loans approved prior to fiscal year 1992) and (2) the cost of money rate for advances made during fiscal year 2001 on loans approved on or after October 1, 1991 (otherwise referred to as loans from the financing account).

The cost of money rate methodology is the same for both accounts. It develops a weighted average rate for the Bank's cost of money considering total fiscal year loan advances; the excess of fiscal year loan advances over amounts received in the fiscal year from the issuance of Class A, B, and C stocks, debentures and other obligations; and the costs to the Bank of obtaining funds from these sources.

During fiscal year 2001, the Bank was authorized to pay the following dividends: the dividend on Class A stock was 2.00% as established in amended section 406(c) of the Rural Electrification Act (RE Act); no dividends were payable on Class B stock as specified in 7 CFR 1610.10(c); and the dividend on Class C stock was established by the Bank at 5.45%.

Sources and Costs of Funds—Liquidating Account

In accordance with Section 406(a) of the RE Act, the Bank did not issue Class A stock in fiscal year 2001. Advances for the purchase of Class B stock and cash purchases for Class B stock were $256,497. Since there were no rescissions of loan funds advanced for Class B stock, the amount received by the Bank from the issuance of Class B stock, per 7 CFR 1610.10(c), was $256,497. The amount received by the Bank in fiscal year 2001 from the issuance of Class C stock was $3,368.

The Bank did not issue debentures or any other obligations related to the liquidating account in fiscal year 2001. Consequently, no cost was incurred related to the issuance of debentures subject to 7 U.S.C. 948(b)(3)(D).

The excess of fiscal year 2001 loan advances from the liquidating account over amounts received from issuance of stocks, debentures, and other obligations amounted to $6,378,242. The cost associated with this excess is the historical cost of money rate as defined in 7 U.S.C. 948(b)(3)(D)(v). The calculation of the Bank's historical cost of money rate for advances from the liquidating account is also provided in Table 1. The methodology required to perform this calculation is described in 7 CFR 1610.10(c). The cost for money rates for fiscal years 1974 through 1987 are defined in section 408(b) of the RE Act, as amended by Public Law 100–203, and are listed in 7 CFR 1610.10(c) and Table 1 herein.

Sources and Costs of Funds—Financing Account

In accordance with Section 406(a) of the RE Act, the Bank did not issue Class A stock in fiscal year 2001. Advances for the purchase of Class B stock and cash purchases for Class B stock were $2,638,376. Since there were no rescissions of loan funds advanced for Class B stock, the amount received by the Bank from the issuance of Class B stock, per 7 CFR 1610.10(c), was $2,638,376. The Bank did not receive any amounts in fiscal year 2001 from the issuance of Class C stock.

During fiscal year 2001, issuance of debentures or any other obligations related to the financing account were $63,500,000 at an interest rate of 5.426%. However, only $52,767,520 is attributable to advances made with borrowed funds. Advances totaling $2,638,376 were made through collections associated with Class B stock purchases and $8,094,104 will be carried forward and used for loan transactions in fiscal year 2002. Therefore, there is no excess of funds for fiscal year 2001.

Since there was no excess of fiscal year 2001 loan advances from the financing account over amounts received from issuance of stocks, debentures, and other obligations, no cost was incurred related to advances from the financing account. However, the Bank's cost of money rate for advances from the financing account is provided in Table 2. The methodology required to perform this calculation is described in 7 CFR 1610.10(c).

Dated: December 21, 2001.

Hilda Gay Legg,

Governor, Rural Telephone Bank.

BILLING CODE 3410–15–P

TABLE 1

Rural Telephone Bank Cost of Money Rate - Liquidating Account

FY 2001 Source of Bank Funds	(a) Amount	(b) Cost	(c) (a)x(b)	(c) / Advances
Issuance of Class A Stock	$ -	2.00%	$ -	0.0000%
Issuance of Class B Stock	$ 256,497	0.00%	$ -	0.0000%
Issuance of Class C Stock	$ 3,368	5.45%	$ 184	0.0028%
Issuance of Debentures and Other Obligations	$ -	0.00%	$ -	0.0000%
Excess of Total Advances Over Issuances	$ 6,378,242	6.19%	$ 394,813	5.9477%
Total FY 2001 Advances	$ 6,638,107	CALCULATED COST OF MONEY RATE =		5.95%
		MINIMUM RATE ALLOWABLE =		5.00%

Fiscal Year	(a) Cost of Money	(b) Advances	(c) (a)x(b)	(c) / Total Advances
FY 1974	5.01%	$ 111,022,574	$ 5,562,231	0.232%
FY 1975	5.85%	$ 130,663,197	$ 7,643,797	0.319%
FY 1976	5.33%	$ 99,915,066	$ 5,325,473	0.222%
FY 1977	5.00%	$ 80,907,425	$ 4,045,371	0.169%
FY 1978	5.87%	$ 142,297,190	$ 8,352,845	0.349%
FY 1979	5.93%	$ 130,540,067	$ 7,741,026	0.323%
FY 1980	8.10%	$ 199,944,235	$ 16,195,483	0.676%
FY 1981	9.46%	$ 148,599,372	$ 14,057,501	0.587%
FY 1982	8.39%	$ 112,232,127	$ 9,416,275	0.393%
FY 1983	6.99%	$ 93,402,836	$ 6,528,858	0.272%
FY 1984	6.55%	$ 90,450,549	$ 5,924,511	0.247%
FY 1985	5.00%	$ 72,583,394	$ 3,629,170	0.151%
FY 1986	5.00%	$ 71,582,383	$ 3,579,119	0.149%
FY 1987	5.00%	$ 51,974,938	$ 2,598,747	0.108%
FY 1988	5.00%	$ 119,488,367	$ 5,974,418	0.249%
FY 1989	5.00%	$ 97,046,947	$ 4,852,347	0.203%
FY 1990	5.00%	$ 107,694,991	$ 5,384,750	0.225%
FY 1991	5.43%	$ 163,143,075	$ 8,858,669	0.370%
FY 1992	6.14%	$ 84,940,822	$ 5,215,366	0.218%
FY 1993	6.05%	$ 84,605,366	$ 5,118,625	0.214%
FY 1994	6.15%	$ 54,530,897	$ 3,353,650	0.140%
FY 1995	6.04%	$ 35,967,133	$ 2,172,415	0.091%
FY 1996	6.05%	$ 30,965,187	$ 1,873,394	0.078%
FY 1997	5.98%	$ 32,602,587	$ 1,949,635	0.081%
FY 1998	5.96%	$ 20,673,798	$ 1,232,158	0.051%
FY 1999	6.01%	$ 17,796,518	$ 1,069,571	0.045%
FY 2000	6.01%	$ 10,436,622	$ 627,241	0.026%
	TOTAL ADVANCES	$ 2,396,007,663	COST OF MONEY	6.19%

TABLE 2

Rural Telephone Bank Cost of Money Rate - Financing Account

FY 2001 Source of Bank Funds	(a) Amount	(b) Cost	(c) (a)x(b)	(c) / Advances
Issuance of Class A Stock	$ -	2.000%	$ -	0.0000%
Issuance of Class B Stock	$ 2,638,376	0.000%	$ -	0.0000%
Issuance of Class C Stock	$ -	5.450%	$ -	0.0000%
Issuance of Debentures and Other Obligations*	$ 52,767,520	5.426%	$ 2,863,166	5.1676%
Excess of Total Advances Over Issuances	$ -	6.260%	$ -	0.0000%
Total FY 2001 Advances	$ 55,405,896	CALCULATED COST OF MONEY RATE =		5.17%
		MINIMUM RATE ALLOWABLE =		5.00%

* RTB borrowed $63,500,000 from the financing account in FY2001, the remaining funds will be be used for loan transactions in FY2002.

Rural Telephone Bank Historical Cost of Money Rate - Financing Account

Fiscal Year	(a) Cost of Money	(b) Advances	(c) (a)x(b)	(c) / Total Advances
FY 1992	7.38%	$ 4,056,250	$ 299,351	0.098%
FY 1993	6.35%	$ 23,839,200	$ 1,513,789	0.496%
FY 1994	6.40%	$ 56,838,902	$ 3,637,690	1.191%
FY 1995	6.88%	$ 37,161,517	$ 2,556,712	0.837%
FY 1996	6.42%	$ 44,536,621	$ 2,859,251	0.936%
FY 1997	6.54%	$ 34,368,726	$ 2,247,715	0.736%
FY 1998	5.71%	$ 34,446,458	$ 1,966,893	0.644%
FY 1999	5.54%	$ 38,685,732	$ 2,143,190	0.702%
FY 2000	6.05%	$ 31,401,867	$ 1,899,813	0.622%
	TOTAL ADVANCES	$ 305,335,273	COST OF MONEY	6.26%

[FR Doc. 02–1362 Filed 1–17–02; 8:45 am]
BILLING CODE 3410–15–C

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Municipal Interest Rates for the First Quarter of 2002

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of municipal interest rates on advances from insured electric loans for the first quarter of 2002.

SUMMARY: The Rural Utilities Service hereby announces the interest rates for advances on municipal rate loans with interest rate terms beginning during the first calendar quarter of 2002.

DATES: These interest rates are effective for interest rate terms that commence during the period beginning January 1, 2002, and ending March 31, 2002.

FOR FURTHER INFORMATION CONTACT: Gail P. Salgado, Management Analyst, Office of the Assistant Administrator, Electric Program, Rural Utilities Service, U.S. Department of Agriculture, Room 4024–S, Stop 1560, 1400 Independence Avenue, SW., Washington, DC 20250–1560. Telephone: 202–205–3660. FAX: 202–690–0717. e-mail: *GSalgado@rus.usda.gov.*

SUPPLEMENTARY INFORMATION: The Rural Utilities Service (RUS) hereby announces the interest rates on advances made during the first calendar quarter of 2002 for municipal rate electric loans. RUS regulations at § 1714.4 state that each advance of funds on a municipal rate loan shall bear interest at a single rate for each interest rate term. Pursuant to § 1714.5, the interest rates on these advances are based on indexes published in the ''Bond Buyer'' for the four weeks prior to the fourth Friday of the last month before the beginning of the quarter. The rate for interest rate terms of 20 years or longer is the average of the 20 year rates published in the Bond Buyer in the four weeks specified in § 1714.5(d). The rate for terms of less than 20 years is the average of the rates published in the Bond Buyer for the same four weeks in the table of ''Municipal Market Data—General Obligation Yields'' or the successor to this table. No interest rate may exceed the interest rate for Water and Waste Disposal loans.

The table of Municipal Market Data includes only rates for securities maturing in 2002 and at 5 year intervals thereafter. The rates published by RUS reflect the average rates for the years shown in the Municipal Market Data table. Rates for interest rate terms ending in intervening years are a linear interpolation based on the average of the rates published in the Bond Buyer. All rates are adjusted to the nearest one eighth of one percent (0.125 percent) as required under § 1714.5(a). The market interest rate on Water and Waste Disposal loans for this quarter is 5.125 percent.

In accordance with § 1714.5, the interest rates are established as shown in the following table for all interest rate terms that begin at any time during the first calendar quarter of 2002.

Interest rate term ends in (year)	RUS rate (0.000 percent)
2023 or later	5.125
2022	5.125
2021	5.000
2020	5.000
2019	4.875
2018	4.875
2017	4.875
2016	4.750
2015	4.625
2014	4.500
2013	4.375
2012	4.250
2011	4.125
2010	3.875
2009	3.750
2008	3.625
2007	3.500
2006	3.125
2005	2.625
2004	2.250
2003	1.875

Dated: December 21, 2001.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 02–1363 Filed 1–17–02; 8:45 am]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition and Deletion

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

ACTION: Proposed addition to and deletion from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a service previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 19, 2002.

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

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

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

Addition

If the Committee approves the proposed addition, the entities of the Federal Government identified in the notice for each service will be required to procure the service 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 service to the Government.

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

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information. The following service is proposed for addition to Procurement List for production by the nonprofit agencies listed:

Service: Fulfillment Services, Military Sealift Command, Milwaukee, Wisconsin.

NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin.

Government Agency: Military Sealift Command.

Deletion

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.

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

3. There are no known regulatory alternatives which would accomplish

the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for deletion from the Procurement List.

The following service is proposed for deletion from the Procurement List:

Service: Janitorial/Custodial, VA Greater Los Angeles Regional Healthcare System, Consolidated Mail Outpatient Pharmacy, 11301 Wilshire Boulevard, Building 222, Los Angeles, California.

G. John Heyer,

General Counsel.

[FR Doc. 02–1368 Filed 1–17–02; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

[I.D. 011502A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Gear-Marking Requirements in Antarctic Fisheries.

Form Number(s): None.

OMB Approval Number: 0648–0367.

Type of Request: Regular submission.

Burden Hours: 10.

Number of Respondents: 1.

Average Hours Per Response: 5 minutes to mark a buoy/float; 2 minutes to mark or tag a trap/pot; and 2 minutes to sew a tag on trawl nets.

Needs and Uses: Vessels participating in Antarctic fisheries must mark the vessel's fishing gear with the official vessel identification number, Federal permit or tag number, or some other specified form of identification. The information is used for enforcement purposes. The authority for this requirement comes from the Magnuson-Stevens Fishery Management and Conservation Act and the Antarctic Marine Living Resources Convention Act of 1984.

Affected Public: Business and other for-profit organizations.

Frequency: Third party disclosure.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1392 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 011502B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Foreign Fishing Gear Identification Requirements.

Form Number(s): None.

OMB Approval Number: 0648–0354.

Type of Request: Regular submission.

Burden Hours: 1.

Number of Respondents: 1.

Average Hours Per Response: 75 minutes.

Needs and Uses: Under provisions of Section 204 of the Magnuson-Stevens Fishery Management and Conservation Act, foreign fishing vessels may be authorized to conduct fishing activities in U.S. waters. Vessels so authorized that deploy gear which is not physically and continuously attached to the vessel are required to mark such gear in a prescribed manner to allow enforcement personnel to monitor fishing activities and ensure that a vessel harvests only from its own gear and that its gear is not illegally placed.

Affected Public: Business or other for-profit organizations.

Frequency: Third party disclosure.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1393 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 011502C]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Foreign Fishing Vessel Permit Applications.

Form Number(s): None.

OMB Approval Number: 0648–0089.

Type of Request: Regular submission.

Burden Hours: 25.

Number of Respondents: 25.

Average Hours Per Response: 90 minutes for an application for directed fishing; 2 hours for an application for a joint venture; and 45 minutes for an application for transshipment.

Needs and Uses: Section 204 of the Magnuson-Stevens Fishery Conservation and Management Act provides for the issuance of fishing permits to foreign vessels. Persons wanting permits must submit application material needed by NOAA to evaluate and act on the request.

Affected Public: Business and other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1394 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 01502D]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: High Seas Fishing Vessel Identification Requirements.

Form Number(s): None.

OMB Approval Number: 0648–0348.

Type of Request: Regular submission.

Burden Hours: 37.

Number of Respondents: 50.

Average Hours Per Response: 45 minutes.

Needs and Uses: Vessels licensed under the High Sea Fishing Compliance Act are required to mark their vessels in three places with their official number or international radio call sign. This identification is necessary for enforcement purposes.

Affected Public: Business and other for-profit organizations.

Frequency: Third party disclosure.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1395 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 011502E]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Prohibited Species Donation Program.

Form Number(s): None.

OMB Approval Number: 0648–0316.

Type of Request: Regular submission.

Burden Hours: 733.

Number of Respondents: 76.

Average Hours Per Response: 40 hours for an authorized distributor application and list of participants; 12 minutes for a distributor to retain product tracking information; and 6 minutes for a processor to retain product tracking information.

Needs and Uses: A prohibited species donation (PSD) program for salmon and halibut was approved by the North Pacific Fishery Management Council and implemented by the National Marine Fisheries Service (NMFS). This program has effectively reduced regulatory discard of salmon and halibut by allowing fish that would otherwise be discarded to be donated to needy individuals through tax-exempt organizations. Vessels and processing plants participating in the donation program voluntarily retain and process salmon and halibut bycatch.

An authorized, tax-exempt, distributor, chosen by NMFS is responsible for monitoring the retention and processing of fish donated by vessels and processors. The authorized distributor also coordinates the processing, storage, transportation, and distribution of salmon and halibut. The PSD program requires a collection-of-information so that NMFS can monitor the authorized distributors' ability to effectively supervise program participants and ensure that donated fish are properly processed, stored, and distributed.

Affected Public: Not-for-profit institutions, business or other for-profit organizations.

Frequency: Every three years for permit, on occasion, and recordkeeping.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1396 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 011502F]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Individual Fishing Quotas for Pacific Halibut and Sablefish in the Alaska Fisheries.

Form Number(s): None.

OMB Approval Number: 0648–0272.

Type of Request: Regular submission.

Burden Hours: 13,249.

Number of Respondents: 6,700.

Average Hours Per Response: 30 minutes for an application for a landing card; 30 minutes for an application for a registered buyer permit; 1 hour for an application for quota share; 4 hours for a letter of appeal; 30 minutes for a beneficiary designation; 2 hours for identification of ownership interest; 30 minutes for an annual update on status of corporation or partnership quota share; 2 hours for an application for a transfer eligibility certificate; 2 hours for

an application for transfer of quota share; 30 minutes for an application for replacement of certificates, permits, or cards; 30 minutes for a request for a transaction terminal; 6 minutes for a request for an administrative waiver; 12 minutes for a prior notice of landing; 12 minutes for a landing report; 12 minutes for a vessel clearance; 6 minutes for a departure report; 12 minutes for a transshipment authorization; 18 minutes for a shipment report; and 6 minutes for a dockside sales receipt.

Needs and Uses: The National Marine Fisheries Service collects information for the continued management of the Individual Fishing Quota (IFQ) Program for fixed-gear Pacific halibut and sablefish fisheries off Alaska as well as the Western Alaska Community Development Quota (CDQ) Program halibut fishery. The IFQ program allocates annual total catch limits for the halibut and sablefish fisheries among individual fishermen. The CDQ halibut program allocates annual total catch limits for the halibut fishery among individual CDQ fishermen. Fishermen are assigned Quota Shares (QS) for the fisheries, and then annually receive an IFQ and/or CDQ. Applications and reporting are required to manage and track the program.

Affected Public: Individuals or households, business or other for-profit organizations.

Frequency: Recordkeeping, on occasion, annual.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1397 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 011502G]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Pacific Albacore Logbook.

Form Number(s): NOAA Form 88–197.

OMB Approval Number: 0648–0223.

Type of Request: Regular submission.

Burden Hours: 400.

Number of Respondents: 400.

Average Hours Per Response: 1.

Needs and Uses: Fishermen participating in the Pacific albacore tuna fishery are asked to voluntarily complete and submit logbooks documenting their catch and effort on fishing trips. Persons possessing High Seas Fishing Compliance Act permits are required to submit such logbooks. The information obtained is used by the agency to assess the status of albacore stocks and to monitor the fishery.

Affected Public: Business and other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1398 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011502J]

Submission for OMB Review; Comment Request

SUPPLEMENTARY INFORMATION: The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Foreign Fishing Vessel Identification Requirements.

Form Number(s): None.

OMB Approval Number: 0648-0356.

Type of Request: Regular submission.

Burden Hours: 7.

Number of Respondents: 10.

Average Hours Per Response: 45 minutes.

Needs and Uses: Under provisions of Section 204 of the Magnuson-Stevens Fishery Management and Conservation Act, foreign fishing vessels may be authorized to conduct fishing activities in U.S. waters. Vessels so authorized are required to display vessel identification to make it possible for enforcement personnel to monitor fishing, at-sea processing, and other related activities, to ascertain whether a vessel's observed activities are in accordance with those authorized for that vessel.

Affected Public: Business and other for-profit organizations.

Frequency: Third party disclosure.

Respondent's Obligation: Mandatory

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1401 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011502H]

Submission for OMB Review; Comment Request

SUPPLEMENTARY INFORMATION: The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: High Sea Fishing Permit Application Information.

Form Number(s): None.

OMB Approval Number: 0648–0304.

Type of Request: Regular submission.

Burden Hours: 100.

Number of Respondents: 200.

Average Hours Per Response: 30 minutes.

Needs and Uses: United States vessels that fish on the high seas are required to possess a permit issued under the High Seas Fishing Compliance Act. Applicants must submit information to identify their vessels and intended fishing areas. The application information is used to process applications and maintain a register of U.S. vessels authorized to fish on the high seas.

Affected Public: Business and other for-profit organizations.

Frequency: Every 5 years.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1402 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011502I]

Submission for OMB Review; Comment Request

SUPPLEMENTARY INFORMATION: The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northwest Region Vessel Identification Requirements.

Form Number(s): None.

OMB Approval Number: 0648–0355.

Type of Request: Regular submission.

Burden Hours: 1,488.

Number of Respondents: 1,984.

Average Hours Per Response: 45 minutes (15 minutes per location).

Needs and Uses: Federally-permitted vessels in the Pacific Coast Groundfish Fishery are required to identify their vessels by displaying their official number in three locations. The number is used by NOAA, the U.S. Coast Guard, and other agencies for fishery enforcement activities.

Affected Public: Business or other for-profit organizations.

Frequency: Third party disclosure.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1403 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Office of Export Trading Company Affairs; Export Trading Companies Contact Facilitation Service

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(C)(2)(A)).

DATES: Written comments must be submitted on or before March 19, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th & Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *MClayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Mary Michael, Office of Export Trading Company Affairs; Service Industries, Tourism and Finance; Room 1104; 14th St. & Constitution Ave, NW., Washington, DC 20230; phone: (202) 482–5131; and fax: (202) 482–1790.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Contact Facilitation Service (CFS) is a U.S. Department of Commerce database, designed to put U.S. producers together with export service providers. Many U.S. firms have never exported because of a fear of the risks involved in exporting and a lack of knowledge of the international marketplace. New-to-export firms need the assistance of export service firms offering export trade services. One of the purposes of the Export Trading Company (ETC) Act of 1982 is to increase United States exports of goods and services by encouraging more efficient provision of export trade services to U.S. producers and suppliers. Section 104 of the Act directs Commerce to provide a service to facilitate contact between producers of exportable goods and services and firms offering export trade services.

The International Trade Administration (ITA) maintains the CFS database of U.S. manufacturers, export

trading and management companies, wholesalers/distributors, and international service firms. The CFS is designed to help promote exports and enable U.S. producers to locate export service providers. Export Service firms registered in the CFS database are listed in annual print editions of the *U.S. Trade Assistance Directory,* distributed throughout the United States. U.S. producers of goods and services registered in the CFS database are listed in the annual print editions of the *U.S. Department of Commerce Exporters' Yellow Pages ™,* distributed worldwide. These directories also are accessible online at *www.myexports.com.* The print and electronic directories are produced and made available through ITA's ''MyExports ™'' program. Without the information collected by the form, the CFS database and the resulting directories would be unreliable and ineffective, because users of this kind of data need current information about the listed companies.

II. Method of Collection

Form ITA–4094P is sent by request to U.S. firms.

III. Data

OMB Number: 0625–0120.
Form Number: ITA–4094P.
Type of Review: Regular Submission.
Affected Public: Business or other for-profit; not-for-profit institutions and State, local or Tribal Government.
Estimated Number of Respondents: 9,500.
Estimated Time Per Response: 30 minutes.
Estimated Total Annual Burden Hours: 4,750.
Estimated Total Annual Costs: $95,500 ($10,000 government and $85,500 respondents).

IV. Request for Comments

Comments are invited (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 15, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1360 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–812]

Furfuryl Alcohol From Thailand: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: January 18, 2002.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Tisha Loeper-Viti at (202) 482–0650 or (202) 482–7425, Office of AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order/finding for which a review is requested, and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Background

On August 20, 2001, the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on furfuryl alcohol from Thailand, covering the period July 1, 2000 through June 30, 2001 (66 FR 43570). The preliminary results are currently due no later than April 2, 2002.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit for the reasons stated in our memorandum from Gary Taverman to Bernard Carreau, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than July 31, 2002. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: January 14, 2002.

Bernard Carreau,

Deputy Assistant Secretary for AD/CVD Enforcement II.

[FR Doc. 02–1390 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an amended Export Trade Certificate of Review, Application No. 90–4A005.

SUMMARY: The Department of Commerce has issued an amended Export Trade Certificate of Review to the California Kiwifruit Commission (''CKC'') and California Kiwifruit Exporters Association (''CKEA'') on January 14, 2002. The original Certificate was issued on August 10, 1990 (55 FR 33740, August 17, 1990) and previously amended on November 27, 1990 (55 FR 50204, December 5, 1990); January 29, 1991 (56 FR 4601, February 5, 1991); and February 24, 1992 (57 FR 6712, February 27, 1992).

FOR FURTHER INFORMATION CONTACT: Vanessa M. Bachman, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number), or by e-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing

Title III are found at 15 CFR part 325 (2000).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

CKC's and CKEA's Export Trade Certificate of Review has been amended to:

1. Add each of the following companies as a new ''Member'' of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)): Stellar Distributing, Fresno, California; George Brothers, Sultana, California; Trinity Fruit Sales Co., Clovis, California; Sun Pacific Marketing Coop., Los Angeles, California; and Regatta Tropicals, Arroyo Grande, California;

2. Delete the following companies as ''Members'' of the Certificate: Alkop Farms, Inc., Chico, California; Bartell Marketing, Inc., Fresno, California; Blue Anchor, Inc., Sacramento, California; Coast to Coast Produce Co., San Luis Obispo, California; Nash De Camp Company, Visalia, California; and Richland Sales Co., McFarland, California; and

3. Change the listing of the company names for the current Members: Kings Canyon Fruit Sales Corp. to the new listing Kings Canyon/Corrin Sales Corp.; Venida Packing Inc. to the new listing Venida Packing Co.; and Wil-Ker-Son Kiwifruit Ranch to the new listing WKS/Wil-Ker-Son Ranch.

The effective date of the amended certificate is October 15, 2001. A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Dated: January 14, 2002.

Vanessa M. Bachman,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 02–1294 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 01–00005.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to Vinex International, Inc. (''VINEX''). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Vanessa Bachman, Acting Director Office of Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number), or by e-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2000). The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the Certificate in the **Federal Register**. Under Section 305 (a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. Products

All products.

2. Services

All services.

3. Technology Rights

Technology rights, including, but not limited to, patents, trademarks, copyrights, and trade secrets that relate to Products and Services.

4. Export Trade Facilitation Services (as They Relate to the Export of Products, Services, and Technology Rights)

Export Trade Facilitation Services, including, but not limited to, professional services and assistance relating to: Government relations; state and federal export programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping and export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation services; and the formation of shippers' associations.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

VINEX may:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;
2. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Markets and distribute such information to clients;
3. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products, Services, and/or Technology Rights in Export Markets;
4. Enter into exclusive and/or non-exclusive agreements with distributors and/or sales representatives in Export Markets;
5. Allocate export sales or divide Export Markets among Suppliers for the sale and/or licensing of Products, Services, and/or Technology Rights;
6. Allocate export orders among Suppliers;
7. Establish the price of Products, Services, and/or Technology Rights for sale and/or licensing in Export Markets;
8. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights;
9. Enter into contracts for shipping; and
10. Exchange information on a one-to-one basis with individual Suppliers regarding inventories and near-term production schedules for the purpose of determining the availability of products for export and coordinating export with distributors.

Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operation, VINEX will not intentionally disclose, directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.

2. VINEX will comply with requests made by the Secretary of Commerce on behalf of the Secretary of Commerce or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities, and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of Section 303(a) of the Act.

Definitions

1. ''Supplier'' means a person who produces, provides, or sells Products, Services and/or Technology Rights.

Protection Provided by the Certificate

This Certificate protects VINEX and its employees acting on its behalf from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Dated: January 14, 2002.

Vanessa M. Bachman,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 02–1295 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Allocation of Tariff Rate Quotas on the Import of Certain Worsted Wool Fabrics for Calendar Year 2002

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Notice of allocation of 2002 worsted wool fabric tariff rate quota.

FOR FURTHER INFORMATION CONTACT: Sergio Botero, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4058.

The Department of Commerce (Department) has determined the allocation for calendar year 2002 of imports of certain worsted wool fabrics under tariff rate quotas established by Title V of the Trade and Development Act of 2000. The companies that are being provided an allocation are listed below.

Background

Title V of the Trade and Development Act of 2000 (The Act) creates two tariff rate quotas, providing for temporary reductions in the import duties on two categories of worsted wool fabrics suitable for use in making suits, suit-type jackets, or trousers. For worsted wool fabric with average fiber diameters greater than 18.5 microns (Harmonized Tariff Schedule of the United States (HTS) heading 9902.51.11), the reduction in duty is limited to 2,500,000 square meters per year. For worsted wool fabric with average fiber diameters of 18.5 microns or less (HTS heading 9902.51.12), the reduction is limited to 1,500,000 square meters per year. The Act requires the President to ensure that such fabrics are fairly allocated to persons (including firms, corporations, or other legal entities) who cut and sew men's and boys' worsted wool suits and suit-like jackets and trousers in the United States and who apply for an allocation based on the amount of such suits cut and sewn during the prior calendar year. Presidential Proclamation 7383, of December 1, 2000, authorized the Secretary of Commerce to allocate the quantity of worsted wool fabric imports under the tariff rate quotas. On January 22, 2001 the Department published regulations establishing procedures for applying for, and determining, such allocations. 66 FR 6459, 15 CFR 335.

On September 7, 2001, the Department published a notice soliciting applications for an allocation of the 2002 tariff rate quotas with a closing date of October 9, 2001. The Department received timely applications for the HTS 9902.51.11 tariff rate quota from 17 firms. The Department received timely applications for the HTS 9902.51.12 tariff rate quota from 16 firms All applicants were determined eligible for an allocation.

Most applicants submitted data on a business confidential basis. As allocations to firms were determined on the basis of this data, the Department considers individual firm allocations to be business confidential.

Three companies' 2002 tariff rate quota allocations were reduced for HTS 9902.51.11. These companies failed to import 95 percent of their 2001 tariff rate quota allocations of this fabric. The total amount of the reduction was 11,036 square meters, which will be allocated to the non-penalized 2002 license holders at a later date this year. One company's 2002 tariff rate quota allocation was reduced for HTS 9902.51.12. This company failed to import 95 percent of its 2001 tariff rate quota allocation of this fabric. The amount of the reduction was 4,903 square meters, which will be allocated to the non-penalized 2002 license holders at a later date this year. The Department determined the appropriate allocation reduction in accordance with CFR 335.

Firms That Received Allocations

1. HTS 9902.51.11, fabrics, of worsted wool, with average fiber diameter greater than 18.5 micron, certified by the importer as suitable for use in making suits, suit-type jackets, or trousers (provided for in subheading 5112.11.60 and 5112.19.95)

Amount allocated: 2,488,964 square meters; 11,036 square meters to be allocated at later date this year.

Companies Receiving Allocation:

Alperin Inc.—Scranton, PA
American Fashion, Inc.—Chula Vista, CA
Bowdon Manufacturing Co., Inc—Bowdon, GA
Calvin Clothing Company, Inc.—Scranton, PA
CK Apparel Corp.—New York, NY
Concorde Apparel Company, L.L.C.—Scranton, PA
Corbin Ltd.—Ashland, KY
Hardwick Clothes Inc.—Cleveland, TN
Hartmarx Corporation—Chicago, IL
Hartz & Company, Inc.—Frederick, MD
Hugo Boss Cleveland, Inc—Cleveland, TN
JA Apparel Corp.—New York, NY
John H. Daniel Co.—Knoxville, TN
Pincus Bros, Inc.—Philadelphia, PA
Sewell Clothing Company, Inc.—Bremen, GA
Southwick Clothing L.L.C.—Lawrence, MA
The Tom James Co.—Franklin, TN

2. HTS 9902.51.12, fabrics, of worsted wool, with average fiber diameter of 18.5 micron or less, all the foregoing certified by the importer as suitable for use in making suits, suit-type jackets, or trousers (provided for in subheading 5112.11.30 and 5112.19.60)

Amount allocated: 1,495,097 square meters; 4903 square meters to be allocated at later date this year.

Companies Receiving Allocation:

American Fashion, Inc.—Chula Vista, CA
Brooks Brothers—New York, NY
Corbin Ltd.—Ashland, KY
Dormeuil Personal Tailoring—New York, NY
Hardwick Clothes Inc.—Cleveland, TN
Hartmarx Corporation—Chicago, IL
Hartz & Company, Inc.—Frederick, MD
Hugo Boss Cleveland, Inc.—Cleveland, TN
JA Apparel Corp.—New York, NY
John H. Daniel Co.—Knoxville, TN
Martin Greenfield—Brooklyn, NY
Pincus Bros, Inc.—Philadelphia, PA
Saint Laurie—New York, NY
Sewell Clothing Company, Inc.—Bremen, GA
Southwick Clothing L.L.C.—Lawrence, MA
The Tom James Co.—Franklin, TN

Dated: January 16, 2002.

D. Michael Hutchinson,

Acting Assistant Secretary for Textiles, Apparel and Consumer Goods Industries for Import Administration.

[FR Doc. 02–1491 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011402E]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Capacity Committee Report in February, 2002. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Tuesday, February 5, 2002, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION: The committee will discuss and possibly recommend actions to implement the guidance provided by the Council at the January 2002 Council meeting regarding the possible inclusion of capacity reduction proposals in Amendment 13 to the Multispecies Fishery Management Plan (FMP). They will also refine the list of capacity reduction proposals to be forwarded to the Groundfish Plan Development Team for further analyses and to the Council for consideration. The Council has directed the Committee to make recommendations on revising and combining these proposals for possible inclusion in Amendment 13 to the Multispecies FMP.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. 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 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 Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: January 15, 2002.

Richard W. Surdi,

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

[FR Doc. 02–1399 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011402D]

North Pacific Research Executive Board

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

ACTION: Notice of Executive Board Meeting, closed to the public.

SUMMARY: The North Pacific Research Board was created by Congress for the purpose of carrying out marine research activities in the waters off Alaska. The Executive Board will meet in closed session to discuss personnel and administrative issues.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

DATES: The meeting will be held on February 4, 2002.

ADDRESSES: The meeting will be held at 441 W. 5th Avenue, Suite 500, Anchorage, AK.

FOR FURTHER INFORMATION CONTACT: Clarence Pautzke: 907–271–2809.

SUPPLEMENTARY INFORMATION: Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified 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 Clarence Pautzke at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: January 15, 2002.

Richard W. Surdi,

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

[FR Doc. 02–1400 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

National Imagery and Mapping Agency; Privacy Act of 1974; System of Records

AGENCY: National Imagery and Mapping Agency, DoD.

ACTION: Notice to Amend and Delete Systems of Records.

SUMMARY: The National Imagery and Mapping Agency (NIMA) is amending a system of records notice and deleting one from its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

In addition, NIMA is revising its Preamble to its Privacy Act systems of records to reflect its current name.

DATES: This proposed action will be effective without further notice on February 19, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Comments should be sent to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Avenue, Bethesda, MD 20816–5003.

FOR FURTHER INFORMATION CONTACT: Ms. Christine May on (301) 227–4142.

SUPPLEMENTARY INFORMATION: The National Imagery and Mapping Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 14, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

National Imagery and Mapping Agency

How Systems of Records Are Arranged

Imagery and Mapping Agency records are grouped by subject series. Each series has records about a specific activity or function to which a subject title and number is given. Systems or records are grouped in the same way. For example, a system of records on personnel security clearances may be found in Personnel Security Files—B0504–01 and one about military personnel assignments may be found in Military Services Administrative Record Files—B0614–02. These numbers are part of the system identification. The letter B means National Imagery and Mapping Agency. The first four digits (0504 and 0614) show that the records pertain to Personnel Security and Military Personnel respectively, and the last two are a further breakdown of the series. Other systems of records which differ from these examples but have similar documents may also be found in the same series.

How To Use the Index Guide

The systems of records maintained by the National Imagery and Mapping Agency are contained within the subject series that are listed below. This list identifies each series in the order in which it appears in this issuance. Use the list to identify subject areas of interest. Having done so, use the series number (for example 0504 for Personnel Security) to locate the systems of records grouping in which you are interested.

Subject series	System identification series
Inspection	0210
Historical	0228
Finance and Accounting	0302
Civilian Personnel Pay and Accounting	0303
General Legal	0401
Claims Investigating and Processing Documents	0402
Informational Services	0408
Information Security	0502
Guard Protective Services	0503
Personnel Security	0504
Military Personnel Files	0614
Safety Management Program	0615
Medical and Health Program	0901
Individual Procurement Transactions	1202
General Supply Accounting	1205
Self Service Supply	1206
Maintenance	1208
Personnel Travel and Transportation	1211

Requesting Records

Records are retrieved by name or by some other personal identifier. It is therefore especially important for expeditious service when requesting a record that particular attention be provided to the Notification and/or Access Procedures of the particular record system involved so as to furnish the required personal identifiers, or any other pertinent personal information as may be required to locate and retrieve the record.

Blanket Routine Uses

Certain 'blanket routine uses' of the records have been established that are applicable to every record system maintained within the Department of Defense unless specifically stated otherwise within a particular record system. These additional blanket routine uses of the records are published below only once in the interest of simplicity, economy and to avoid redundancy.

Law Enforcement Routine Use

In the event that a system of records maintained by this component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

Disclosure When Requesting Information Routine Use

A record from a system of records maintained by this component may be disclosed as a routine use to a Federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the

letting of a contract, or the issuance of a license, grant or other benefit.

Disclosure of Requested Information Routine Use

A record from a system of records maintained by this component may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

Congressional Inquiries Routine Use

Disclosure from a system of records maintained by this component may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

Private Relief Legislation Routine Use

Relevant information contained in all systems of records of the Department of Defense published on or before August 22, 1975, may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

Disclosures Required By International Agreements Routine Use

A record from a system of records maintained by this component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities in order to comply with requirements imposed by, or to claim rights conferred in, international agreements and arrangements including those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel.

Disclosure to State and Local Taxing Authorities Routine Use

Any information normally contained in IRS Form W–2 which is maintained in a record from a system of records maintained by this component may be disclosed to state and local taxing authorities with which the Secretary of the Treasury has entered into agreements pursuant to Title 5, U.S. Code, Sections 5516, 5517, 5520, and only to those state and local taxing authorities for which an employee or military member is or was subject to tax regardless of whether tax is or was withheld. This routine use is in accordance with Treasury Fiscal Requirements Manual Bulletin Number 76–07.

Disclosure to the Office of Personnel Management Routine Use

A record from a system of records subject to the Privacy Act and maintained by this component may be disclosed to the Office of Personnel Management concerning information on pay and leave, benefits, retirement deductions, and any other information necessary for the Office of Personnel Management to carry out its legally authorized Government-wide personnel management functions and studies.

Disclosure to the Department of Justice for Litigation Routine Use

A record from a system of records maintained by this component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

Disclosure to Military Banking Facilities Overseas Routine Use

Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged, or retired from the Armed Forces, information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual, the U.S. Government will be liable for the losses the facility may incur.

Disclosure of Information to the General Services Administration Routine Use

A record from a system of records maintained by this component may be disclosed as a routine use to the General Services Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

Disclosure of Information to the National Archives and Records Administration Routine Use

A record from a system of records maintained by this component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

Disclosure to the Merit Systems Protection Board Routine Use

A record from a system of records maintained by this component may be disclosed as a routine use to the Merit Systems Protection Board, including the Office of the Special Counsel for the purpose of litigation, including administrative proceedings, appeals, special studies of the civil service and other merit systems, review of OPM or component rules and regulations, investigation of alleged or possible prohibited personnel practices; including administrative proceedings involving any individual subject of a DoD investigation, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

Counterintelligence Purposes Routine Use

A record from a system of records maintained by this component may be disclosed as a routine use outside the DoD or the U.S. Government for the purpose of counterintelligence activities authorized by U.S. Law or Executive Order or for the purpose of enforcing laws which protect the national security of the United States.

Deletions

B0303–01

SYSTEM NAME:

Individual Pay Record Files (February 22, 1993, 58 FR 10189).

Reason: These records are now covered under the Defense Finance and Accounting Service Privacy Act notice T7335, Defense Civilian Pay System (DCPS) (May 19, 2000, 65 FR 31888).

Amendment

B1211–03

SYSTEM NAME:

Passport Files (February 22, 1993, 58 FR 10189).

Changes:

* * * * *

SYSTEM NAME:

Add 'and Visa' to entry.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Passports and documentation relating to passports and visas for NIMA personnel, including their dependents. Included are passports, requests and receipts for passports, transmittal letters, control cards, and related documents.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'Information is collected to obtain and safe keep official passports until needed for travel and to obtain necessary visas from appropriate Embassies; to notify individuals to reapply when passports expire and to return passports to the Department of State upon departure of the individual from NIMA.'

* * * * *

STORAGE:

Delete entry and replace with 'Paper records in locked cabinets. Electronic records are maintained with restricted access requiring user name and password authorization to access network.'

* * * * *

B1211–03

SYSTEM NAME:

Passport and Visa Files.

SYSTEM LOCATION:

National Imagery and Mapping Agency, Financial Management Office, ATTN: Passport Agent, J–06, 3200 South Second Street, St. Louis, MO 63118–3399.

National Imagery and Mapping Agency Financial Management Office, ATTN: Passport Agent, P–3, 12310 Sunrise Valley Drive, Reston, VA 22091–3414.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: INDIVIDUALS TRAVELING OVERSEAS ON OFFICIAL GOVERNMENT ORDERS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Passports and documentation relating to passports and visas for National Imagery and Mapping Agency personnel, including their dependents. Included are passports, requests and receipts for passports, transmittal letters, control cards, and related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental regulations and NIMA Instruction 5410.1, Travel Management.

PURPOSE(S):

Information is collected to obtain and safe keep official passports until needed for travel and to obtain necessary visas from appropriate Embassies; to notify individuals to reapply when passports expire and to return passports to the Department of State upon departure of the individual from NIMA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of DMA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in locked cabinets. Electronic records are maintained with restricted access requiring user name and password authorization to access network.

RETRIEVABILITY:

By name of individual.

SAFEGUARDS:

Records are maintained in a secured area/locked file cabinets with access limited to authorized personnel whose duties require access. Access to electronic record is limited to restricted access requiring user name and password authorization to access network.

RETENTION AND DISPOSAL:

Passport documentation only held in active office until separation or transfer of individual. Passport and all documentation are destroyed by active office upon separation. Letter of passport destruction is sent to State Department.

SYSTEM MANAGER(S) AND ADDRESS:

National Imagery and Mapping Agency, Financial Management, ATTN: Passport Agent, P–3, 12310 Sunrise Valley Drive, Reston, VA 22091–3414. National Imagery and Mapping Agency, Financial Management Office, ATTN: Passport Agent, J–06, 3200 South Second Street, St. Louis, MO 63118–3399.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to National Imagery and Mapping Agency, 4600 Sangamore Road, GC (D10), Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to National Imagery and Mapping Agency, 4600 Sangamore Road, GC (D10), Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, current address and telephone number.

CONTESTING RECORD PROCEDURES:

NIMA's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in NIMA Instruction 5500.7R1; 32 CFR part 320; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Requests and receipt for passports and visas.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–1333 Filed 1–17–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Air Force is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on February 19, 2002, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, Office of the Chief Information Officer, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of

records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 14, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AF PC N

SYSTEM NAME:

Unit Assigned Personnel Information (October 16, 1997, 62 FR 53826).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Add to entry 'folders containing documentation used for deployment management and processing (Personnel Readiness Folders).'

* * * * *

PURPOSE(S):

Add to end of entry 'deployment management'.

* * * * *

RETENTION AND DISPOSAL:

Add to entry 'Return Personnel Readiness Folder to unit upon completion of deployment, or give to individual upon PCS, separation or discharge (Exception: return passports per DoD Instruction 1000–21.R).'

* * * * *

F036 AF PC N

SYSTEM NAME:

Unit Assigned Personnel Information.

SYSTEM LOCATION:

Headquarters, U.S. Air Force; major command headquarters; all Air Force installations and units, and headquarters of combatant commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military personnel, and Air Force Reserve and Air National Guard personnel. Air Force civilian employees may be included when records are created which are identical to those on military members. Army, Navy, Air Force and Marine Corps active duty military and civilian personnel assigned to headquarters of combatant commands for which Air Force is Executive Agent.

CATEGORIES OF RECORDS IN THE SYSTEM:

File copies of separation actions, newcomers briefing letters, line of duty determinations, assignment actions, retirement actions, in and out processing checklists, promotion orders, credit union authorization, disciplinary actions, favorable/unfavorable communications, record of counseling, appointment notification letters, duty status changes, applications for off duty employment, applications and allocations for school training, professional military and civilian education data, private weapons storage records, locator information including names of dependents, home address, phone number, training and experience data, special recognition nominations, other personnel documents, records of training, and folders containing documentation used for deployment management and processing (Personnel Readiness Folders).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 36–2608, Military Personnel Records System; and E.O. 9397 (SSN).

PURPOSE(S):

Provides information to unit commanders/supervisors for required actions related to personnel administration and counseling, promotion, training, separation, retirement, reenlistment, medical examination, testing, assignment, sponsor program, duty rosters, off duty activities, and deployment management.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, notebooks/binders, and card files and in computers and computer output products.

RETRIEVABILITY:

Retrieved by name and Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Retained in office files until superseded, no longer needed, separation or reassignment of individual on permanent change of assignment (PCA) or permanent change of station (PCS). On intercommand reassignment PCA or PCS the file is given to individual or destroyed. On intracommand reassignment PCA or PCS the file is given to individual, forwarded to gaining commander, or destroyed. Return Personnel Readiness Folder to unit upon completion of deployment, or give to individual upon PCS, separation or discharge (Exception: return passports per DoD Instruction 1000–21.R). Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

The Master Personnel Records (DPSAM), Commander, Headquarters Air Force Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to or visit the system manager or to agency officials at location of assignment. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the system manager or to agency officials at location of assignment. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and

appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from the individual concerned, financial institutions, educational institution employees, medical institutions, police and investigating officers, bureau of motor vehicles, witnesses, reports prepared on behalf of the agency, standard Air Force forms, personnel management actions, extracts from the Personnel Data System (PDS) and records of personal actions submitted to or originated within the organization.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–1332 Filed 1–17–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of The Army

Notice of Availability of the Environmental Assessment (EA)/ Finding of No Significant Impact (FNSI) for the Programmatic Treatment of Capehart and Wherry Era Housing

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: This announces the availability of the EA/FNSI for the Programmatic Treatment of Capehart and Wherry Era Housing under 36 CFR 800.14(e). The Army intends to sign the FNSI unless public comments identify significant impacts or issues that have not been considered. The Department of the Army (Army) is pursing a programmatic approach to compliance under Section 106 of the National Historic Preservation Act for its Capehart and Wherry Era Housing (1949–1962). The Army is facing a significant challenge that has direct implications for soldiers' quality of life as this housing represents 54% of the Army's total family housing stock and 70% of it is considered inadequate (defined as requiring a major repair, component upgrade, component replacement or total upgrade by the Army Family Housing Master Plan 2000). As such, the Army anticipates that all of this housing will be subject to rehabilitation, maintenance and repair, demolition and replacement, transfer, sale or lease in the next 10 years.

Development of the EA was preceded by coordination with the Advisory Council on Historic Preservation (ACHP), the National Conference of State Historic Preservation Officers (NCSHPO), and the National Trust for Historic Preservation (NTHP). In addition, the process of gathering public input and coordinating comment on this program was initiated by The Army at a symposium to seek the comments and suggestions of experts on the proposed treatment to these properties. The EA gives full consideration of request and implementation of Program Comments in accordance with 36 CFR 800.14(e) as the proposed action, and two reasonable alternatives to the proposed action.

DATES: Submit comments on or before February 19, 2002.

ADDRESSES: To obtain copies of the EA and FNSI, contact U.S. Army Environmental Center, ATTN: SFIM–AEC–PA (Bob DiMichele), Aberdeen Proving Ground, MD 21010–5401.

FOR FURTHER INFORMATION CONTACT: Mr. Lee Foster at (703) 693–0675.

SUPPLEMENTARY INFORMATION: The EA considered, evaluated and assessed alternatives: (i) The no action alternative (continued project-by-project review under 36 CFR Part 800); (ii) the Programmatic Agreement Alternative; and (iii) the proposed action alternative, request and implement Program Comments in accordance with 36 CFR 800.14(e). Consideration of the alternatives analyzed in the EA leads to The Army's decision to request and implement Program Comments. The no action alternative would allow a continued ad hoc approach to compliance with Section 106 and management of historic properties. With the anticipated growth in The Army's historic properties inventory, continued review of undertakings on a case-by-case basis will likely remain inefficient and lead to increased program costs. This could have adverse impacts on the ability of The Army to provide suitable housing for military families. The Programmatic Agreement (PA) Alternative better meets the stated purpose and need since it would provide a programmatic basis for Section 106 compliance. The PA approach, however, would require development of several separate compliance agreements. This approach would not be as comprehensive in scope and would not assure predictability as management actions are carried out. Like the no action alternative, the PA alternative could result in adverse impacts to The Army's ability to provide suitable housing to military families. The proposed action more squarely meets the stated purpose and need for action and provides the necessary balance between preservation and the need to expeditiously provide suitable housing to military families. While the proposed action has the potential to adversely impact historic properties, those impacts are not likely to be significant. The Army will ensure that effects on historic properties are considered and addressed up front through programmatic treatment.

Dated: January 15, 2002.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health) OASA(I&E).

[FR Doc. 02–1405 Filed 1–17–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 19, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type

of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 14, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: The National Evaluation of Smaller Learning Communities.

Frequency: Annually.

Affected Public: Individuals or household; Businesses or other for-profit; Federal Government; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,377.

Burden Hours: 3,123.

Abstract: The National Evaluation of Smaller Learning Communities is a study to assess the implementation and estimate the impact of creating smaller learning communities in high schools. The study will address how schools are implementing smaller learning communities (e.g., variety of strategies, approaches, and models; characteristics and needs of the population served; intensity, variety and quality of services); whether smaller learning communities improve student outcomes; and whether program implementation and outcomes vary by types of strategies and approaches and by types of schools.

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 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–1303 Filed 1–17–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board; Education.

ACTION: Notice of quarterly meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Educational Research Policy and Priorities Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the public of their opportunity to attend. Individuals 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 Mary Grace Lucier at (202) 219–2253 no later than January 22. 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.

DATES: February 1, 2002.

TIME: 8:30 a.m. to 3 p.m.

LOCATION: Room 1505 C, Health Science Center, University of Texas-Houston, 7000 Fannin, Houston, TX 77030.

FOR FURTHER INFORMATION CONTACT: Mary Grace Lucier, Designated Federal Official, National Educational Research Policy and Priorities Board, 80 F St., NW., Washington, DC 20208–7564. Telephone: (202) 219–2253; fax: (202) 219–1528; e-mail: Mary.Grace.Lucier@ed.gov. Main telephone for Board office: (202) 208–0692.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office.

The agenda for February 1 will review how Federally-funded research informs the Texas Reading Initiative, after which Board committees will discuss their work plans for the remainder of the year. A final agenda will be available from the Board's office on January 22, and will be posted on the Board's Web site, *http://www.ed.gov/offices/OERI/NERPPB/.*

Records are kept of all Board proceedings and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, 80 F St., NW., Washington, DC 20208–7564.

Dated: January 8, 2002.

Rafael Valdivieso,

Executive Director.

[FR Doc. 02–1309 Filed 1–17–02; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

[Docket No. EA–256]

Application To Export Electric Energy; Lighthouse Energy Trading Company, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Lighthouse Energy Trading Company, Inc. (Lighthouse) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before February 19, 2002.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Rosalind Carter (Program Office) 202–586–7983 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On December 27, 2001, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from Lighthouse to transmit electric energy from the United States to Canada. Lighthouse is a corporation formed under South Dakota Law with

its principal place of business in Zimmerman, Minnesota. Lighthouse is a privately owned corporation and is not a subsidiary or affiliate of any other corporation. Lighthouse operates as a marketer and a broker of electric power at wholesale and arranges services in related areas such as fuel supplies and transmission services. Lighthouse does not own or control any electric power generation or transmission facilities and does not have a franchised service area.

Lighthouse will purchase the power to be exported from electric utilities and federal power marketing agencies within the United States and arrange for the delivery of electric energy to Canada over the existing international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizen Utilities, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by Lighthouse, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the Lighthouse application to export electric energy to Canada should be clearly marked with Docket EA–256. Additional copies are to be filed directly with Rollie M. Hill, Lighthouse Energy Trading company, Inc., P.O. Box 81, Zimmerman, MN 55398.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy homepage at http://www.fe.de.gov. Upon reaching the Fossil Energy homepage, select ''Regulatory'' Programs,'' then ''Electricity Regulation,'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on January 14, 2002.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 02–1328 Filed 1–17–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice Extending the Public Comment Period for the Proposed Kentucky Pioneer Integrated Gasification Combined Cycle Demonstration Project Draft Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice of comment period extension.

SUMMARY: The Department of Energy (DOE) announces the extension of the public comment period to January 25, 2002, for the Proposed Kentucky Pioneer Integrated Gasification Combined Cycle (IGCC) Demonstration Project Draft Environmental Impact Statement (Draft EIS), DOE/EIS–0318. On November 16, 2001, the Environmental Protection Agency issued a Notice of Availability (66 FR 57716) of the Proposed Kentucky Pioneer IGCC Project Draft EIS which began a planned 45-day public comment period. Subsequently, on November 27, 2001, DOE published its own Notice of Availability (66 FR 59237) of the Draft EIS and announced public hearings that were held on December 10, 2001, in Lexington, Kentucky and December 11, 2001, in Trapp, Kentucky. The original comment period was to expire on January 4, 2002. However, in response to public comments and to ensure that the public has ample opportunity to provide comments, DOE is extending the public comment period by 21 days.

DATES: DOE's public comment period on the proposed Kentucky Pioneer IGCC Demonstration Project Draft EIS is extended from January 4, 2002 to January 25, 2002. Comments should be submitted by January 25, 2002 to ensure consideration (see **ADDRESSES** section for more details). DOE will consider comments submitted after January 25, 2002, to the extent practicable.

ADDRESSES: Comments may be submitted by U.S. mail, fax, telephone, or electronic mail to: Mr. Roy Spears, NEPA Document Manager, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 880, Morgantown, WV 26507–0880; Telephone: 304–285–5460; Fax: 304–285–4403 leave message at 1–800–276–9851; *rspear@netl.doe.gov.*

Requests for copies of the Kentucky Pioneer IGCC Demonstration Project Draft EIS or other information regarding this environmental analysis should also be addressed to Mr. Spears at the address above.

FOR FURTHER INFORMATION CONTACT: For further information on the proposed project or the Draft EIS, please contact Mr. Spears as directed above. For general information on DOE's NEPA process, please contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. Ms. Borgstrom may be contacted by calling 202–586–4600 or by leaving a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: Prior to publication of this **Federal Register** Notice, notices were published in the local newspapers of Winchester and Lexington, Kentucky, to notify members of the local community about the extension of the comment period. Additionally, direct notifications have been made by electronic mail and U.S. mail to individuals who participated in the public meetings in Lexington and Trapp, Kentucky and to those individuals, parties, and Federal, state, and local government agencies that are listed on the project mailing list.

Issued in Washington, DC, this 14th day of January, 2002.

Richard D. Furiga,

Acting Principal Deputy Assistant Secretary for Fossil Energy.

[FR Doc. 02–1329 Filed 1–18–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2672–002]

Idaho Power Company; Notice of Filing

January 11, 2002.

Take notice that on January 7, 2002, Idaho Power Company amended its filing of the Generator Interconnection and Operating Agreement between Idaho Power Company and Emmett Power Company, under its open access transmission tariff in the above-captioned proceeding.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-filing'' link.

Comment Date: January 28, 2002.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1291 Filed 1–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–3032–002]

Virginia Electric and Power Company; Notice of Filing

January 11, 2002.

Take notice that on January 7, 2002, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Generator Interconnection and Operating Agreement (Interconnection Agreement) with Tenaska Virginia Partners, L.P. (Tenaska) that complies with the Commission's December 6, 2001 Order in Docket Nos. ER01–3032–000 and ER01–3032–001.

Dominion Virginia Power respectfully requests that the Commission accept this filing to make the Interconnection Agreement effective as of November 9, 2001, the same date the Commission made the Interconnection Agreement effective in its December 6th Order. Copies of the filing were served upon Tenaska and the Virginia State Corporation Commission.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-filing'' link.

Comment Date: January 28, 2002.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1292 Filed 1–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–47–000]

Wisconsin Public Power Inc., Complainant v. Wisconsin Power & Light Co., Respondents; Notice of Complaint

January 14, 2002.

Take notice that on January 11, 2002, Wisconsin Public Power Inc. (WPPI) filed a Complaint against Wisconsin Power & Light Company (WPL) alleging violations of WPL's Rate Schedule PR–1, WPL's Rate Schedule W/W–3, and the Commission's Fuel Adjustment Clause Regulations, 18 CFR 35.14.

WPL has been served with a copy of the Complaint

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before January 31, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before January 31, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1290 Filed 1–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–3141–003, et al.]

American Electric Power Service Corporation, et al.; Electric Rate and Corporate Regulation Filings

January 14, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. American Electric Power Service Corporation

[Docket No. ER01–3141–003]

Take notice that on January 8, 2002, the American Electric Power Service Corporation (AEPSC), tendered for filing First Revised Firm Point-to-Point Transmission (PTP) Service Agreements for Exelon Generation Company, LLC for long-term PTP reservations. Both of these agreements are pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Second Revised Volume No. 6.

AEPSC requests an effective date of September 1, 2001.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: January 29, 2002.

2. Llano Estacado Wind, LP

[Docket No. ER02–73–002]

Take notice that on January 8, 2002, Llano Estacado Wind, LP (Llana Estacado Wind) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Change in Status informing the Commission of a change in status as a result of a change in its upstream corporate ownership.

Comment Date: January 29, 2002.

3. Virginia Electric and Power Company

[Docket No. ER02–92–002]

Take notice that on January 10, 2002, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing an executed Generator Interconnection and Operating Agreement (Interconnection Agreement) with CPV Cunningham Creek LLC. (CPV) that complies with the Commission's December 11, 2001 letter order in Docket No. ER02–92–000.

Dominion Virginia Power respectfully requests that the Commission accept this filing to make the Interconnection Agreement effective as of December 11, 2001, the same date the Commission made the Interconnection Agreement effective in its December 11, 2001 letter order.

Copies of the filing were served upon CPV and the Virginia State Corporation Commission.

Comment Date: January 31, 2002.

4. Rainy River Energy Corporation—Taconite Harbor

[Docket No. ER02–124–001]

Take notice that on January 9, 2002, Rainy River Energy Corporation—Taconite Harbor (RRTH) filed an amendment to its October 18, 2001, Market Based Rate Application in compliance with a December 13, 2001, Letter Order requiring the submission of a supply margin assessment market power study and the addition of certain language conditioning the market-based rate authority contained in RRTH's proposed rate schedule.

RRTH requests that the rate schedule become effective January 28, 2002.

Comment Date: January 30, 2002.

5. Bluegrass Generation Company, L.L.C.

[Docket No. ER02–506–001]

Take notice that on January 9, 2002, Bluegrass Generation Company, L.L.C. tendered for filing pursuant to Rule 205, 18 CFR 385.205, a supplement to its petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Tariff No. 1, originally submitted on December 7, 2001.

Comment Date: January 30, 2002.

6. CP&L Holdings, Inc., et al.

[Docket No. ER02–745–000]

Take notice that on January 9, 2002, Carolina Power & Light Company (CP&L) tendered for filing with the Federal Energy Regulatory Commission (Commission) a revised service agreement with Cinergy Services, Inc. under CP&L's FERC Electric Tariff, Fourth Revised Volume No. 4 in compliance with the Commission's July 12, 2000 order issued in Docket Nos. EC00–55–000 and ER00–1520–000, *et al.*

CP&L respectfully requests that the Commission allow the revised service agreement to become effective as of December 15, 2001.

Copies of the filing were served upon the Commission's official service list in the above-mentioned dockets, the North Carolina Utilities Commission, the South Carolina Public Service Commission, and the Florida Public Service Commission.

Comment Date: January 30, 2002.

7. PacifiCorp

[Docket No. ER02–746–000]

Take notice that on January 10, 2002, PacifiCorp tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation of Rate Schedule F.E.R.C. No. 419

Comment Date: January 31, 2002.

8. PacifiCorp

[Docket No. ER02–747–000]

Take notice that on January 10, 2002, PacifiCorp tendered for filing with the Federal Energy Regulatory Commission (Commission), a Notice of Cancellation of Rate Schedule F.E.R.C. No. 5 under PacifiCorp's FERC Electric Tariff, Volume No. 12 for the Long Term Power Sales Agreement between Public Utility District No. 1 of Okanogan County and PacifiCorp.

Comment Date: January 31, 2002.

9. PacifiCorp

[Docket No. ER02–748–000]

Take notice that on January 10, 2002, PacifiCorp tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation of Rate Schedule F.E.R.C. No. 429 for the Long Term Power Sales Agreement between Pacific Northwest Generation Company and PacifiCorp.

Comment Date: January 31, 2002.

10. PPL Electric Utilities Corporation

[Docket No. ER02–749–000]

Take notice that on January 10, 2002, PPL Electric Utilities Corporation filed a notice of termination of the Power Supply Agreement between it and Allegheny Electric Cooperative Inc. for service to Tri-County Electric Cooperative, Inc. designated as Service Agreement No. 120 under FERC Electric Tariff, First Revised Volume No. 5. PPL Electric also filed a notice of termination of the Power Supply Agreement between it and Allegheny Electric Cooperative, Inc. for service to Sullivan County Rural Electric Cooperative Inc. designated as Service Agreement No. 121 under FERC Electric Tariff, First Revised Volume No. 5.

PPL Electric Utilities Corporation requests a February 1, 2002 termination date for both power supply agreements.

PPL Electric Utilities Corporation has served a copy of the notice of termination on Allegheny Electric Cooperative, Inc.

Comment Date: January 31, 2002.

11. PPL Electric Utilities Corporation

[Docket No. ER02–750–000]

Take notice that on January 10, 2002, PPL Electric Utilities Corporation filed a notice of termination of the Power Supply Agreement between it and Citizens' Electric Company of Lewisburg designated as Service Agreement No. 76 under FERC Electric Tariff, First Revised Volume No. 5.

PPL Electric Utilities Corporation requests a January 31, 2002 termination date for the Agreement.

PPL Electric Utilities Corporation has served a copy of the notice of termination on Citizens' Electric Company of Lewisburg.

Comment Date: January 31, 2002.

12. Mid-Continent Area Power Pool

[Docket No. ER02–751–000]

Take notice that on January 10, 2002, the Mid-Continent Area Power Pool (MAPP), on behalf of its public utility members, tendered for filing Firm and Non-Firm Point-To-Point service agreements under MAPP Schedule F with Entergy-Koch Trading, LP to reflect a corporate name change from Axia Energy, LP to Entergy-Koch Trading, LP.

Comment Date: January 31, 2002.

13. P Chrisman Iribe, Thomas B. King, John R. Cooper, John C. Barpoulis, David N. Bassett, Mark V. Carney, F. Joseph Feyder, J.W. Maitland Horner, William E. Quinn, Sanford L. Hartman, Nancy A. Manning, J. Tracy Mey, Dena Chapin Nolte, Thomas E. Legro, Morris Meltzer, Suzanne Rich, Kent L. Ficket

[Docket Nos. ID–3131–011, ID–3616–001, ID–3132–010, ID–3447–002, ID–3134–008, ID–3429–005, ID–3448–004, ID–3276–004, ID–3449–004, ID–3275–005, ID–3425–005, ID–3619–001, ID–3618–001, ID–3689–000, ID–3690–000, ID–3278–003, and ID–3691–000]

Take notice that on December 27, 2001, the above named individuals filed with the Federal Energy Regulatory Commission (Commission) an application for authority to hold interlocking positions in Mountain View Power, LLC; Mountain View Power II, LLC; Attala Generating Company, LLC; and Plains End, LLC all with their principal place of business at 7500 Old Georgetown Road, Bethesda, Maryland 20814.

Comment Date: February 7, 2002.

14. American Transmission Company LLC

[Docket No. ER02–752–000]

Take notice that on January 10, 2002, American Transmission Company LLC (ATCLLC) tendered for filing Firm and Non-Firm Point-to-Point Service Agreements for Midwest Power LLC.

ATCLLC requests an effective date of January 14, 2002.

Comment Date: January 31, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1429 Filed 1–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2517–012]

Allegheny Energy Supply Company, LLC; Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

January 14, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Minor License.

b. *Project No.:* 2517–012.

c. *Date Filed:* December 17, 2001.

d. *Applicant:* Allegheny Energy Supply Company, LLC.

e. *Name of Project:* Dam No. 5 Hydro Station.

f. *Location:* On the Potomac River, near the Town of Hedgesville, in Berkeley County, West Virginia. The project dam and reservoir are owned by the United States and operated by the National Park Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Charles L. Simons, Allegheny Energy Supply Company, LLC, 4350 Northern Pike, Monroeville, PA 15146, (412) 858–1675.

i. *FERC Contact:* Peter Leitzke, (202) 219–2803 or *peter.leitzke@ferc.fed.us.*

j. *Deadline for filing additional study requests:* February 15, 2002.

All documents (original and eight copies) should be filed with: Linwood A. Watson, Jr., Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (http://www.ferc.gov) under the ''e-Filing'' link.

k. This application is not ready for environmental analysis at this time.

l. The existing Dam No. 5 Hydro Station Project consists of: (1) A 100-foot-long, 80-foot-wide headrace; (2) a brick and concrete powerhouse containing two generating units with a total installed capacity of 1,210 kilowatts; (3) a 250-foot-long, 90-foot-wide tailrace; (4) a substation; and (5) appurtenant facilities. The applicant estimates that the total average annual generation would be 5,945 megawatthours. All generated power is sold to Allegheny Power for use in the existing electric grid system serving West Virginia and Maryland.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at http://www.ferc.gov using the ''RIMS'' link—select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. With this notice, we are initiating consultation with the Maryland State Historic Preservation Officer and the West Virginia State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

o. Procedural schedule and final amendments: The application will be processed according to the following milestones, some of which may be combined to expedite processing:

Notice of application has been accepted for filing
Notice of NEPA Scoping
Notice of application is ready for environmental analysis
Notice of the availability of the draft NEPA document
Notice of the availability of the final NEPA document
Order issuing the Commission's decision on the application

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1293 Filed 1–17–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6625–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated May 18, 2001 (66 FR 27647).

Draft EISs ERP No. D–AFS–J65354–MT Rating EC2 Game Range Project, Ecosystem Health and Productivity Improvements, Fuel Loading Reduction and Game Winter Range Condition Improvements and Maintenance, Lolo National Forest, Plain/Thompson Falls Ranger District, Thompson River to Squaw Creek, Thompson Falls, MT.

Summary: EPA expressed environmental concerns regarding the need for improved discussion of how environmental commitments are provided for during implementation under the stewardship contracting program. EPA also believes additional information should be provided to: support stated minimal watershed impacts; the identification of Alternative 2 as the environmentally preferred alternative; and describe fuel loads and wildfire risks within the Ashley Creek watershed and Thompson Fall's public water supply watershed.

ERP No. D–FHW–G40167–LA Rating LO

Louisiana 1 Improvements Project, Golden Meadow to Port Fourchon Highway Construction, Funding, US Army COE Section 10 and 404, NPDES and Coast Guard Bridge Permits Issuance, Lafoufche Parish, LA.

Summary: EPA has a lack of objections to the selection of the preferred alternative. However to strengthen the NEPA document, EPA suggests that additional information on secondary development and potential wetland losses be discussed in the FEIS.

ERP No. DS–AFS–K65307–CA

Rating EC2 Herger-Feinstein Quincy Library Group Forest Act Pilot Project, Proposal to Analyze Options for Maintaining Defensible Fuel Profile Zones (DFPZs), Lassen, Plumas and Tahoe National Forests, Shasta, Lassen, Tehama, Yuba, Plumas and Battle Counties, CA.

Summary: EPA expressed environmental concerns regarding the limited scope of the analysis, and continuing concerns regarding water quality, habitat fragmentation and noxious weed proliferation associated with the construction of defensible fuel profile zones (DFPZs). EPA suggested a broader scope for the analysis and document formatting changes.

ERP No. D1–AFS–L65120–OR

Rating EC2 Lemolo Watershed Projects, Objectives for Management of Areas 5 and 10 and Matrix Lands, Umpqua National Forest, Diamond Lake Ranger District, Douglas County, OR.

Summary: EPA expressed environmental concerns related to listed species, silvicultural practices, logging roads and access issues. and interagency coordination. EPA requested that the Purpose and Need statement be consistent with the North West Forest Plan.

Final EISs

ERP No. F–FAA–E51047–NC

Piedmont Triad International Airport, Construction and Operation, Runway 5L/23R and New Overnight Express Air Cargo Sorting and Distribution Facility and Associated Developments, Funding, NPDES and US Army COE Section 404 Permit Issuance, City of Greensboro, Guilford County, NC.

Summary: EPA continues to express environmental concern regarding noise mitigation measures. EPA recommended that the FAA extend its proposed residential land acquisitions to include those homes which would be located in the DNL 65 dBA contour and would experience a DNL 1.5 dBA or greater increase.

ERP No. F–FHW–G40146–NM

New Mexico Highway 126 (NM–126)/ Cuba-La Cueva Road (also Known as Forest Highway 12 (FH–12)) Improvement, southeast of Fenton Lake to east of Cuba at Senorito Divide, Sandoval and Rio Arriba Counties, NM.

Summary: EPA has no further comments to offer on the Final EIS or the selected alternative.

ERP No. F–FHW–H40397–MO

Interstate 70 Corridor Improvements, Kansas City to St. Louis, Funding, US Army COE Section 404 and 10 and US Coast Guard Section 9 Permits Issuance, several counties, MO.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FS–FTA–L40210–WA

Central Link Light Transit Project (Sound Transit) Construction and Operation, Additional Information concerning Consideration of the Tukwila Freeway Route Alternative, Funding and US Army COE Section 10 and 404 Permits Issuance, Cities of Seattle, Sea Tac and Tukwila, King County, WA.

Summary: EPA had a lack of objections to the FEIS.

Dated: January 15, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–1343 Filed 1–17–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6625–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *www.epa.gov/oeca/ofa.*

Weekly receipt of Environmental Impact Statements Filed January 07, 2002 Through January 11, 2002 Pursuant to 40 CFR 1506.9.

EIS No. 020010, FINAL EIS, AFS, NY, Finger Lake National Forest, Oil and Gas Leasing, Exploration and Development, Approval and Authorization, Hector Ranger District, Seneca and Schuyler Counties, NY, Wait Period Ends: February 19, 2002, Contact: Martha Twarkins (607) 546–4470.

EIS No. 020011, FINAL EIS, AFS, MT, North Elkhorns Vegetation Project, Elkhorn Wildlife Management Unit, Implementation, Strawberry Butte Area, Helena National Forest, Jefferson County, MT, Wait Period Ends: February 19, 2002, Contact: Jodie Canfield (406) 266–3425.

EIS No. 020012, DRAFT EIS, AFS, AK, Otter Lake Timber Sale(s) Project, Implementation, Plan to Harvest and Sell Timber, Hoonah Ranger District, Tongass National Forest, AK, Comment Period Ends: March 04, 2002, Contact: Stan McCoy (907) 790–7431.

EIS No. 020013, DRAFT EIS, COE, FL, Lake Tohopekaliga Extreme Drawdown and Habitat Enhancement Project, Fish and Wildlife Habitat Improvements, Construction, Operation and Maintenance, Osceola County, FL, Comment Period Ends: March 04, 2002, Contact: Liz Manners (904) 232–3923.

EIS No. 020014, FINAL SUPPLEMENT, BLM, MT, Zortman and Landusky Mines Reclamation Plan, Modifications and Mine Life Extensions, Updated Information to Analyze Additional Reclamation Alternatives, Mine Operations Approval, Mine Reclamation and US Army COE Section 404 Permits Issuance, Little Rocky Mountains, Phillip County, MT, Wait Period Ends: February 19, 2002, Contact: Scott Haight (406) 538–1930.

EIS No. 020015, FINAL EIS, AFS/BLM, UT, CO, Flat Canyon Federal Coal Lease Tract (UTU–77114), Application for Leasing, Manti-La Sal National Forest, Ferron-Price Ranger District, Sanpete and Emery Counties, UT, Wait Period Ends: February 19, 2002, Contact: Carter Reed (AFS) (435) 637–2817. US Department of Agriculture's Forest (FS) and US Department of the Interior's Bureau of Land Management (BLM) are Joint Lead Agencies for the above project. The contact person for BLM is Stan Perks (801) 539–4038.

EIS No. 020016, FINAL EIS, AFS, FL, Ocklawaha River Restoration Project, Continued Occupation of Florida National Forest Lands, Portions of Kirkpatrick Dam, Rodman Reservoir and Eureka Lock and Dam in Conjunction with Partial Restoration of the Ocklawaha River, Operation and Maintenance, Special Use Permit Issuance and Implementation, Marion and Putnam Counties, FL, Wait Period Ends: February 19, 2002, Contact: George Hemingway (850) 942–9364.

EIS No. 020017, DRAFT EIS, BLM, WY, Powder River Basin Oil and Gas Project, To Extract, Transport, and Sell Oil and Natural Gas Resource, Application of Permit to Drill (APD), Special Use Permit and Right-of-Way Grant, Campbell, Converse, Johnson and Sheridan Counties, WY, Comment Period Ends: April 18, 2002, Contact: Paul Beels (307) 684–1100. This document is available on the Internet *at: http://fs.fed.us/r4/payette/main.html*

EIS No. 020018, DRAFT EIS, NOA, WA, CA, OR, US West Coast Fisheries for Highly Migratory Species Fishery Management Plan (FMP), Approval and Implementation, Ocean Waters off the States of Washington, Oregon and California a portion of the Exclusive Economic Zone (EEZ), WA, OR and CA, Comment Period Ends: March 04, 2002, Contact: Rod McInnis (562) 980–4000.

EIS No. 020019, FINAL EIS, NRC, UT, Skull Valley Band of Goshute Indians Reservation Project, Construction and Operation of Independent Spent Fuel Storage Installation and Related Transportation Facilities, Permits and Approvals, Tooele County, UT, Wait Period Ends: February 19, 2002, Contact: Chester Poslusny, Jr (301) 415–1341.

EIS No. 020020, FINAL SUPPLEMENT, FTA, CA, Los Angeles Eastside Corridor Transit Improvements, Light Rail Transit (LRT) Selected Build Alternative Options A and B, Los Angeles Central Business District to just east of Atlantic Boulevard, Funding, NPDES and US Army COE Section 404 Permits, Los Angeles County, CA, Wait Period Ends: February 19, 2002, Contact: Erv Poka (213) 202–3952.

EIS No. 020021, FINAL EIS, COE, PA, Dents Run Watershed Ecosystem Restoration, Construction and Operation of Six Acid Mine Drainage Abatement Projects, Implementation, Benezette Township, Susquehana River Basin, Elk County, PA, Wait Period Ends: February 19, 2002, Contact: Greg Nielson (410) 962–6782.

Dated: January 15, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–1344 Filed 1–17–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7129–8]

Designation and Support for Local Resource Centers To Assist Public Entities Develop Environmental Management Systems (EMS)

AGENCY: Environmental Protection Agency.

ACTION: Notice; announcement of a program to assist not-for-profit organizations that wish to work with public entities that wish to adopt environmental management systems (EMS); request for applications.

SUMMARY: The Environmental Protection Agency (EPA) announces its intention to select and provide technical assistance for up to five existing not-for-profit organizations in order to increase their capacity to assist public entities wishing to adopt environmental management systems (EMS). The assistance provided to these organizations will include helping with developing business plans, providing relevant EMS materials to facilitate each organization's existing EMS assistance activities, train-the-trainer work sessions on ways to address the needs of public agencies, and other marketing services. Each organization selected will also gain increased visibility, attention, and recognition of the key role they can play in meeting the growing needs of public agencies wishing to adopt EMSs.

This program is a continuation of two highly successful projects led by U.S. EPA to directly support various public agencies as they develop EMSs. The program is designed to build on these efforts by increasing the capacity of existing EMS service providers to meet the needs of public agencies. This project is being led by EPA's Office of Water, in conjunction with EPA's Office of Air and Radiation and Office of Compliance.

DATES: Letters of Application from interested organizations should be submitted no later than March 15, 2002.

ADDRESSES: Letters of Application should be submitted to James Horne, U.S. Environmental Protection Agency, Office of Wastewater Management, 1200 Pennsylvania Avenue, NW, Washington, DC, Mail Code 4201M, (202) 564–0571 *and* Craig Ruberti, Global Environment and Technology Foundation, 7010 Little River Turnpike, Suite 460, Annandale, Virginia, 22003.

FOR FURTHER INFORMATION CONTACT: James Horne at (202) 564–0571.

SUPPLEMENTARY INFORMATION:

I. Background

Public entities manage complex large-scale problems of operating and maintaining physical plants; power, wastewater, water, and roadway systems; and managing solid and hazardous waste. As the front line implementers of environmental programs, they are responsible for the health and safety of hundreds millions of citizens. Faced with shrinking resources and aging infrastructure, public entities must manage their operations in a more efficient manner, at lower cost, and with less environmental impact. Environmental management systems (EMS) are an important emerging tool to help public entities do this.

EMSs follow Shewart and Deming's ''*plan, do, check, and act*'' systems methodology and can be implemented by organizations of all sizes and types. They provide a set of problem identification and problem-solving tools that can be implemented in an organization in many different ways, depending on its activities and needs. Based on the organization's core values, business goals, and environmental commitments, employees examine their environmental footprint and the procedures they use to manage environmental issues. They incorporate strong operational controls and environmental responsibilities into existing job descriptions and work instructions. They set measurable objectives and targets, monitor, measure, and evaluate progress, ''find and fix'' environmental problems as they occur, and provide top management with a feedback loop to assess progress and make appropriate changes to the management system. The various elements of the EMS work together to provide opportunities to continually improve management of environmental impacts both in regulated areas and in areas that are not regulated (*e.g.*, odor, water or electricity use, and growth management).

Key elements of the EMS include:

- An environmental policy statement endorsed and actively promoted by senior management;
- A planning process that identifies the organization's environmental impacts and integrates their management into the organization's regular business and operations decisions;
- An organizational structure that places environmental responsibilities directly with employees in operational functions that deal with significant environmental impacts;
- An implementation process that stresses training, communication, operational controls, and reaching measurable goals—all oriented toward reducing risks of significant environmental impacts and continually improving environmental management;
- Measurement and auditing procedures that focus on ''finding and fixing'' problems and reducing the chances of their recurring;
- Periodic top management review of the EMS to ensure continual improvement.

Since 1996, the most commonly used framework for an EMS is the ISO 14001 Environmental Management Standard developed by the International Organization for Standardization (ISO). The ISO was established in 1947 with the mission of developing voluntary technical standards to promote international trade in goods and services.

For the last several years the U. S. Environmental Protection Agency (US EPA) has been promoting the adoption of Environmental Management Systems (EMS) to help public entities, particularly local governments, improve their environmental performance beyond compliance, prevent pollution, promote greater environmental stewardship across the workforce, and improve their overall efficiency.

The US EPA's Office of Water has played a critical leadership role in bringing EMS capacity to local governments. This leadership has continued and expanded to include other headquarters and regional offices. Since 1997, in partnership with the Global Environment & Technology Foundation (GETF), the US EPA has established two EMS initiatives to help local governments test the applicability and benefits of an EMS on environmental performance, compliance, pollution prevention, and stakeholder involvement in government operations. In all, 23 local governments have participated in developing and implementing their own EMSs through these two initiatives.

Using a four-phased implementation strategy over a two-year period, each participating public entity has received EMS training, coaching, and technical assistance, as well as EMS implementation materials and toolkits specially designed for the public sector. Five intensive week long training sessions, individual bi-weekly phone consultations, and on-site visits provided additional implementation guidance. Monthly ''all-hands'' calls allowed participants to share their experiences and keys to success and engage in shared problem solving opportunities. Information and data were collected about the benefits, barriers, and keys to success and resource requirements of EMS implementation in a variety of public sector organizations. Participants experienced convincing environmental and economic benefits over the first two-year project period in the following areas, as evidenced by the statements below:

- *Environmental Compliance and Performance:* ''With regard to environmental compliance, we have a better understanding of our legal requirements. We have better-trained employees whose competence in their work areas is critical to the environment. We expect that our EMS will increase our ability to stay in compliance.''—Tim Hall, Superintendent, Massachusetts Corrections Institute, Norfolk, MA.
- *Recycling:* ''Building on the momentum generated early on in the program, we moved forward with a recycling program for lab waste that has diverted 18,000 lbs of waste from the landfill in a three-month period.—Oscar Pancorbo, Director, Wall Experiment Station Laboratory, Massachusetts Department of Environmental Protection, Lawrence, MA.
- *Water Conservation:* ''In our efforts to conserve potable water use in our operations we realized we have 1 million gallons of rainwater available in our sedimentation basin per large storm event. By using this water for dust control and soil compaction we estimate conserving about 800,000 gallons of potable water and $1,500 in water fees on an annual basis.—Mark zu Hone, EMS Project Manager, Department of Environmental Services, Refuse Disposal Division, City of San Diego, CA.
- *Efficient Regulatory Tracking:* ''Implementing an EMS enables us to embark on a huge project we always knew we needed to do but could never find the time for—to consciously

identify all our regulatory requirements and formally designate responsibility for compliance and updates. We always felt we had a handle on this, but our procedure to identify our legal requirements now relieves worries that we might have missed something.—Pam Badger, Special Waste Supervisor, King County Solid Waste Division, Seattle, WA.

• *Resource Conservation:* ''In light of this summer's expected electricity shortages and water rationing we have set objectives and targets that will focus on resource conservation for both our bus and rail maintenance operations. Through these conservation initiatives we plan to save about 10% of our budgeted utilities which could result in $85,000—$90,000.''—Kevin Considine, Environmental Engineer, Tri-County Metropolitan Transportation District of Oregon, Portland, OR.

• *Operational Efficiency:* ''Using the process flow diagrams (PFDs) from the aspects investigation phase of the EMS, the Safety Committee has begun preparation of job hazard analyses (JHA) for approximately 200 work activities at the Bureau. It is estimated that the use of the PFDs will save approximately 300 hours of JHA development time—amounting to approximately $5,000 in savings.''—Fred Murphy, Special Programs Manager, New Hampshire Department of Transportation, Concord, NH.

• *Air Quality:* ''The Port has been significantly involved in the development and implementation of the Houston One-Hour Ozone State Implementation Plan (SIP). To fulfill our role in this effort we have set a target to reduce our NO_X emissions by 320 tons per year, which goes well beyond EPA's cost effectiveness guidelines. The PHA has been testing innovative technologies to reduce emissions and has committed to implementing these technologies through our EMS efforts to achieve this goal.''—Laura Fiffick, Environmental Affairs Manager, Port of Houston Authority, Houston, TX.

More information about these two projects can be found at www.getf.org/projects/muni.cfm.

II. The National Public Entity EMS Resource Center—The Peer Center

The two EMS initiatives described above have helped to demonstrate the relevance of EMSs in the public sector and established a solid basis for expanding EMS adoption for public agencies, especially local governments. The strong enthusiasm and tangible environmental results with EMS through these initiatives suggest substantial long-term benefits from EMS implementation and ensure the parallel development of sustainable management practices in both the private and public sectors. Public entity EMS implementation has sparked interest from government leaders around the world. To take advantage of this momentum US EPA and GETF have launched the National Public Entity Environmental Management System Resource Center—the National PEER Center.

The National PEER Center is a virtual and live clearinghouse of information and people whose mission is to promote the adoption of EMSs in public entities, particularly local governments.

The PEER Center's goals are three-fold:

• To promote the understanding and adoption of EMSs by public entities

• To facilitate peer-to-peer exchange of information and experiences and build awareness of EMSs as a tool to improve environmental performance

• To build regional EMS competence and technical assistance capacity through the creation of Local Resource Centers.

The National PEER Center Web site is currently in place (*www.peercenter.net*) and links users to a national database of key resources such as sample EMS documentation, local and state EMS programs in place, EMS service providers, detailed descriptions of the EMS implementation phases, trainers, mentors and course providers, as well as training materials, web links, contact information, and case studies. The PEER Center serves to demystify the elements of environmental management systems and programs. It will deliver field-tested EMS tools, training, mentoring, and problem solving strategies on-line to help public entities systematically manage both their regulated and non-regulated environmental impacts.

III. Local Resource Centers

Critical to the effectiveness and success of the PEER Center will be the establishment of Local Resource Centers (LRCs) to advance the use of EMS in public entities. Building on individual EMS skills and competencies, and leveraging the successes and skills of the other LRCs and the National PEER Center, each LRC will serve as a high-quality EMS resource center for the public entities in their area, facilitating information transfer, providing training, and government-to-government mentoring in order to maximize public entities' time and resource investment in EMS implementation. The joint efforts of the National PEER Center and the LRCs will reach many more public entities, particularly municipalities and increase the ability of existing EMS service providers to advance the use of EMSs by agencies in their areas.

Although no direct financial assistance will be provided, the PEER Center staff will act as the initial support mechanism for the Local Resource Centers, providing business-planning assistance, field-tested training techniques and materials, implementation strategies, and assistance with outreach plans and marketing materials. In areas where Local Resource Centers do not exist, the PEER Center staff will work with other local entities in that area that have implemented EMSs and help provide information to agencies interested in learning more about EMSs and possibly developing them for their operations.

Information transfer between the PEER Center, the LRCs, and various public entities implementing EMSs will ensure access to the most current tools, keys to success, and lessons learned.

Activities that the LRCs selected under this program will be expected to undertake include, but are not limited to:

• Leveraging their existing EMS expertise to provide training, technical assistance, tools and materials that will facilitate EMS implementation in the public sector;

• Maintaining a database of local/regional EMS service providers, public entities who have implemented EMS, including but not limited to those that are ISO 14001 certified;

• Using their data, information, resources and key contacts to encourage EMS information transfer and facilitate government-to-government mentoring;

• Leading regular and frequent outreach activities to increase awareness and understanding of EMS applicability among public entities in their local/regional area;

• Collecting data and information and preparing case studies about EMS implementation in public entities and assisting in the dissemination of this information across public organizations;

• Facilitating information transfer between the PEER Center and other Local Resource Centers to ensure access to the most current data, information, tools, keys to success, and lessons learned; and

• Facilitating EMS workshops and conferences in their local/regional area

If at all possible, EPA intends to select existing not-for-profit organizations that are already providing some degree of EMS services in their respective areas. The Local Resource Centers will offer a menu of EMS services including—EMS training, technical expertise, field-tested tools, information, speakers/mentors,

workshops and conferences, outreach, and EMS implementation assistance.

IV. Benefits of Becoming a Local Resource Center

Each Local Resource Center will receive, at no cost, extensive start-up support, a full catalogue of EMS implementation tools from the Global Environment & Technology Foundation (GETF) and materials that have already been field-tested and used in the public sector, including:

- Assistance in developing a business plan, and business development materials.
- An extensive suite of field-tested, high-quality and successful materials for public entities: training techniques, implementation strategies, document samples, outreach and presentation toolkits.
- Regular train-the-trainer work sessions on EMS implementation in public sector organizations with other LRCs and national partners.
- An extensive database of national mentors and experts with hands-on experience to assist in local/regional EMS outreach and implementation.
- Support services and mentoring from existing public entities that are implementing an EMS.
- Assistance with marketing services and opportunities.
- National attention, visibility, and partnership opportunities from the PEER Center and its partners and stakeholders.

In addition to the assistance provided by the National Peer Center as described above, each Local Resource Center will be authorized to use the National PEER Center Logo endorsing their selection to provide high quality EMS services to public entities as part of an EPA sponsored competitive process.

V. Criteria for Selecting the Local Resource Centers

Up to five organizations will be selected to serve as Local EMS Resource Centers (LRCs) based on the following criteria:

Business Experience:

- Well-established delivery mechanism and client base for providing EMS services.
- An excellent reputation for providing high-quality services.
- Good training/facilitation capacity and experience.
- Ability to market services and sustain a business model.
- A not-for-profit organization.

EMS Expertise:

- Excellent first hand experience, knowledge and understanding of EMS development and implementation, using the basic Plan-Do-Check-Act approach.
- Documented success in providing EMS services, but not necessarily to public entities.

Capacity:

- Strong Web literacy and functionality.
- Adequate staffing for providing range of services: marketing, training, outreach, information transfer, mentoring, speaking.
- Willingness to proactively seek out and mobilize other EMS partners in the region.
- Potential to bring partners who can leverage resources.

Organizational Commitment:

- Organizational commitment and top management support.
- Organizational resources for start up activities.
- Willingness to share data and information with other LRCs and PEER Center.

Interested organizations are invited to submit letters of application no later than March 15, 2002. Please address each of the following issues in your correspondence:

1. Briefly describe your organization's background and structure, including number of years in operation, current staffing levels and management structure. Briefly outline the range of services you provide, the typical recipients of these services and how you currently advertise/market your services. Please submit samples of communication and outreach materials you currently use. Please describe how your top management will participate in your LRC activities.

2. What types of EMS training sessions and/ or workshops do you currently develop and facilitate? Who in your organization provides/supports the training function?

3. Briefly describe your first-hand experience with EMS implementation, training, and mentoring. Please describe your sense of the demand by public entities for EMS services in your area. What type of EMS services do you currently provide and in what sector? Who in your organization provides EMS services and briefly outline their qualifications and experience in directly assisting organizations to develop and implement an EMS? How will your organization accommodate the demand on its resources for additional EMS work? Please provide contact information for two organizations as references for your EMS services.

4. Please describe your organization's Web and computer literacy and functionality.

5. To what local/regional/national organizations does your organization belong? Please describe the leadership functions that any of your employees have provided. How might your organization conduct outreach with these organizations about EMS benefit for public entities?

6.Why does your organization want to become a Local Resource Center?

US EPA and the National PEER Center will solicit applicants for Local Resource Centers through March 15, 2002 using this **Federal Register** Notice and other communication and outreach vehicles.

Each applying organization will receive a PEER Center information packet following receipt of their application. Materials will include:

- Additional details and information about the National PEER Center and the Local Resource Centers.
- A Memorandum of Understanding that each selectee will sign with Global Environment & Technology Foundation (GETF), and that outlines the relationship and obligations of the PEER Center and the Local Resource Centers.
- The selection criteria used in the interview process.
- Information about the two US EPA EMS programs for public entities.

Following the receipt of these letters, PEER Center staff will schedule interviews with each applicant's management and appropriate staff at a mutually convenient time from March 17–April 12, 2002. Results of these evaluations will be presented to an EPA selection committee who will name the Local Resource Centers no later than May 3, 2002. At that time, PEER Center staff will begin work with each Local Resource Center to develop business plans, materials, processes, marketing strategies, information transfer, data collection, etc.

Organizations who are interested in becoming Local Resource Centers are invited to submit letters of application no later than March 15, 2002, as described above to:

Jim Horne, Office of Wastewater Management, U.S. Environmental Protection Agency (EPA), 1200 Pennsylvania Avenue, NW Mail Code 4201M, Washington, DC 20460, Phone: (202) 564–0571, FAX: (202) 501–2338, e-mail: *horne.james@epa.gov*

and

Craig Ruberti, Global Environment and Technology Foundation (GETF), 7010 Little River Turnpike, Suite 460, Annandale, Virginia 22003, Phone: (703) 750–6401, FAX: (703–750–6506 e-mail: *cruberti@getf.org*

Dated: January 11, 2002.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 02–1346 Filed 1–17–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7131–4]

EPA Science Advisory Board; Notification of a Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that a Subcommittee of the US EPA Science Advisory Board (SAB) (the Surface Impoundments Study Subcommittee of the SAB's Environmental Engineering Committee) will conduct a public teleconference meeting on February 1, 2002 from 12 pm to 2 pm. The meeting will be coordinated through a conference call connection in Room 6450C in the USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC 20004. The public is encouraged to attend the meeting in the conference room noted above, however, the public may also attend through a telephonic link if lines are available. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Mary Winston at (202) 564–4538, or via e-mail at *winston.mary@epa.gov*. Important Notice: Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

Purpose of the Meeting—The primary purpose of this meeting will be to finalize and approve the Subcommittee's report on its review of Industrial Surface Impoundments in the United States for the Office of Solid Waste as announced in **Federal Register** notices 66 FR 30917–30920 June 8, 2001 and 66 FR 9671–49672 September 28, 2001. Final approval of this report will be accomplished during a public review meeting of the US EPA Science Advisory Board (SAB) at a later date (to be announced in the FR).

Availability of Review Materials: The availability of Industrial Surface Impoundments in the United States was announced previously in the FRs cited above. The January draft of Subcommittee report will be available in mid-January. Those wishing a copy of the draft report should contact the DFO, preferably by email (see contact information in following paragraph) on or about January 14.

For Further Information—Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (3 minutes or less) must contact Ms. Kathleen White, Designated Federal Officer, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone (202) 564–4559; FAX (202) 501–0582; or via e-mail at *white.kathleen@epa.gov.* Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Ms. White no later than noon Eastern Time on Tuesday January 29, 2002.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. Oral Comments: In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY2000 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Ms. White at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: January 16, 2002.

A. Robert Flaak,

Acting Staff Director, EPA Science Advisory Board.

[FR Doc. 02–1481 Filed 1–17–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7130–5]

Office of Research and Development 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 11–12, 2002. On Monday, February 11, the Meeting will begin at 1 p.m., and will recess at 5 p.m. On Tuesday, February 12, the Meeting will reconvene at 9 a.m. and will adjourn at approximately 4 p.m. All times noted are Eastern Time.

ADDRESSES: The Meeting will be held at the Madison Hotel, 1177 15th Street, NW., Washington, DC 20005, (202) 862–1600.

SUPPLEMENTARY INFORMATION: Agenda items will include, but not be limited to: Discussion of BOSC Sub-Committee draft reports of ORD Labs/Centers site visits, Ad-hoc Subcommittee on Communications Progress Report, and discussion of BOSC 2002 activities.

Anyone desiring a draft agenda may fax their request to Shirley R. Hamilton at (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, U.S. Environmental Protection Agency, Board of Scientific Counselors, 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, (8701R), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–6853.

Dated: January 14, 2002.

Peter W. Preuss,

Director, National Center for Environmental Research.

[FR Doc. 02–1347 Filed 1–17–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7129–9]

Intent To Grant an Exclusive Patent License

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to grant an exclusive patent license.

SUMMARY: Pursuant to 35 U.S.C. 207 and 37 CFR part 404, EPA hereby gives notice of its intent to grant an exclusive, royalty-bearing revocable license to practice the invention described and claimed in the patent application listed below, all U.S. patents issuing therefrom, and all reexamined and reissued patents granted in the United States in connection with such patent application to Corus Consulting Inc., Pittsburgh, Pennsylvania. The patent application is:

U.S. Patent Application No. 08/440,965, entitled ''Hydrogel Alginate Compositions,'' filed May 15, 1995, and claiming priority from U.S. Patent Application 07/857,046, entitled ''Use of Immobilized Film Bioreactor,'' filed March 25, 1992.

The invention was announced as being available for licensing in the April 26, 1995 issue of the **Federal Register** (60 FR 20490), citing another application in the series, U.S. Patent Application 08/084,985, entitled ''Use of Immobilized Film Bioreactor,'' filed July 2, 1993.

EPA has authority under 37 CFR 404.7(a)(1) to proceed without a notice of availability when expeditious granting of the license will best serve the interest of the Federal government and the public. Under that authority, EPA has decided not to issue a notice of availability because an earlier application in the family of inventions was announced as available for licensing and because the only applicant, Corus Consulting, has filed an application for an exclusive license under 37 CFR 404.8 and is prepared to enter into an exclusive license agreement.

The proposed exclusive license will contain appropriate terms, limitations and conditions to be negotiated in accordance with the limitations and conditions of 35 U.S.C. 209 and 37 CFR 404.5 and 404.7 of the U.S. Government patent licensing regulations.

EPA will negotiate the final terms and conditions and grant the exclusive license, unless within 30 days from the date of this Notice, EPA receives, at the address below, written objections to the grant, together with supporting documentation. The documentation from objecting parties having an interest in practicing the above patent application should include an application for exclusive or nonexclusive license with the information set forth in 37 CFR 404.8. The EPA Patent Counsel and other EPA officials will review all written responses and then make recommendations on a final decision to the Director of the National Risk Management Research Laboratory, who has been delegated the authority to issue patent licenses under EPA Delegation 1–55.

DATES: Comments to this notice must be received by EPA at the address listed below by February 19, 2002.

FOR FURTHER INFORMATION CONTACT: Alan Ehrlich, Patent Counsel, Office of General Counsel (Mail Code 2377A), U.S. Environmental Protection Agency, Washington, DC 20460, telephone (202) 564–5457.

Dated: January 11, 2002.

Robert A. Friedrich,

Acting Associate General Counsel.

[FR Doc. 02–1350 Filed 1–17–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7130–1]

Intent To Assign an Invention

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to assign an invention.

SUMMARY: Pursuant to 35 U.S.C. 202(e)(1) and 207 and 37 CFR part 404, EPA hereby gives notice of its intent to assign ownership of the invention described and claimed in the patent application listed below, all U.S. patents issuing therefrom, all corresponding patents granted and issued throughout the world, and all reexamined and reissued patents granted in connection with such patent application to the University of Southern California, Los Angeles, California. The patent application is:

U.S. Patent Application No. 09/992,544, entitled ''A Technology for Continuous Measurement of Coarse Particle Mass Concentration,'' filed November 13, 2001.

Title 35 U.S.C. 202(e)(1) requires that assignment of rights to an invention be made in accordance with the provisions of chapter 18 of 35 U.S.C. Accordingly, EPA is required to follow the procedures set out in 37 CFR part 404, Licensing of Government Owned Inventions, which implement chapter 18, in order to issue the assignment. Normally, 37 CFR 404.7(a)(1) requires an agency to issue both a notice of availability of an invention for exclusive licensing or assignment, as well as a notice of intent to grant the exclusive license or issue the assignment. However, EPA has authority under 37 CFR 404.7(a)(1) to proceed without a notice of availability when expeditious transfer of rights will best serve the interest of the Federal government and the public. Under that authority, EPA has decided not to issue a notice of availability of this invention for licensing or assignment. The University of Southern California is co-owner by assignment from its employee inventor of an undivided interest in the invention. It is unlikely that any other party would be willing to take a license or assignment from EPA on a patent application or patent encumbered by co-ownership. Furthermore, the University of Southern California has identified a potential licensee of the University who is requesting an exclusive license of the University. The University cannot grant an exclusive license until it has obtained the exclusive license or assignment of EPA's co-ownership.

Accordingly, EPA is relying on its authority under 37 CFR 404.7(a)(1) to proceed without such notice of availability.

The proposed assignment will contain appropriate terms, limitations and conditions in accordance with the limitations and conditions of 35 U.S.C. 202(c)(4), 203 and 204, and where applicable to assignments, the limitations and conditions of 37 CFR 404.5 and 404.7 of the U.S. Government patent licensing regulations.

EPA will negotiate the final terms and conditions and execute the assignment, unless within 30 days from the date of this Notice, EPA receives, at the address below, written objections to the grant, together with supporting documentation. The documentation from objecting parties having an interest in practicing the above patent application should include an application for assignment or for an exclusive or nonexclusive license with the information set forth in 37 CFR 404.8. EPA's Grants Administration Division, the Director of the National Risk Management Research Laboratory, and other EPA officials will review all written responses and then make a recommendation to the EPA Patent Counsel who has been delegated the authority to transfer and assign patent rights on behalf of EPA.

DATES: Comments to this notice must be received by EPA at the address listed below by February 19, 2002.

FOR FURTHER INFORMATION CONTACT: Laura Scalise, Patent Attorney, Office of General Counsel (Mail Code 2377A), U.S. Environmental Protection Agency, Washington, DC 20460, telephone (202) 564–8303.

Dated: January 11, 2002.

Robert A. Friedrich,

Acting Associate General Counsel.

[FR Doc. 02–1348 Filed 1–17–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7130–2]

Benfield Industries Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: Under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), the United States Environmental Protection Agency (''EPA'') proposes to enter into a Prospective Purchaser Agreement (''PPA'') regarding the Benfield Industries Superfund Site in Waynesville, Haywood County, North Carolina. EPA proposes to enter into the PPA with the party who purchases the property pursuant to a judgment sale conducted by the Haywood County Sheriff (the ''Purchaser''). The PPA obligates the Purchaser to cooperate with any response actions EPA may take on the property, to grant EPA access for any such response actions, and to comply with specified institutional controls. Further, the PPA provides the Purchaser with a covenant not to sue from the United States for Existing Contamination on the property. The covenant is conditioned upon the Purchaser's fulfilling its obligations under the PPA. EPA will consider comments on the proposed PPA for thirty (30) days.

EPA may withdraw from or modify the proposed PPA should such comments disclose facts or considerations which indicate the proposed PPA is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, 404/562–8887.

Written comments may be submitted to Ms. Batchelor at the above address within 30 days of the date of publication.

Dated: December 21, 2001.

Anita L. Davis,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 02–1349 Filed 1–17–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

January 10, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 19, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley or Leslie Smith, Federal Communications Commission, Room 1–C804 or Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to *jboley@fcc.gov* or *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0798.

Title: FCC Application for Wireless Telecommunications Bureau Radio Service Authorization.

Form No.: FCC Form 601.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, state, local or tribal governments.

Number of Respondents: 241,335.

Estimated Time Per Response: 1.25 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Total Annual Burden: 211,169 hours.

Total Annual Cost: $48,267,100.

Needs and Uses: The FCC Form 601 is used as the general application (long form) for market-based licensing and site-by-site licensing in the Wireless Telecommunications Radio Services. The purpose of this revision is to make the necessary form changes for the

Reallocation and Service Rules for the 698–746 MHz spectrum band (television channels 52–59). We are seeking Office of Management and Budget (OMB) approval in order to have the form changes in place for the auction scheduled for June 2002. The information is used by the Commission to determine whether the applicant is legally, technically, and financially qualified to be licensed.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 02–1334 Filed 1–17–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority; Comments Requested

January 11, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments March 19, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, 445 12th Street, SW, Room 1–C804, Washington, DC 20554 or via internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley at 202–418–0214 or via internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0997.

Title: 47 CFR Section 52.15(k), Numbering Utilization and Compliance Audit Program.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or Other for Profit.

Number of Respondents: 25.

Estimated Time Per Response: 33 hours per response (avg).

Total Annual Burden: 825 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion reporting requirement.

Needs and Uses: The state of the nation's numbering resources has a direct effect on the growth of competition in the telecommunications industry. The nation's numbering resources are depleting rapidly. Under the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Congress granted the Federal Communications Commission (FCC) exclusive jurisdiction over the United States' portion of the North American Numbering Plan (NANP). Consistent with this authority, the FCC adopted an audit requirement to preserve numbering resources. The purpose of the audits is to monitor telecommunications carriers' compliance with FCC rules and to verify the accuracy and validity of the numbering data submitted to the FCC. The audits will also allow the FCC to identify inefficiencies in the manner in which carriers use numbers, including excessive use of certain categories of numbers (e.g., administrative, aging, or intermediate numbers). By ensuring compliance with FCC rules and providing in-depth information, these audits will help preserve the nation's numbering resources. The FCC staff developed a standardized audit program consisting of audit procedures and guidelines, an internal control questionnaire, and a corresponding data request, for the independent auditor to follow in conducting audits. The independent auditor would conduct audits using these tools. The audit procedures generally require the audited carrier to respond to requests for information from the independent auditor. The independent auditor will report its audit findings to the FCC. The FCC will use the audit results to determine whether the audited carriers are complying with the FCC's rules, and whether the audited carriers' numbering data submitted to the FCC , e.g., FCC Form 502, is accurate and valid.

OMB Control No.: 3060–0814.

Title: Section 54.301, Local Switching Support and Local Switching Support Data Collection Form and Instructions.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or Other for Profit.

Number of Respondents: 197.

Estimated Time Per Response: 19.42 hours per response (avg).

Total Annual Burden: 3,787 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion and annual reporting requirement.

Needs and Uses: Pursuant to 47 CFR 54.301, each incumbent local exchange carrier that is not a member of the NECA common line tariff, that has been designated an eligible telecommunications carriers, and that serves a study area with 50,000 fewer access lines shall, for each study area, provide the Administrator with the projected total unseparated dollar amount assigned to each account in section 54.301(b). Average schedule companies are required to file information pursuant to 47 CFR section 54.301(f). Both respondents must provide true-up data. The data is necessary to calculate certain revenue requirement.

OMB Control No.: 3060–0169.

Title: Reports and Records of Communications Common Carriers and Affiliates—Sections 43.51 and 43.53.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or Other for Profit.

Number of Respondents: 374.

Estimated Time Per Response: 16.12 hours per response (avg).

Total Annual Burden: 6,029 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion and annual reporting requirement.

Needs and Uses: Sections 211 and 215 of the Communications Act of 1934, as amended, require that the FCC examine the transactions of any common carriers

relating to the activities of that carrier which may affect the charges and/or services rendered under the Act. Sections 43.51 and 43.53 require common carriers to submit reports so that the FCC can monitor various activities of these carriers to determine the impact on the just and reasonable rates required by the Communications Act of 1934, as amended.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 02–1335 Filed 1–17–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

January 10, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 19, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0799.

Title: FCC Ownership Disclosure Information for the Wireless Telecommunications Services.

Form No.: FCC Form 602.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit; individuals or households; not-for-profit institutions; and State, Local or Tribal Government.

Number of Respondents: 3,000.

Estimated Time Per Response: 1 hour (average).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 3,000 hours.

Total Annual Cost: $450,000.

Needs and Uses: FCC Form 602 is comprised of a main form containing administrative information and Schedule A used to collect ownership data pertaining to the applicant for the proposed authorization. Filers will use multiple copies of Schedule A as needed to list each direct and indirect owner and associated information. The form was designed for use by auctionable services and all Wireless Telecommunications Services.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 02–1337 Filed 1–17–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

January 9, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 19, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0920.

Title: Application for Construction Permit for a Low Power FM Broadcast Station.

Form No.: FCC Form 318.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions.

Number of Respondents: 2,283.

Estimated Time Per Response: 0.75 to 6 hours per response (avg.).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 6,315 hours.

Total Annual Cost: N/A.

Needs and Uses: FCC Form 318 is required to apply for a construction permit for a new LPFM station or to make changes in the existing facilities of such a station. The data is used by Commission staff to determine whether an applicant meets basic statutory and regulatory requirements to become a Commission licensee. It is also used to ensure that the public interest would be served by grant of the application. This extension is being requested to obtain the full three-year OMB approval.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 02–1338 Filed 1–17–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

January 11, 2002.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0665.

Expiration Date: 12/31/2004.

Title: Section 64.707—Public Dissemination of Information by Providers of Operator Services.

Form No.: N/A .

Respondents: Business or other for-profit.

Estimated Annual Burden: 436 respondents; 4 hour per response (avg.); 1744 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Third Party Disclosure.

Description: 47 CFR 64.707 requires that operator services providers (OSPs), regularly publish and make available at no cost upon request from consumers written materials that describe any changes in operator services and choices available to consumers. 47 U.S.C. 226(d)(4)(B) required adoption of this rule. This requirement was a response to a widespread failure of operator service providers to provide information necessary for informed consumer choice in the marketplace. OSPs have provided this information primarily to consumers in the form of a written report that will be regularly updated at the OSP's discretion. Consumers will use this information to increase their knowledge of the choices available to them in the operator service marketplace. Obligation to respond: Mandatory

OMB Control No.: 3060–0853.

Expiration Date: 01/31/2005.

Title: Receipt of Service Confirmation Form, Adjustment of Funding Commitment, and Certification by Administrative Authority to Billed Entity of Compliance with Children's Internet Protection.

Form No.: FCC Forms 500, 486 and 479.

Respondents: Business or other for-profit; Not-for-profit institutions.

Estimated Annual Burden: 40,000 respondents; 1.87 hour per response (avg.); 75,000 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Recordkeeping; Third Party Disclosure.

Description: Section 1721 and related sections of the Children's Internet Protection Act (CIPA) provide that in order to be eligible under section 254 of the Communications Act of 1934, as amended (the Act), to receive discounted Internet access, Internet services, and internal connection services, schools and libraries that have computers with Internet access must have in place certain Internet safety policies. FCC Forms 486, 479 and 500 are used to implement the requirements of CIPA and 47 U.S.C. section 254.

(a) FCC Form 486, Receipt of Service Confirmation Form. Schools and libraries and consortia of such entities, apply to the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) for discounts on telecommunications services, Internet access and internal connections, through the use of FCC Forms 470 and 471. Both Forms 470 and 471 contain certifications that guarantee that eligible entities are ordering services for eligible purposes. The applicant must also certify that it has developed a technology plan that has been approved by an authorized entity. The technology plan should demonstrate that the applicant will be able to deploy any necessary hardware, software, and wiring, and to undertake any necessary teacher training required to use effectively the services ordered pursuant to the section 254(h) discount. 47 CFR 54.504(b)(2). FCC Form 486, which is filed after the applicant has received a Funding Commitment Decision Letter, serves several purposes: it authorizes the payment of invoices from service providers for the services indicated on the applicant's Form 471 and also indicates the approval of technology plans as required and it indicates the state of compliance with CIPA. All schools and libraries receiving Internet access and internal connection services supported by the schools and libraries support mechanism must certify that they are enforcing a policy of Internet safety and enforcing the operation of a technology prevention measure pursuant to CIPA. The purpose of this information is to ensure that schools and libraries that are eligible to receive discounted Internet access, Internet services, and internal connections have in place certain Internet safety policies. (*Number of respondents:* 30,000; *hours per response:* 1.5 hours; *total annual burden:* 45,000 hours).

(b) FCC Form 479, Certification by Administrative Authority to Billed Entity of Compliance with Children's Internet Protection Act. All members of a consortium must submit signed certifications to the Billed Entity of each consortium in language consistent with the FCC Form 486. FCC Form 479 provides notification to a Billed Entity by of the status of the Administrative Authority's compliance for the purposes of CIPA. The billed entity will then certify on its FCC Form 486 that it has collected duly completed and signed Forms 479 from administrative authorities that the billed entity represents. (*Number of respondents:* 10,000; *hours per response:* 1.5 hours; *total annual burden:* 15,000 hours).

(c) FCC Form 500, Adjustment to Funding Commitment and Modification to Receipt of Service Confirmation Form. Schools and libraries and consortia of such entities which have received funding commitments from the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) for discounts on telecommunications services, Internet access and internal connections, must have a mechanism by which they can adjust that funding commitment or provide updated information to SLD. The Form 500, which is filed after the applicant has received a Funding Commitment Decision Letter serves the following four purposes: to adjust the Funding Year Service Start Date reported on a previously filed Form 486 for the then-current Funding Year; to adjust the Contract Expiration Date listed on a Form 471 application for the then-current Funding Year; to cancel irrevocably and totally a Funding Request Number (FRN); and/or to reduce irrevocably the amount of a Funding Request Number (FRN). (*Number of respondents:* 10,000; *hours per response:* 1.5 hours; *total annual burden:* 15,000 hours). All schools and libraries receiving Internet access and internal connection services supported by the schools and libraries support mechanism must certify that they are enforcing a policy of Internet safety and enforcing the operation of a technology prevention measure. The purpose of this

information is to ensure that schools and libraries that are eligible to receive discounted Internet access, Internet services, and internal connections have in place certain Internet safety policies. The schools and libraries will certify using FCC Form 486. Respondents who received a Funding Commitment Decision Letter indicating services eligible for universal service discounts must file FCC Form 486 in order to start the payment process. FCC Form 486 informs the Administrator when the Billed Entity and/or the eligible entities that it represents is receiving, is scheduled to receive, or has received service in the relevant Funding Year from the named service providers. The FCC Form 486 is filed: to authorize the payment of invoices from the service provider; to indicate approval of technology plans; and to indicate the state of compliance with CIPA. The information is to ensure that services are actually being provided and that a billing relationship exists between the service provider and the applicant. Failure to file a Form 486 means that no payments may be made to a service provider (or for an applicant reimbursement, which is passed through the service provider) on the particular Funding Request Number. In addition, all members of a consortium must submit signed certifications to the Billed Entity (using a FCC Form 479, Certification by Administrative Authority to Billed Entity of Compliance with Children's Internet Protection Act) of each consortium, in language consistent with that on the FCC Form 486. Only some applicants will avail themselves of the FCC Form 500. It is available for applicants who wish to keep their information current or who wish to return funds to the Universal Service Fund. The forms and instructions may be obtained at the SLD web site, *http://www.sl.universalservice.org/*, or by contacting the SLD Client Service Bureau at 888–203–8100. Obligation to respond: Mandatory.

Public reporting burden for the collections of information are as noted above. Send comments regarding the burden estimates or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 02–1336 Filed 1–17–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATE AND TIME: Wednesday, January 23, 2002 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, January 24, 2002 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2001–20: Careau & Co. and Mohre Communications by Richard F. Carrot, President.

Civil Penalty Inflation Adjustments (11 CFR 111.24).

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–1459 Filed 1–16–02; 11:22 am]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1398–DR]

Mississippi; 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 declaration for the State of Mississippi, (FEMA–1398–DR), dated December 7, 2001, and related determinations.

EFFECTIVE DATE: January 10, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi 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 December 7, 2001:

Tate County for Public Assistance (already designated for Individual Assistance).

Coahoma and Tallahatchie Counties for Individual Assistance (already designated for 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)

Joe M. Allbaugh,

Director.

[FR Doc. 02–1315 Filed 1–17–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3170–EM]

New York; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of New York (FEMA–3170–EM), dated December 31, 2001, and related determinations.

EFFECTIVE DATE: December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 31, 2001, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the impact in certain areas of the State of New York,

resulting from record/near record snow on December 24–29, 2001, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act).

I, therefore, declare that such an emergency exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 48 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for subgrantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

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 Peter Martinasco of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared emergency:

The counties of Erie and Niagara for emergency protective measures under the Public Assistance program for a period of 48 hours.

(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.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–1316 Filed 1–17–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3170–EM]

New York; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of New York, (FEMA–3170–EM), dated December 31, 2001, and related determinations.

EFFECTIVE DATE: January 8, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that as authorized by the President in a letter dated December 31, 2001, FEMA is extending the time period for emergency protective measures under the Public Assistance program from 48 hours to 120 hours. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

(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)

Joe M. Allbaugh,

Director.

[FR Doc. 02–1317 Filed 1–17–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 11, 2002.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Chinatrust Financial Holding Company, Ltd., Taipei, Republic of China; to acquire 100 percent of the voting shares of Chinatrust Commercial Bank, Ltd., Taipei, Republic of China, and thereby indirectly acquire voting shares of China Trust Capital A/S, Copenhagen Denmark; China Trust Capital B.V., Amsterdam, The Netherlands; and China Trust Holdings Corporation, New York, New York; and Chinatrust Bank (U.S.A.), Torrance, California.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. SinoPac Holdings, Taipei, Taiwan, R.O.C.; to become a bank holding company by acquiring 100 percent of the voting shares of Bank SinoPac, Taipei, Taiwan, R.O.C., and thereby indirectly acquire 100 percent of the voting shares of SinoPac Bancorp, and Far East National Bank, both of Los Angeles, California.

Board of Governors of the Federal Reserve System, January 14, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–1282 Filed 1–17–02; 8:45 am]

BILLING CODE 6210–02–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99E–0117]

Determination of Regulatory Review Period for Purposes of Patent Extension; Heart Laser System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for the Heart Laser System 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. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–007), 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 Heart Laser System. Transmyocardial revascularization with the Heart Laser System is indicated for the treatment of patients with stable angina refractory to medical treatment and secondary to objectively demonstrated coronary artery atherosclerosis not amenable to direct coronary revascularization. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for the Heart Laser System (U.S. Patent No. 5,125,926) from PLC Medical Systems, Inc., 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 16, 1999, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of the Heart Laser System represented the first permitted commercial marketing or use of the product. Subsequently, 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 the Heart Laser System is 3,135 days. Of this time, 2,586 days occurred during the testing phase of the regulatory review period, while 549 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*: January 21, 1990. The applicant claims that 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 on November 30, 1990. However, FDA records indicate that the IDE was determined substantially complete for clinical studies to have begun on January 21, 1990, which represents the IDE effective date.

2. *The date the application was initially submitted with respect to the device under section 515 of the act (21 U.S.C. 360e)*: February 18, 1997. FDA has verified the applicant's claim that the premarket approval application (PMA) for the Heart Laser System (PMA P950015) was initially submitted February 18, 1997.

3. *The date the application was approved*: August 20, 1998. FDA has verified the applicant's claim that PMA P950015 was approved on August 20, 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 695 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (address above) written comments and ask for a redetermination by March 19, 2002. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by July 17, 2002. 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. Three copies of any information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 28, 2001.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–1320 Filed 1–17–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the

Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Proposed Project: National Health Service Corps (NHSC) Waiver Request Worksheets (OMB No. 0915–0234)—Revision

The National Health Service Corps (NHSC) of HRSA's Bureau of Health Professions (BHPr) is committed to improving the health of the Nation's underserved by uniting communities in need with caring health professionals and by supporting communities' efforts to build better systems of care.

The NHSC Site Bill is sent to all sites where NHSC members have been assigned for all or part of the calendar year. The sites are billed for the full amount of the calculated costs associated with the assignee(s). The Public Health Service Act, Section 334(b) contains provisions which permit a waiver of the reimbursement requirement for entities which are assigned Corps members. The Waiver Request Worksheets are used by the NHSC to collect the necessary information from sites which are requesting a waiver to determine if such a waiver is justified.

Estimates of annualized reporting burden are as follows:

Type of report	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Billing Form	1200	1	1200	.25	300
Budget Form	1200	1	1200	.75	900
Total	1200	1	2400	1.00	2400

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 10, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–1283 Filed 1–17–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–03]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7262, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–4300; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provided an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a

Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register,** the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Agriculture:* Ms. Marsha Pruitt, Realty Officer, Department of Agriculture, Reporters Building, 300 7th St., SW., Rm 310B, Washington, DC 20250; (202) 720–4335; *DOT:* Mr. Rugene Spruill, Principal, Space Management, SVC–140, Transportation Administrative Service Center, Department of Transportation, 400 7th St., SW, Rm 2310, Washington, DC 20590; (202) 366–4246; *GSA:* Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; *Interior:* Ms. Linda Tribby, Acquisition & Property Management, Department of the Interior, 1849 C St., NW, MS5512, Washington, DC 20240; (202) 219–0728; (These are not toll-free numbers).

Dated: January 10, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

Suitable/Available Properties

Buildings (by State)

Kentucky

Residence
420 Willow Street
Moorhead Co: KY 40351
Landholding Agency: Agriculture
Property Number: 15200210004
Status: Excess
Comment: 1300 sq. ft., brick

Ranger's Residence
125 Cherry Road
Berea Co: KY
Landholding Agency: Agriculture
Property Number: 15200210005
Status: Excess
Comment: 1680 sq. ft., brick, needs repair

Montana

Ranger Residence Garage
401 Manix Street
Augusta Co: Lewis & Clark MT 59422–
Landholding Agency: Agriculture
Property Number: 15200210001
Status: Excess
Comment: 372 sq. ft., needs repair, most recent use—bunkhouse, off-site use only

Ranger Residence
401 Manix Street
Augusta Co: Lewis & Clark MT
Landholding Agency: Agriculture
Property Number: 15200210002
Status: Excess
Comment: 856 & 700 sq. ft., needs repair, most recent use—bunkhouse, off-site use only

Choteau Bunkhouse
4236 Hwy 89
Choteau Co: Teton MT 59422–
Landholding Agency: Agriculture
Property Number: 15200210003
Status: Excess
Comment: 1209 sq. ft., needs repair, presence of asbestos, most recent use—bunkhouse, off-site use only

Land (by State)

New Jersey

0.27 acres
lots 3103, 3106
209 Bay Road
Ocean City Co: Cape May NJ 08226–
Landholding Agency: GSA
Property Number: 54200210003
Status: Surplus
Comment: Undeveloped land, endangered species documented
GSA Number: 1–U–NJ–645

North Carolina

4.939 acres
Staton Road
Greenville Co: Pitt NC
Landholding Agency: GSA
Property Number: 54200210002
Status: Surplus
Comment: Undeveloped land
GSA Number: 4–D–NC–738

Washington

Richland Rail R/W
East of 1335 Lee Blvd.
Richland Co: Benton WA
Landholding Agency: GSA
Property Number: 54200210005
Status: Excess
Comment: 0.59 acre, long narrow curved strip, most recent use—gravel rail bed/parking
GSA Number: 9–B–WA–1197

Unsuitable Properties

Buildings (by State)

Maryland

Bldg. #81
U.S. Coast Guard YARD
Baltimore Co: Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87200210001
Status: Underutilized
Reason: Secured Area

Bldg. #85
U.S. Coast Guard YARD
Baltimore Co: Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87200210002
Status: Underutilized
Reason: Secured Area

Bldg. #86
U.S. Coast Guard YARD
Baltimore Co: Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87200210003
Status: Underutilized
Reason: Secured Area

Bldg. #86D
U.S. Coast Guard YARD
Baltimore Co: Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87200210004
Status: Underutilized
Reason: Secured Area

Bldg. #149
U.S. Coast Guard YARD
Baltimore Co: Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87200210005
Status: Underutilized
Reason: Secured Area

New Mexico

Bldg. 220, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Interior
Property Number: 61200210002
Status: Excess
Reason: Secured Area

Bldg. 222, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Interior
Property Number: 61200210003
Status: Excess
Reason: Secured Area

Bldg. 223, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Interior
Property Number: 61200210004
Status: Excess
Reason: Secured Area

Bldg. 224, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Interior
Property Number: 61200210005
Status: Excess
Reason: Secured Area

Bldg. 226, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Interior
Property Number: 61200210006
Status: Excess
Reason: Secured Area

Bldg. 1, TA–22
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Interior
Property Number: 61200210007
Status: Excess

Reason: Secured Area; Extensive deterioration

Bldg. 25, TA–22
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Interior
Property Number: 61200210008
Status: Excess
Reason: Secured Area; Extensive deterioration

New York

Middle Marker
Wind Shear Site
31st Ave & 75th St
Jackson Heights Co: Queens NY 11434–
Landholding Agency: GSA
Property Number: 54200210004
Status: Surplus
Reason: Extensive deterioration
GSA Number: 1–U–NY–889

Washington

Dam Tenders Qtrs.
O'Sullivan Dam
Warden Co: Grant WA 98857–
Landholding Agency: Interior
Property Number: 61200210009
Status: Unutilized
Reason: Extensive deterioration

Cox Property
Road 7820
Mesa Co: Franklin WA 99343–
Landholding Agency: Interior
Property Number: 61200210010
Status: Unutilized
Reason: Extensive deterioration

Unsuitable Properties

Land (by State)

California

1.23 acre
Delta-Mendota Canal
Bell Road
Stanislaus Co: CA
Property Number: 61200210001
Status: Underutilized
Reason: Floodway

Kentucky

64.47 acres
between airport & prison
Pine Knot Co: McCreary KY 42635–
Landholding Agency: GSA
Property Number: 54200210001
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone
GSA Number: 4–J–KY–0610

[FR Doc. 02–1030 Filed 1–17–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–HY–P; F–21901–56, F–21904–91, DOA–12]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Doyon, Limited, for lands in Tps. 10 S., Rs. 20 and 21 W., Fairbanks Meridian, Alaska, located in the vicinity of Denali National Preserve, aggregating approximately 37,235 acres. Notice of the decision will also be published four times in the *Fairbanks Daily News-Miner.*

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until February 19, 2002 to file an appeal.

2. Parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Barbara Opp Waldal, (907) 271–5669.

Barbara Opp Waldal,
Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 02–1380 Filed 1–17–02; 8:45 am]

BILLING CODE 4310–88–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–350–1060–JJ]

Notice of Public Meetings on the Use of Helicopters and Motorized Vehicles in Wild Horse and Burro Gather Operations

AGENCY: Bureau of Land Management, Interior; Eagle Lake Field Office, Susanville, California.

ACTION: Notice of public meetings on the use of helicopters and motorized vehicles in wild horse and burro gather operations.

SUMMARY: In accordance with 43 CFR 4740.1(b), two public meetings will be held to discuss the use of helicopters and other motorized vehicles during wild horse and burro gathering operations on public lands managed by the Bureau of Land Management's Surprise, Eagle Lake, and Alturas Field Offices.

SUPPLEMENTARY INFORMATION: The meetings will be conducted on Monday, April 15, 2002, at the Bureau of Land Management's Eagle Lake Field Office, 2950 Riverside Drive, Susanville, California, and on Tuesday, April 15, 2002, at the Bureau of Land Management's Surprise Field Office, 602 Cressler Street, Cedarville, California. Both meetings will begin at 7 p.m. The use of helicopters and other motorized equipment in conducting wild horse and burro gathers during calendar year 2002 will be discussed and the public will be given the opportunity to submit oral or written comments during the meeting.

FOR FURTHER INFORMATION: Contact Linda Hansen, Eagle Lake Field Manager, at (530) 257–5381 0456, or Rob Jeffers, Wild Horse and Burro Specialist, Surprise Field Office, at (530) 279–6101.

Linda D. Hansen,
Field Manager.

[FR Doc. 02–1378 Filed 1–17–02; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1430–PE; NMNM101473]

Notice of Realty Action; Recreation and Public Purposes Act Classification; New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action: Recreation and Public Purposes (R&PP) Act classification.

SUMMARY: The following public land in Dona Ana County, New Mexico has been examined and found suitable for classification for lease or conveyance to Gadsden Independent School District (GISD), New Mexico under the provision of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*). GISD proposes to use the land for an elementary school site.

T. 26 S., R. 5 E., NMPM
Section 13, part of the S1/2SE1/4NE1/4
Containing approximately 20 acres.

DATES: Comments regarding the proposed lease/conveyance or classification must be submitted on or before March 4, 2002.

ADDRESSES: Comments should be sent to the BLM, Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Gilda Fitzpatrick at the address above or at (505) 525–4454.

SUPPLEMENTARY INFORMATION: Lease or conveyance will be subject to the following terms, conditions, and reservations.

1. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Upon publication of this notice in the **Federal Register**, the land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws. On or before March 4, 2002 , interested persons may submit comments regarding the proposed lease/conveyance or classification of the land to the District Manager, Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico 88005. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective March 19, 2002.

Classification Comments: Interested parties may submit comments involving the suitability of the land for an elementary school site. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for an elementary school.

Dated: October 15, 2001.

Leonard T. Brooks,

Acting Field Manager, BLM Las Cruces Field Office.

[FR Doc. 02–1383 Filed 1–17–02; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID074–02–1430–DU 241E]

Idaho; Notice of Intent To Prepare a Land Use Plan Amendment and Environmental Assessment

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice of intent to prepare a land use plan amendment and Environmental Assessment (EA) to provide for a proposed direct land sale.

SUMMARY: Pursuant to 43 CFR 1600, the Bureau of Land Management (BLM) Idaho Falls Field Office is considering an amendment to the Medicine Lodge Resource Management Plan (RMP) to provide for the possible disposal by direct sale of approximately 140 acres of public land in Madison County, Idaho.

DATES: Comments regarding the proposed plan amendment must be received on or before March 4, 2002.

ADDRESSES: Written comments should be sent to Joe Kraayenbrink, Field Manager, Idaho Falls Field Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83401. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the proposed plan amendment may be obtained by contacting Skip Staffel, Realty Specialist, at the above address or by calling (208) 524–7562.

SUPPLEMENTARY INFORMATION: The following described public land in Madison County, Idaho, will be examined for possible disposal by direct sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 1719.

Boise Meridian, Idaho

T. 6 N., R. 38 E.,

Sec. 26, N½SW¼ and SW¼SW¼;
Sec. 27, E½SE¼ (that portion east of the Twin Buttes Road).

The land described above contains 140 acres, more or less.

Upon publication of this notice in the **Federal Register**, the land described above will be segregated from appropriation under the public land laws, including the mining laws, except for the sale provisions of FLPMA.

An environmental assessment will be completed for this action. If the land is found suitable for disposal, the United States would offer it for direct sale to Madison County at fair market value. This action would provide Madison County with a site for solid waste disposal. The public is invited to provide scoping comments on the issues that should be addressed in the plan amendment and environmental assessment. The following resources will be considered in preparation of the plan amendment: lands, wildlife, recreation, wilderness, range, minerals, cultural resources, watershed/soils, threatened/endangered species, and hazardous materials. Staff specialists representing these resources will make up the planning team. Planning issues will include the same planning criteria originally considered for the Medicine Lodge RMP; however, issues for this amendment are expected to primarily involve the adjustment of land tenure. This action is not expected to be controversial.

No public meetings are scheduled.

Current land use planning information is available at the Idaho Falls BLM office. Office hours are 7:45 a.m. to 4:30 p.m., Monday through Friday except holidays.

Dated: December 17, 2001.

Joe Kraayenbrink,

Field Manager, Idaho Falls Field Office.

[FR Doc. 02–1382 Filed 1–17–02; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–930–1610–DO]

Utah Bureau of Land Management Price Field Office Resource Management Plan and the Richfield Field Office Resource Management Plan; Extension of Scoping Periods.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of extension of scoping periods.

SUMMARY: The Price Field Office and Richfield Field Office published Notices

of Intent to prepare Resource Management Plans (RMP) in the **Federal Register** on November 7 and November 1, 2001 respectively. These notices officially started the scoping process for each planning area.

Since that time, the public has expressed an interest in extending the scoping period for each of these plans. In order to be responsive to the public, the Utah Bureau of Land Management (BLM) hereby extends the scoping periods for both of the above mentioned plans.

Comments, including names and addresses of respondents, will be available for public review at the BLM offices listed in this notice during regular business hours. If you wish to withhold your name and or address from public review or from disclosure under the Freedom of Information Act, you must state so prominently at the beginning of your written comments.

Public notification of scoping meetings and open houses will be made in local and regional publications at least 15 days prior to the meetings being held. Meetings are expected to be held in locally affected communities as well as the Wasatch Front area.

Even though the formal scoping period ends on the dates described below, opportunities to get involved in planning are still available for all of our planning efforts. You are welcome at any time to contact our offices which are involved in planning. Our ability to consider your input will become more limited the closer we get to alternative development and analysis. These phases are expected to begin in late summer and fall of 2002.

DATES: The scoping period for the Price Field Office Resource Management Plan is extended to February 1, 2002. The scoping period for the Richfield Field Office Resource Management Plan is extended to April 1, 2002. All comments regarding issues, concerns, resource values, or considerations for alternative development are due by the dates listed above and will be summarized in a forthcoming Scoping Summary Report.

ADDRESSES: For the Richfield Field Office Resource Management Plan, written comments should be sent to RMP Comments, Bureau of Land Management, Richfield Field Office, 150 East 900 North, Richfield Utah 84701; or faxed at 1–435–896–1550. For the Price Field Office Resource Management Plan, written comments should be sent to RMP Comments, Bureau of Land Management, Price Field Office, 125 South 600 West, Price, Utah 84501; or faxed at 1–435–636–3657.

Documents pertinent to these proposals including public comment may be examined at either BLM Field Office during regular business hours; 8 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: If you are interested in the Price Field Office RMP, contact Floyd Johnson, Supervisory Planning Coordinator at 1–435–636–3600 or e-mail *floyd_johnson@ut.blm.gov.* If you are interested in the Richfield Field Office RMP, contact Frank Erickson, Assistant Field Manager for Planning at 1–435–896–1532 or e-mail *frank_erickson@ut.blm.gov.*

Dated: December 19, 2001.

Sally Wisely,

Utah State Director.

[FR Doc. 02–1381 Filed 1–17–02; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–952–02–1420–BJ]

Notice of Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, (30) thirty calendar days from the date of this publication.

New Mexico Principal Meridian, New Mexico

T. 7 N., R. 13 W., approved September 18, 2001, for Group 946 NM;

Indian Meridian, Oklahoma

T. 11 N., R. 10 E., approved September 27, 2001, for Group 74 OK;
T. 7 N., R. 14 W., approved September 18, 2001, for Group 62 OK;

Texas

Padre Island National Seashore, approved September 27, 2001, for Group 6 TX;

Amended Protraction Diagrams for

T. 15 S., R. 9 W., approved September 18, 2001, NM;
T. 16 S., R. 9 W., approved September 18, 2001, NM;
T. 17 S., R. 9 W., approved September 27, 2001, NM;
T. 16 S., R. 10 W., approved September 27, 2001, NM;

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the NM State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed. The above-listed plats represent dependent resurveys, surveys, and subdivisions.

These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, PO Box 27115, Santa Fe, New Mexico, 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: January 4, 2002.

Stephen W. Beyerlein,

Acting Chief Cadastral Surveyor, for New Mexico.

[FR Doc. 02–1384 Filed 1–17–02; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–BJ: GP02–0009]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 25 S., R. 7 W., accepted August 15, 2001
T. 9 S., R. 3 E., accepted August 22, 2001
T. 40 S., R. 8 W., accepted September 7, 2001
T. 38 S., R. 3 W., accepted September 7, 2001

Washington

T. 17 N., R. 11 E., accepted September 7, 2001
T. 40 N., R. 34 E., accepted September 27, 2001

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the

filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, surveys, and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 S.W. 5th Avenue) PO Box 2965, Portland, Oregon 97208.

Dated: October 12, 2001.

Robert D. DeViney, Jr.,

Branch of Realty and Records Services.

[FR Doc. 02–1377 Filed 1–17–02; 8:45 am]

BILLING CODE 4310–33–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–467]

Certain Canary Yellow Self-Stick Repositionable Note Products

AGENCY: United States International Trade Commission.

ACTION: Correction notice for the subject investigation.

SUMMARY: On January 7, 2002, the Commission published in the **Federal Register** (67 FR 757) a notice of investigation in certain canary yellow self-stick repositionable note products under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337). The Commission gives notice of a needed correction to the above mentioned notice. The date ''December 17, 2001'' in the sentence following the words ''Scope of Investigation'' should be ''December 27, 2001.''

EFFECTIVE DATE: January 7, 2002.

FOR FURTHER INFORMATION CONTACT: Jeffrey R. Whieldon, Esq. (202–205–2580), U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

Issued: January 14, 2002.

By order of the Commission.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–1302 Filed 1–17–02; 8:45 am]

BILLING CODE 7020–04–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearing of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Civil Procedures.

ACTION: Notice of cancellation of open hearing.

SUMMARY: The public hearing on proposed amendments to the Federal Rules of Civil Procedure, scheduled for February 4, 2002, in Dallas, Texas, has been canceled.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: January 14, 2002.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 02–1361 Filed 1–17–02; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, including 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States of America and State of Louisiana* v. *City of Baton Rouge and Parish of East Baton Rouge,* Civil Action No. 01–978–B–M–3, was lodged on November 13, 2001, with the United States District Court for the Middle District of Louisiana.

The proposed Consent Decree settles an action brought under Clean Water Act (''CWA'') Section 301, 33 U.S.C. 1311, for civil penalties and injunctive relief for violations related to the publicly owned treatment works owned and operated by the City/Parish. The Consent Decree resolves all claims in the Complaint and provides for injunctive relief, a civil penalty of $729,500; a $1.125 million supplemental environmental project that will connect certain neighborhoods to the sewage treatment system; and payment $216,000 in stipulated penalties which accrued under a prior Consent Decree. The injunctive relief will require the City/Parish to implement specified projects including a 13–15 year project to improve its sewage collection system, a Sanitary Sewer Overflow Response Plan to protect the public health by responding to overflows, and an extensive preventive maintenance program.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. As a result of the discovery of anthrax contamination at the District of Columbia mail processing center in mid-October 2001, the delivery of regular first-class mail sent through the U.S. Postal Service has been disrupted. Consequently, public comments which are addressed to the Department of Justice in Washington, DC, and sent by regular, first-class mail through the U.S. Postal Service are not expected to be received in timely manner. Therefore, comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, and sent: (1) c/o United States Attorneys Office, Middle District of Louisiana, 777 Florida St., Ste 208, Baton Rouge, LA 70801, Attention: John Gaupp; and/or (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW., 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States and Louisiana* v. *Baton Rouge,* No. 01–978–B–M–3 (M.D. La.), DOJ Ref. # 90–5–1–1–2769/1.

Notice of this Consent Decree was previously published at 66 FR 66931 (2001), and, that notice instructed commenters to send comments via the U.S. Postal Service to P.O. Box 7611, Washington, DC 20044–7611. Due to the

same mail delivery problems referred to in the previous paragraph, any comments submitted pursuant to the previous notice through the U.S. Postal Service are not expected to be received in a timely manner. In order to ensure that all comments are considered, any persons who submitted comments via the U.S. Postal Service pursuant to the previous notice are advised to resubmit those comments by one of the methods specified in the previous paragraph.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Middle District of Louisiana, 777 Florida St., Ste 208, Baton Rouge, LA 70801, and at the Region 6 office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. A copy of the proposed Consent Decree may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 616–6584; phone confirmation no. (202) 514–1547. There is a charge for the copy (25 cent per page reproduction cost). Upon requesting a copy, please mail a check in the amount of $67.75 payable to the ''U.S. Treasury'' to: Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. The check should refer to *United States and Louisiana* v. *Baton Rouge,* No. 01–978–B–M–3 (M.D. La.), DOJ Ref. # 90–5–1–2769/1.

Thomas A. Mariani, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1298 Filed 1–17–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy and 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Goodyear Tire & Rubber Co., Corning, Inc. and First Piedmont Corp.,* Civil Action No. 4:01CV00062, was lodged on October 30, 2001 with the United States District Court for the Western District of Virginia. The consent decree resolves the United States' claims against defendants with respect to past costs incurred in response to contamination at the First Piedmont Rock Quarry (Route 719) Site in Pittsylvania County, Virginia, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9607.

Under the consent decree, defendants will pay the United States $973,095 in reimbursement of past response costs incurred in connection with the Site. Said amount will be paid within thirty (30) days after entry of the consent decree by the Court. As part of the proposed settlement, defendants will receive a covenant not to sue for and contribution protection for past response costs.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree that were previously submitted during the original comment period. Any persons who previously submitted comments should resubmit those comments. As a result of the discovery of anthrax contamination at the District of Columbia mail processing center in mid-October, 2001, the delivery of regular first-class mail sent through the U.S. Postal Service has been disrupted. Consequently, public comments which are addressed to the Department of Justice in Washington, DC and sent by regular, first-class mail through the U.S. Postal Service are not expected to be received in a timely manner. Therefore, comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, and sent: (1) c/o Natalie Katz, USEPA Region III (3RC42), 1650 Arch Street, Philadelphia, PA 19103 and/or (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW., 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States* v. *Goodyear Tire & Rubber Co., Corning, Inc. and First Piedmont Corp.,* DOJ # 90–11–3–07144.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Western District of Virginia, 105 Franklin Road, SW., Suite One, Roanoke, Virginia 24008 and at the Region 3 office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed Consent Decree may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 616–6584; phone confirmation no. (202) 514–1547. There is a charge for the copy (25 cent per page reproduction cost). Upon requesting a copy, please mail a check payable to the ''U.S. Treasury'', in the amount of $4.75, to: Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. The check should refer to *United States* v. *Goodyear Tire & Rubber Co., Corning, Inc. and First Piedmont Corp.,* DOJ # 90–11–3–07144.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1296 Filed 1–17–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Resolving U.S. v. IBP Inc. (D. Nebraska)

Notice is hereby given that the United States, on behalf of the United States Environmental Protection Agency (''EPA''), intends, on or before February 4, 2002, to move for entry of the Consent Decree lodged with the United States District Court for the District of Nebraska on October 12, 2001. This Consent Decree, together with the Partial Consent Decree for Interim Injunctive Relief previously entered in this case, will fully resolve the United States' Complaint filed on January 12, 2000, in the District of Nebraska, alleging violations by IBP, inc. [sic] (''IBP'') of the Clean Air Act, 42 U.S.C. 7401 *et seq.*; the Clean Water Act, 33 U.S.C. 1311 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*; and the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. 11001 *et seq.*, at its Dakota City Nebraska slaughterhouse facility.

Notice of the lodging of the Consent Decree was previously published in the **Federal Register** on November 15, 2001 (Volume 66, Number 221, Page 57484), triggering a thirty-day public comment period that expired on December 15, 2001. One set of comments was received during this period by facsimile transmission on December 12, 2001, from a Nebraska group called Citizens Promoting Environmental Stewardship, to which the United States will respond in connection with its motion to enter the Consent Decree. However, as a result of the discovery of anthrax contamination at the District of Columbia mail processing center, the delivery of regular first-class mail sent through the U.S. Postal Service has been disrupted. Consequently, any additional public comments on the proposed Consent Decree that were timely sent to

the Department of Justice in Washington, DC, by regular, first-class mail through the U.S. Postal Service, but not sent by additional means such as overnight or facsimile transmission, have not been received. This notice, therefore, is intended to advise any such commenters that their comments on the Proposed Consent Decree have not been received to date. Any previously submitted comments thus should be re-submitted by January 31, 2002, addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, and sent: (1) c/o Howard Bunch, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VII, 901 N. 5th St., Kansas City, Kansas 66101 and/or (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW., 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States* v. *IBP,* DOJ Ref. #90–11–3–06517/1. Any such re-submitted comments will be evaluated and responded to prior to any final decision by the United States to move to enter the Consent Decree.

Robert E. Maher,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1297 Filed 1–17–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

AGENCY: United States Department of Justice.

ACTION: Policy guidance document.

SUMMARY: The United States Department of Justice (DOJ) is republishing for additional public comment policy guidance on Title VI's prohibition against national origin discrimination as it affects limited English proficient persons.

DATES: This guidance was effective January 19, 2001. Comments must be submitted on or before February 19, 2002. DOJ will review all comments and will determine what modifications to the policy guidance, if any, are necessary.

ADDRESSES: Interested persons should submit written comments to Ms. Merrily Friedlander, Chief, Coordination and Review Section, Civil Rights Division, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530; Comments may also be submitted by facsimile at 202–307–0595.

FOR FURTHER INFORMATION CONTACT: Christine Stoneman or Sebastian Aloot at the Civil Rights Division, 950 Pennsylvania Avenue, N.W., Washington, DC 20530. Telephone 202–307–2222; TDD: 202–307–2678. Arrangements to receive the policy in an alternative format may be made by contacting the named individuals.

SUPPLEMENTARY INFORMATION: Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.* and its implementing regulations provide that no person shall be subjected to discrimination on the basis of race, color, or national origin under any program or activity that receives federal financial assistance.

The purpose of this policy guidance is to clarify the responsibilities of recipients of federal financial assistance from the U.S. Department of Justice (DOJ) (''recipients''), and assist them in fulfilling their responsibilities to limited English proficient (LEP) persons, pursuant to Title VI of the Civil Rights Act of 1964 and implementing regulations. The policy guidance reiterates DOJ's longstanding position that in order to avoid discrimination against LEP persons on the ground of national origin, recipients must take reasonable steps to ensure that such persons have meaningful access to the programs, services, and information those recipients provide, free of charge.

This document was originally published on January 16, 2001. See 66 FR 3834. The document was based on the policy guidance issued by the Department of Justice entitled ''Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency.'' 65 FR 50123 (August 16, 2000).

On October 26, 2001 and January 11, 2002, the Assistant Attorney General for the Civil Rights Division issued to federal departments and agencies guidance memoranda, which reaffirmed the Department of Justice's commitment to ensuring that federally assisted programs and activities fulfill their LEP responsibilities and which clarified and answered certain questions raised regarding the August 16th publication. The Department of Justice is presently reviewing its original January 16, 2001 publication in light of these clarifications to determine whether there is a need to clarify or modify the January 16th guidance. In furtherance of those memoranda, the Department of Justice is republishing its guidance for the purpose of obtaining additional public comment.

The policy guidance includes appendices. Appendix A provides examples of how this guidance would apply to DOJ recipients. Appendix B provides further information on the legal bases for the guidance. It also explains further who is covered by this guidance. The text of the complete guidance document, including appendices, appears below.

Dated: January 15, 2002.

Ralph F. Boyd, Jr.,

Assistant Attorney General, Civil Rights Division.

I. Introduction

For most people living in the United States, English is their native language or they have learned to read, speak, and understand English. There are others for whom English is not their primary language. If they also have limited ability to read, speak, or understand English, then these people are limited English proficient, or ''LEP.'' For them, language can be a barrier to accessing benefits or services, understanding and exercising important rights, or understanding other information provided by federally funded programs and activities.

This guidance (''Guidance'') is based on Title VI of the Civil Rights Act of 1964 and regulations that implement Title VI. Title VI was intended to eliminate barriers based on race, color, and national origin in federally assisted programs or activities. In certain circumstances, failing to ensure that LEP persons can effectively participate in or benefit from federally assisted programs and activities or imposing additional burdens on LEP persons is national origin discrimination. Therefore, recipients must take reasonable steps to ensure meaningful access for LEP persons.

In August, 2000, the President signed Executive Order 13166. Under that order, every federal agency that provides financial assistance to non-federal entities must create guidance on how their recipients can provide meaningful access to LEP persons and therefore comply with the longstanding Title VI law and its regulations. DOJ is issuing this Guidance to comply with the Executive Order. The guidance document is new, but Title VI's meaningful access requirement is not.

This Guidance should help recipients of Department of Justice (DOJ) financial assistance understand how to comply with the law. Recipients have a great

deal of flexibility in determining how to comply with the meaningful access requirement, and are not required to use all of the suggested methods and options listed. As always, recipients also have the freedom to and are encouraged to go beyond mere compliance and create model programs for LEP access.

Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance. Recipients of DOJ assistance include, for example:

- police and sheriffs' departments
- departments of corrections
- courts
- certain nonprofit agencies with law enforcement missions

When federal funds are passed through from one recipient to a subrecipient, the subrecipient is also covered by Title VI.

The LEP persons that are eligible to be served or encountered by these recipients include, but are not limited to:

- LEP persons who are in the custody of the recipient, including juveniles, detainees, wards, and inmates.
- LEP persons subject to or serviced by law enforcement activities, including, for example, suspects, violators, witnesses, victims, and community members.
- LEP persons who are not in custody but are under conditions of parole or probation.
- LEP persons who encounter the court system.
- Parents and family members of the above.

Title VI applies to the entire program or activity of a recipient of DOJ assistance. That means that Title VI covers all parts of a recipient's operations. This is true even if only one part of the agency uses the federal assistance.

Example: DOJ provides assistance to a state department of corrections to improve a particular prison facility. All of the operations of the entire state department of corrections—not just the particular prison—are covered by Title VI.

Technical Assistance

DOJ plans to continue to provide assistance and guidance in this important area. For example, DOJ plans to work with representatives of law enforcement, corrections, courts, and LEP persons to identify model plans and examples of best practices and share those with recipients.

DOJ Programs and Activities

At the same time as federal agencies are creating recipient guidance, Executive Order 13166 requires that they create LEP plans for their own agencies that are consistent with the standards for recipients. Therefore, DOJ will apply the standards in this guidance to its own activities.[1]

Appendices

There are two appendices to this guidance. Appendix A provides examples of how this guidance would apply to DOJ recipients.

Appendix B provides further information on the legal bases for the guidance. It also explains further who is covered by this guidance.

Both of these appendices should be considered part of this guidance.

State or Local ''English-Only'' Laws

State or local ''English-only'' laws do not change the fact that recipients cannot discriminate in violation of Title VI. Entities in states and localities with ''English-only'' laws do not have to accept federal funding. However, if they do, they still have to comply with Title VI, including its prohibition against national origin discrimination by recipients.

II. How Recipients Should Decide What Language Services They Should Provide

As mentioned in Executive Order 13166 and the DOJ Guidance issued in August, 2000, recipients should apply a four-factor test to decide what steps to take to provide meaningful access to their programs and activities for LEP persons. Once the recipient has chosen the services it will provide, the recipient should prepare a written policy on language assistance for LEP persons (an ''LEP policy'').

A. The Four-Factor Analysis

Recipients must take reasonable steps to ensure meaningful access to their services, programs, and activities. What ''reasonable steps to ensure meaningful access'' means depends on a number of factors. DOJ recipients should apply the following four factors to the various kinds of contacts that they have with the public to decide what reasonable steps they should take to ensure meaningful access for LEP persons. The results of this balancing test allow a recipient to decide what documents to translate, when oral translation is necessary, and whether language services must be made immediately available.

After applying the four-factor analysis, a recipient may conclude that different language assistance measures are needed for its different types of programs or activities. For instance, some of a recipient's activities will be more important than others and/or have greater impact on or contact with LEP persons, and thus require more in the way of language assistance.

(1) The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population

One factor in determining what language services recipients should provide is the number or proportion of LEP persons eligible to be served or encountered by the recipient in carrying out its operations. Recipients should look to available data, such as the latest census data for the area served, data from school systems and from community organizations, and data collected by the recipient.[2] The greater the number or proportion of LEP persons, the more likely language services are needed.

(2) The Frequency With Which LEP Individuals Come in Contact With the Program

Recipients should assess, as accurately as they can, the frequency with which they have or should have contact with LEP language groups. The more frequent the contact, the more likely that language services are needed. The steps that are reasonable for a recipient that serves one LEP person a year may be very different than those expected from a recipient that serves several LEP persons each day. But even those that serve very few LEP persons on an infrequent basis should utilize this balancing analysis to determine what to do if an LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use one of the commercially available language lines to obtain immediate interpreter services.

In applying this standard, recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

[1] DOJ has created, pursuant to the Executive Order, a separate plan for providing meaningful access to LEP persons in DOJ conducted activities.

[2] The focus of the analysis is on lack of English proficiency, not the ability to speak more than one language. Note that census data may indicate the most frequently spoken languages other than English and the percentage of people who speak that language who do not speak or understand English very well. Some of the most commonly spoken languages other than English may be spoken by people who are also overwhelmingly proficient in English. Thus, they may not be the languages spoken most frequently by limited English proficient individuals. When using census data, it is important to focus in on the languages spoken by those who are not proficient in English.

(3) The Nature and Importance of the Program, Activity, or Service Provided By the Program

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. For example, the obligations to communicate rights to a person who is arrested or to provide medical services to an ill or injured inmate differ from those to provide bicycle safety courses or recreational programming. A recipient needs to determine if a denial or delay of access to services or information could have serious implications for the LEP individual. In addition, a decision by a federal, state, or local entity to make an activity compulsory, such as particular educational programs in a correctional facility or the communication of *Miranda* rights, serves as strong evidence of the program's importance.

(4) The Resources Available to the Recipient

A recipient's level of resources may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. Resource issues can sometimes be minimized by technological advances and sharing of resources and translations. Large entities should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance.

Applying the four factors, for example, a small police department with limited resources encountering very few LEP people has far fewer language assistance responsibilities than larger departments with more resources and large populations of LEP individuals.[3]

B. Selecting Language Assistance Services

After applying the four-factor analysis, recipients have two main ways to provide language services, where needed: oral interpretation and written translation. In deciding how to provide these services, recipients should consider the following information.

(1) Oral Language Services

Where oral interpretation is needed, recipients should develop procedures for providing competent interpreters in a timely manner. To do so, the recipient should consider some or all of the following options:

Hiring Bilingual Staff for public contact positions. When particular languages are encountered often, hiring bilingual staff offers one of the best options. Recipients can, for example, fill public contact positions with staff who are bilingual and competent to communicate directly with LEP persons in their language. If bilingual staff are also used to interpret between English speakers and LEP persons, or to orally translate documents, they must be competent in the skill of interpreting. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

Hiring Staff Interpreters. Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages.

Contracting for Interpreters. Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill.

Using Community Volunteers. Recipient-coordinated use of community volunteers may provide a cost-effective way to provide language services. It is often best to use community volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, must be competent in the skill of interpreting. It is best to make formal arrangements with volunteers. That way, the service is available more regularly and volunteers understand applicable confidentiality and impartiality rules.

Using Telephone Interpreter Lines. Telephone interpreter service lines often offer speedy interpreting assistance in many different languages. Although they are useful in many situations, it is important to ensure that such services have interpreters who are able to interpret any legal terms or terms that are specific to a particular program when such terms may come up in the conversation. Also, sometimes it may be necessary to provide on-site interpreters to provide accurate and meaningful communication with an LEP person.

Competence of Interpreters. When providing oral assistance, recipients should ensure competency of the language service provider, no matter which of the above options they use. Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English.

Competency to interpret does not always mean formal certification as an interpreter. However, certification is helpful. When using interpreters, recipients should ensure that they:

- demonstrate proficiency in both English and in the other language;
- are bound to confidentiality and impartiality to the same extent the recipient employee they are interpreting for is so bound and/or to the extent their position requires;
- have knowledge in both languages of any specialized terms or concepts peculiar to the entity's program or activity; and
- demonstrate the ability to convey information in both languages, accurately;

Some recipients, such as courts, may have additional self-imposed requirements for interpreters.

Inappropriate Use of Family Members, Friends, Other Inmates, or Detainees. As a general rule, when language services are required, recipients should provide competent interpreter services free of cost to the LEP person. LEP persons should be advised that they may choose either to secure the assistance of an interpreter of their own choosing, at their own expense, or a competent interpreter provided by the recipient.[4] If the LEP

[3] As another example, under the four-part analysis, Title VI does not require recipients to translate documents requested under a state equivalent of the Freedom of Information Act or Privacy Act, or to translate all official state statutes or notices of rulemaking. The focus of the analysis is the nature of the information being communicated, the intended or expected audience, and the cost of providing translations. In virtually all instances, one or more of these criteria would lead to the conclusion that recipients need not translate these types of official documents. These criteria, however, may result in translation obligations where, for instance, laws are otherwise posted or summarized in waiting rooms, summarized or set forth in forms, applications, or vital outreach material, or special populations are provided with rules and regulations they must follow (*e.g.*, in prisons, *see* Appendix A).

[4] While an LEP person may sometimes look to bilingual family members or friends or other persons with whom they are comfortable for language assistance, there are many situations where an LEP person might want to rely upon recipient-supplied interpretative services. For example, such individuals may not be available when and where they are needed, or may not have the ability to translate program-specific technical information. Alternatively, an individual may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, law enforcement (e.g., sexual or violent assaults), family, or financial information to a family member, friend, or member of the local community.

Continued

person decides to provide his or her own interpreter, the provision of this notice and the LEP person's election should be documented in any written record generated with respect to the LEP person. In emergency situations that are not reasonably foreseeable, use of interpreters not provided by the recipient may be necessary. Proper recipient planning and implementation can help avoid such situations.

(2) Translation of Written Materials

An effective LEP policy ensures that vital written materials are translated into the language of each regularly encountered LEP group eligible to be served and/or likely to be affected by the recipient's program.

The term ''vital documents'' includes, for example:

- consent and complaint forms
- intake forms with the potential for important consequences
- written notices of rights, denial, loss, or decreases in benefits or services, parole, and other hearings
- notices of disciplinary action
- notices advising LEP persons of free language assistance
- prison rule books
- written tests that do not assess English language competency, but test competency for a particular license, job, or skill for which knowing English is not required
- applications to participate in a recipient's program or activity or to receive recipient benefits or services.

Whether or not a document is ''vital'' also depends upon the importance of the program, information, encounter, or service involved. For instance, applications for bicycle safety courses would not generally be considered vital, whereas applications for drug and alcohol counseling in prison would generally be considered vital.

Many large documents have both vital and non-vital information in them. Written translation of only the vital information is usually sufficient.

It sometimes may be hard to tell the difference between vital and non-vital documents. This may be especially true for outreach materials like brochures or other information on rights and services. In order to have meaningful access, LEP persons need to be aware of those rights and services. Of course, it would be impossible to translate every piece of outreach material into every language. However, sometimes lack of awareness that a particular program, right, or service exists may effectively deny LEP individuals meaningful access. Thus, recipients should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate.

Recent technological advances have made it easier for recipients to store and share translated documents. At the same time, DOJ recognizes that recipients in a number of areas, such as many large cities, regularly serve LEP persons from many different areas of the world who speak dozens and sometimes over 100 different languages. It would be too burdensome to demand that recipients in these circumstances translate all written materials into all of those languages. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the most frequently encountered languages, and to set benchmarks for continued translations over time. As a result, the extent of the recipient's obligation to provide written translations of documents will be determined on a case-by-case basis, looking at the totality of the circumstances.

One way for a recipient to know with greater certainty that it will be found in compliance with its obligation to provide written translations in languages other than English is for the DOJ recipient to meet the guidelines outlined in paragraphs (a) and (b) below.

Paragraphs (a) and (b) outline the circumstances that provide a ''safe harbor'' for recipients regarding the requirements for translation of written materials. A ''safe harbor'' means that if a recipient provides written translations under these circumstances, this will be considered strong evidence of compliance, in the area of written translations.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) will not necessarily mean non-compliance with Title VI. In such circumstances, DOJ reviews the totality of the circumstances to determine the recipient's obligation to provide written materials in languages other than English.

Example: Even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, DOJ will not find the translation of written materials necessary for compliance with Title VI. Other ways of providing meaningful access, such as effective oral interpretation of vital documents, would be acceptable under such circumstances.

Safe Harbor. DOJ will consider a recipient to be in compliance with its Title VI obligation to provide written materials in non-English languages if:

(a) The DOJ recipient provides written translations of, at a minimum, vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other vital documents, if needed, can be provided orally; or

(b) If there are fewer than 50 persons in a language group that reaches the five percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral translation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed. For example, correctional facilities should ensure that prison rules have been explained to LEP inmates, at orientation, for instance, prior to taking disciplinary action against them.

The term ''persons eligible to be served or likely to be affected or encountered'' as used in paragraph (a) relates to the issue of identifying the DOJ recipient's service area for purposes of meeting its Title VI obligation. Because of the wide variety of recipient programs and activities, there is no ''one size fits all'' definition of what constitutes ''persons eligible to be served or likely to be affected or encountered.'' Generally, the term means those persons who are in the geographic area that has been approved by a federal grant agency as the service area and who are either eligible for the recipient's services or otherwise might be affected or encountered by the recipient.

Where no service area has been approved, DOJ will consider the relevant service area as that approved by

Similarly, there may be situations where a recipient's own interests justify the provision of an interpreter regardless of whether the LEP individual also provides his or her own interpreter. For example, where precise, complete and accurate translations of information and/or testimony are critical for law enforcement, adjudicatory or legal reasons, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use their own interpreter as well.

state or local authorities or designated by the recipient itself, provided that these designations do not themselves discriminatorily exclude certain populations. Appendix A provides examples of determining the relevant service area. When considering the number or proportion of LEP individuals in a service area, recipients need to consider LEP parent(s) when their English-proficient or LEP minor children and dependents encounter the legal system.

Just as with oral interpreters, translators of written documents must be competent. It is a good idea to build in a ''check'' on the translation. For instance, an independent translator could check the first translation. Or, one translator could translate the document, and a second, independent translator could translate it back into English. This is called ''back translation.''

Translators should understand the expected reading level of the audience. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version. Community organizations may be able to help consider whether a document is written at a good level for the audience.

Finally, recipients will find it more effective and less costly if they try to maintain consistency in the words and phrases used to translate terms of art, legal, or other technical concepts. Creating or using already-created glossaries of commonly-used terms may be useful for LEP persons and translators, and cost effective for the recipient. Providing translators with examples of previous translations of similar material by the recipient, other recipients, or federal agencies may be helpful.

C. Elements of Effective Written Policy on Language Assistance for LEP Persons (''LEP Policy'')

After completing the four-factor analysis and deciding what language assistance services are needed, the recipient should include those in a written LEP policy. The key to providing meaningful access is accurate and effective communication between the DOJ recipient and the LEP individual.

Although DOJ recipients have a great deal of flexibility in designing their policies, effective programs usually have five elements, discussed below. Failure to take all of the steps outlined in this section does not necessarily mean that a recipient has violated the law. Just as with all Title VI complaints, DOJ assesses each complaint on a case-by-case basis. DOJ applies the four factors in deciding whether the steps taken by a recipient provide meaningful access.

(1) Identifying LEP Individuals Who Need Language Assistance

As noted above, the first two parts of the four-factor analysis of need include an assessment of the number or proportion of LEP individuals eligible to be served or encountered and the frequency of encounters. In addition, when developing a plan, recipients should develop a process for employees to identify the language of LEP persons encountered so that language services can be provided.

One way to determine the language of communication is to use language identification cards (or ''I speak cards''), which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say ''I speak Spanish'' in both Spanish and English, ''I speak Vietnamese'' in both English and Vietnamese, etc. When records are normally kept of past interactions with members of the public, the language of the LEP person should be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future application of the first two factors of the four-factor analysis.

(2) Language Assistance Measures

The LEP policy should include information about the ways in which language assistance will be provided. For instance, it should include information on at least the following:

- Types of language services available (see Section IIB, above).
- How staff can obtain those services.
- How to respond to LEP callers.
- How to respond to written communications from LEP persons.
- How to respond to LEP individuals who have in-person contact with recipient staff.
- How to ensure competency of interpreters and translation services.

(3) Training Staff

Staff need to know that they must provide meaningful access to information and services for LEP persons. Recipients should provide training to ensure that:

- Staff know about LEP policies and procedures.
- Staff having contact with the public (or those in a recipient's custody) are trained to work effectively with in-person and telephone interpreters.

It is important that this training be part of the orientation for new employees and that all employees in public contact positions (or having contact with those in a recipient's custody) be properly trained. Recipients have flexibility in deciding the way the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of an LEP policy.

(4) Providing Notice to LEP Persons

Once an agency has decided, based on the four factors, that it will provide language services, it is important to let LEP persons know that those services are available and that they are free of charge. Recipients should provide this notice in a language LEP persons will understand. Examples of notification that recipients should consider include:

- Posting signs in intake areas and other entry points. When language assistance is needed to ensure meaningful access to information and services, the signs could state that LEP persons have a right to free language assistance. The signs should be translated into the most common languages encountered. They should explain how to get the language help.
- Stating in outreach documents that language services are available from the agency. Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and could be ''tagged'' onto the front of common documents.
- Working with community-based organizations and other stakeholders to inform LEP individuals of the recipients' services, including the right to language services.
- Using a telephone voice mail menu. The menu could be in the most common languages encountered. It should provide information about available language assistance services and how to get them.
- Including notices in local newspapers in languages other than English.
- Providing notices on non-English-language radio stations about the available language assistance services and how to get them.

(5) Monitoring and Updating the LEP policy

Recipients should always consider whether new documents, programs, services, and activities need to be made accessible for LEP individuals, and they should make any needed changes. They should then provide notice of any changes in services to the LEP public and to employees. In addition, DOJ

recipients should evaluate their entire language policy at least every three years. One way to evaluate the LEP policy is to seek feedback from the community.

In their reviews, recipients should assess changes in:

- Current LEP populations in service area or population affected or encountered.
- Frequency of encounters with LEP language groups.
- Nature and importance of activities to LEP persons.
- Availability of resources, including technological advances and sources of additional resources.
- Whether existing assistance is meeting the needs of LEP persons.
- Whether staff knows and understands the LEP policy and how to implement it.
- Whether identified sources for assistance are still available and viable.

III. Application to Specific Types of Recipients

Appendix A of this Guidance provides examples of how the Title VI meaningful access requirement applies to law enforcement, corrections, courts, and other recipients of DOJ assistance.

A. State and Local Law Enforcement

Appendix A further explains how law enforcement recipients can apply the four factors to a range of encounters with the public. The responsibility for providing language services differs with different types of encounters.

Appendix A helps recipients identify the population they should consider when deciding the types of services to provide. It then provides guidance and examples of applying the four factors. For instance, it gives examples on how to apply this guidance to:

- Receiving and responding to requests for help
- Enforcement stops short of arrest and field investigations
- Custodial interrogations
- Intake/detention
- Community outreach

B. Departments of Corrections

Appendix A also helps departments of corrections understand how to apply the four factors. For instance, it gives examples of LEP access in:

- Intake
- Disciplinary action
- Health and safety
- Participation in classes or other programs affecting length of sentence
- English as a Second Language (ESL) Classes
- Community corrections programs

C. Other Types of Recipients

Appendix A also applies the four factors and gives examples for other types of recipients. Those include, for example:

- Courts
- Juvenile Justice Programs
- Domestic Violence Prevention/ Treatment Programs

Title VI Compliance Procedures

DOJ recipients have a great deal of flexibility in deciding how to comply with these obligations. DOJ will continue to use the same process for handling complaints based on LEP as it uses in any other Title VI complaint. That process emphasizes voluntary compliance. (*See* Appendix B for further information). In addition, DOJ will use this Guidance, including the appendices, in conducting investigations or reviews of a recipient's language services.

Appendix A—Application of LEP Guidance for DOJ Recipients to Specific Types of Recipients

While a wide range of entities receive federal financial assistance through DOJ, most of DOJ's assistance goes to law enforcement agencies, including state and local police and sheriffs' departments, and to state departments of corrections. Sections A and B below provide examples of how these two major types of DOJ recipients might apply the four-factor analysis. Section C provides examples for other types of recipients. The examples in this Appendix are not meant to be exhaustive.

The requirements of Title VI and its implementing regulations, as clarified by this Guidance, supplement, but do not supplant, constitutional and other statutory or regulatory provisions that may require LEP services. For instance, while application of the four-factor analysis may lead to a similar result, it does not replace constitutional or other statutory protections mandating warnings and notices in languages other than English in the criminal justice context. Rather, this Guidance clarifies the Title VI obligation to address, in appropriate circumstances and in a reasonable manner, the language assistance needs of LEP individuals beyond those required by the Constitution or statutes and regulations other than Title VI.

A. State and Local Law Enforcement

For the vast majority of the public, exposure to law enforcement begins and ends with interactions with law enforcement personnel discharging their duties while on patrol, responding to a request for services, talking to witnesses, or conducting community outreach activities. For a much smaller number, that exposure includes a visit to a station house. And for an important but even smaller number, that visit to the station house results in entry into the criminal justice, judicial, or juvenile justice systems.

The common thread running through these and other interactions between the public and law enforcement is the exchange of information. LEP individuals' encounters with police and sheriffs' departments are covered by Title VI if those departments receive federal financial assistance. This Guidance focuses on the requirements under Title VI to communicate effectively with persons who are LEP to ensure that they have meaningful access to the system, including, for example, understanding rights and accessing police assistance.

Many police and sheriffs' departments already provide language services in a wide variety of circumstances to obtain information effectively, to build trust and relationships with the community, and to contribute to the safety of law enforcement personnel. For example, many police departments have available printed *Miranda* rights in languages other than English.[1] In areas where significant LEP populations reside, law enforcement officials already may have forms and notices in languages other than English or they may employ bilingual law enforcement officers, intake personnel, counselors, and support staff. These experiences can form a strong basis for assessing need and implementing a plan in compliance with Title VI and its implementing regulations.

1. General Principles

The touchstone of the four-factor analysis is reasonableness based upon the specific purposes, needs, and capabilities of the law enforcement service under review and an appreciation of the nature and particularized needs of the LEP population served. Accordingly, the analysis cannot provide a single uniform answer on how service to LEP persons must be provided in all programs or activities in all situations. Knowledge of local conditions and community needs becomes critical in determining the type and level of language services needed. The more predictable the need for language

[1] DOJ's own Federal Bureau of Investigation makes written versions of those rights available in several different languages.

services, the greater the responsibility under the four-factor analysis.

Before giving specific examples, several general points should assist law enforcement planners in correctly applying the analysis to the wide range of services employed in their particular jurisdictions.

a. Permanent Versus Seasonal Populations. In many communities, resident populations change over time or season. For example, in some resort communities, populations swell during peak vacation periods, many times exceeding the number of permanent residents of the jurisdiction. In other communities, primarily agricultural areas, transient populations of agricultural workers will require increased law enforcement services during the relevant harvest season. This dynamic demographic ebb and flow can also dramatically change the size and nature of the LEP community likely to come into contact with law enforcement personnel. Thus, law enforcement officials should not limit their analysis to numbers and percentages of permanent residents. In assessing factor one—the number or proportion of LEP individuals—police departments should consider any significant but temporary changes in a jurisdiction's demographics.

Example: A rural jurisdiction has a permanent population of 30,000, 7% of which is Hispanic. Based on census data and an information from the contiguous school district, of that number, only 15% are estimated to be LEP individuals. Thus, the total estimated permanent LEP population is 315 or approximately 1% of the total permanent population. Under the four-factor analysis, a sheriffs' department could reasonably conclude that the small number of LEP persons makes the affirmative translation of documents and/or employment of bilingual staff unnecessary. However, during the spring and summer planting and harvest seasons, the local population swells to 40,000 due to the influx of seasonal agricultural workers. Of this transitional number, about 75% are Hispanic and about 50% of that number are LEP individuals. This information comes from the schools and a local migrant worker community group. Thus, during the harvest season, the jurisdiction's LEP population increases to over 10% of all residents. In this case, the department should consider, under the safe harbor provisions of this Guidance, translating vital written documents into Spanish. In addition, the predictability of contact during those seasons makes it important for the jurisdiction to review its oral language services to ensure meaningful access for LEP individuals.

b. Target Audiences. For most law enforcement services, the target audience is defined in geographic rather than programmatic terms. However, some services may be targeted to reach a particular audience (*e.g.,* elementary school children, elderly, residents of high crime areas, minority communities, small business owners/operators, etc.). Also, within the larger geographic area covered by a police department, certain precincts or portions of precincts may have concentrations of LEP persons. In these cases, even if the overall number or proportion of LEP individuals in the district is low, the frequency of contact may be foreseeably higher for certain areas or programs. Thus, the second factor—frequency of contact—should be considered in light of the specific program or the geographic area being served. The police department could then focus language services where they are most likely to be needed.

Example: A police department that receives funds from the DOJ Office of Justice Programs initiates a program to increase awareness and understanding of police services among elementary school age children in high crime areas of the jurisdiction. This program involves ''Officer in the Classroom'' presentations at elementary schools located in areas of high poverty. The population of the jurisdiction is estimated to include only 3% LEP individuals. However, the LEP population at the target schools is 35%, the vast majority of whom are Vietnamese speakers. In applying the four-factor analysis, the higher LEP language group populations of the target schools and the frequency of contact within the program with LEP students in those schools, not the LEP population generally, should be used in determining the nature of the LEP needs of that particular program. Further, because the Vietnamese LEP population is concentrated in one or two main areas of town, the police department should expect the frequency of contact with Vietnamese LEP individuals in general to be quite high in those areas, and it should plan accordingly.

c. Importance of Service/Information. Given the critical role law enforcement plays in maintaining quality of life and property, traditional law enforcement and protective services rank high on the critical/non-critical continuum. However, this does not mean that information about, or provided by, each of the myriad services and activities performed by law enforcement officials must be equally available in languages other than English. While clearly important to the ultimate success of law enforcement, certain community outreach activities do not have the same direct impact on the provision of core law enforcement services as the activities of 911 lines or law enforcement officials' ability to respond to requests for assistance while on patrol, to communicate basic information to suspects, etc. Nevertheless, with the rising importance of community partnerships and community-based programming as a law enforcement technique, the need for language services should be considered in such activities as well.

d. Interpreters. Just as with other recipients, law enforcement recipients have a variety of options for providing language services. As a general rule, when language services are required, recipients should provide competent interpreter services free of cost to the LEP person. LEP persons should be advised that they may choose either to secure the assistance of an interpreter of their own choosing, at their own expense, or a competent interpreter provided by the recipient.

If the LEP person decides to provide his or her own interpreter, the provision of this notice and the LEP person's election should be documented in any written record generated with respect to the LEP person. While an LEP person may sometimes look to bilingual family members or friends or other persons with whom they are comfortable for language assistance, there are many situations where an LEP person might want to rely upon recipient-supplied interpretative services. For example, such individuals may not be available when and where they are needed, or may not have the ability to translate program-specific technical information. Alternatively, an individual may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, law enforcement (*e.g.,* sexual or violent assaults), family, or financial information to a family member, friend, or member of the local community. Similarly, there may be situations where a recipient's own interests justify the provision of an interpreter regardless of whether the LEP individual also provides his or her own interpreter. For example, where precise, complete and accurate translations of information and/or testimony are critical for law enforcement, adjudicatory or legal reasons, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use their own interpreter as well.

In emergency situations that are not reasonably foreseeable, the recipient may have to temporarily rely on non-recipient-provided language services. Proper recipient planning and implementation can help avoid such situations.

While all language services need to be competent, the greater the potential consequences, the greater the need to monitor interpretation services for quality. For instance, it is important that interpreters in custodial interrogations

be highly competent to translate legal and other law enforcement concepts, as well as be extremely accurate in their interpretation. It may be sufficient, however, for a desk clerk who is bilingual but not skilled at interpreting to help an LEP person figure out to whom he or she needs to talk about setting up a neighborhood watch.

2. Applying the Four-Factor Analysis Along the Law Enforcement Continuum

While all police activities are important, the Title VI analysis requires some prioritizing so that language services are targeted where most needed because of the nature and importance of the particular law enforcement activity involved. In addition, because of the ''reasonableness'' standard, and frequency of contact and resources factors, the obligation to provide language services increases where the importance of the activity is greater, the law enforcement activity is more focused, and/or the provision of language services is more ''within the control'' of the police department.

Under this framework, then, critical areas for language assistance include: 911 calls, custodial interrogation, and health and safety issues for persons within the control of the police. These activities should be considered the most important under the four-factor analysis. Systems for receiving and investigating complaints from the public are important; further, complaint forms and investigations/hearings are directly within the control of the department. Thus, forms, hearings, and other complaint procedures should be made accessible to LEP individuals. Often very important, but less focused and controlled are: routine patrol activities, receiving non-emergency information regarding potential crimes, and ticketing. In these situations, the LEP plan should provide for a great deal of flexibility while at the same time ensuring that, wherever reasonable, language resources are available to officers and the LEP persons they encounter and that, when not available, the consequences to the LEP individuals are minimized. Community outreach activities are hard to categorize, but generally they do not rise to the same level of importance as the other activities listed. However, with the importance of community partnerships and community-based programming as a law enforcement technique, the need for language services should be considered in these activities as well. Police departments have a great deal of flexibility in determining how to best address their outreach to LEP populations.

a. Receiving and Responding to Requests for Assistance. LEP persons must have meaningful access to police services when they are victims of or witnesses to alleged criminal activity. Effective reporting systems transform victims, witnesses, or bystanders into assistants in law enforcement and investigation processes. Given the critical role the public plays in reporting crimes or directing limited law enforcement resources to time-sensitive emergency or public safety situations, efforts to address the language assistance needs of LEP individuals could have a significant impact on improving responsiveness, effectiveness, and safety.

All emergency service lines, or ''911'' lines, operated by agencies that receive federal financial assistance must be accessible to persons who are LEP. This will mean different things to different jurisdictions. For instance, in large cities with significant LEP communities, the 911 line may have operators who are bilingual and capable of accurately interpreting in high stress situations. Smaller cities or areas with small LEP populations should still have to have a plan for serving callers who are LEP, but the LEP policy and implementation may involve a telephonic language line that is fast enough and reliable enough to attend to the emergency situation, or include some other accommodation short of hiring bilingual operators.

Example: A large city provides bilingual operators for the most frequently encountered languages, and uses a commercial telephone language line when it receives calls from LEP persons who speak other languages. Ten percent of the city's population is LEP, and sixty percent of the LEP population speaks Spanish. In addition to 911 service, the city has a 311 line for non-emergency police services. The 311 Center has Spanish speaking operators available, and uses a language bank, staffed by the city's bilingual city employees who are competent translators, for other non-English-speaking callers. The city also has a campaign to educate non-English speakers when to use 311 instead of 911. Such services are consistent with Title VI principles.

b. Enforcement Stops Short of Arrest and Field Investigations. Field enforcement includes, for example, traffic stops, pedestrian stops, serving warrants and restraining orders, *Terry* stops, and crowd/traffic control. Because of the diffuse nature of these activities, the reasonableness standard allows for great flexibility in providing meaningful access, for example, in routine field investigations and traffic stops. Nevertheless, the ability of law enforcement personnel to discharge fully and effectively its enforcement and crime interdiction mission requires the ability to communicate instructions, commands, and notices. For example, a routine traffic stop can become a difficult situation if an officer is unable to communicate effectively the reason for the stop, the need for identifying or other information, and the meaning of any written citation. Requests for consent to search are meaningless if the request is not understood. Similarly, crowd control commands will be wholly ineffective where significant numbers of people in a crowd cannot understand the meaning of law enforcement commands.

Given the wide range of possible situations in which law enforcement in the field can take place, it is impossible to equip every officer with the tools necessary to respond to every possible LEP scenario. Rather, in applying the four factors to field enforcement, the goal should be to implement measures addressing the language needs of significant LEP populations in the most likely and common situations.

Example: A police department serves a jurisdiction with a significant number of LEP individuals residing in one or more precincts, and it is routinely asked to provide crowd control services at community events or demonstrations in those precincts. Consistent with the requirements of the four-factor analysis, the police department should assess how it will discharge its crowd control duties in a language-appropriate manner. Among the possible approaches are plans to assign bilingual officers, basic language training of all officers in common law enforcement commands, the use of devices that provide audio commands in the predictable languages, or the distribution of translated written materials for use by officers.

Field investigations include neighborhood canvassing, witness identification and interviewing, investigative or *Terry* stops, and similar activities designed to solicit and obtain information from the community. Encounters with LEP individuals will often be less predictable in field investigations. However, the jurisdiction should still assess the potential for contact with LEP individuals in the course of field investigations and investigative stops, identify the LEP language group(s) most likely to be encountered, and provide their officers with sufficient written or oral translation resources to ensure that lack of English proficiency does not impede otherwise proper investigations or unduly burden LEP individuals.

Example: A police department in a moderately large city includes a precinct that serves an area which includes significant LEP populations whose native languages are Spanish, Korean, and Tagalog. Law

enforcement officials could reasonably consider the adoption of a policy assigning bilingual investigative officers to the precinct and/or creating a resource list of department employees competent to interpret and ready to assist officers by phone or radio. This could be combined with developing language-appropriate written materials, such as consents to searches or statements of rights, for use by its officers where LEP individuals are literate in their languages. In certain circumstances, it may also be helpful to have telephone language line access where other options are not successful and safety and availability of phone access permit.

c. Custodial Interrogations. Custodial interrogations of unrepresented LEP individuals trigger constitutional rights that this Guidance is not designed to address. Given the importance of being able to communicate effectively under such circumstances, recipients' ability to anticipate and plan for a need for language services, and the control over LEP and other individuals asserted by recipients in custodial interrogation situations, law enforcement recipients must ensure competent and free language services for LEP individuals in such situations. A clear written policy, understood and easily accessible by all officers, will assist the law enforcement agency in complying with this obligation. In formulating a written policy for effectively communicating with LEP individuals, agencies should consider whether law enforcement personnel themselves ought to serve as interpreters during custodial interrogation, or whether a qualified independent interpreter would be more appropriate.[2]

Example: A large city police department institutes an LEP plan that requires arresting officers to procure a qualified interpreter for any custodial interrogation, notification of rights, or taking of a statement, and any communication by an LEP individual in response to a law enforcement officer. When considering whether an interpreter is qualified, the LEP policy discourages use of police officers as interpreters in interrogations except under circumstances in which the reliability of the interpretation is verified, such as, for example, where the officer has been trained and tested in interpreting and tape recordings are made of the entire interview. In determining whether an interpreter is qualified, the jurisdiction uses the analysis noted above. Such a plan is consistent with Title VI responsibilities.

d. Intake/Detention. State or local law enforcement agencies that arrest LEP persons should consider the inherent communication impediments to gathering information from the LEP arrestee through an intake or booking process. Aside from the basic information, such as the LEP arrestee's name and address, law enforcement agencies should evaluate their ability to communicate with the LEP arrestee about his or her medical condition. Because medical screening questions are commonly used to elicit information on the arrestee's medical needs, suicidal inclinations, presence of contagious diseases, potential illness, resulting symptoms upon withdrawal from certain medications, or the need to segregate the arrestee from other prisoners, it is essential that law enforcement agencies have the ability to communicate effectively with an LEP arrestee. In jurisdictions with few bilingual officers or in situations where the LEP person speaks a language not encountered very frequently, language lines may provide the most cost effective and efficient method of communication.

e. Community Outreach. Community outreach activities increasingly are recognized as important to the ultimate success of more traditional duties. Thus, an application of the four-factor LEP analysis to community outreach activities can play an important role in ensuring that the purpose of these activities (to improve police/community relations and advance law enforcement objectives) is not thwarted due to the failure to address the language needs of LEP persons.

Example: A police department initiates a program of domestic counseling in an effort to reduce the number or intensity of domestic violence interactions. A review of domestic violence records in the city reveals that 25% of all domestic violence responses are to minority areas and 30% of those responses involve interactions with one or more LEP persons, most of whom speak the same language. The department should take reasonable steps to make the counseling accessible to LEP individuals. In this case, the department successfully sought bilingual counselors (for whom they provided training in translation) for some of the counseling positions. In addition, the department has an agreement with a local university in which bilingual social work majors who are competent in interpreting, as well as language majors who are trained by the department in basic domestic violence sensitivity and counseling, are used as interpreters when the in-house bilingual staff cannot cover the need. Interpreters must sign a confidentiality agreement with the department. This would be consistent with Title VI responsibilities.

Example: A large city has initiated an outreach program designed to address a problem of robberies of Vietnamese homes by Vietnamese gangs. One strategy is to work with community groups and banks and others to help allay traditional fears in the community of putting money and other valuables in banks. Because a large portion of the target audience is Vietnamese speaking and LEP, the department contracts with a bilingual community liaison competent in the skill of translating to help with outreach activities. This would be consistent with Title VI responsibilities.

B. Departments of Corrections

All departments of corrections that receive federal financial assistance from DOJ must provide LEP prisoners[3] with meaningful access to benefits and services within the program. In order to do so, corrections departments, like other recipients, must apply the four-factor analysis.

1. General Principles

Departments of corrections also have a wide variety of options in providing translation services appropriate to the particular situation. Bilingual staff competent in translating, in person or by phone, pose one option. Additionally, particular prisons may have agreements with local colleges and universities, interpreter services, and/or community organizations to provide paid or volunteer competent translators under agreements of confidentiality and impartiality. Language lines may offer a prudent oral interpreting option for prisons with very few and/or infrequent prisoners in a particular language group. Reliance on fellow prisoners is generally not appropriate. Reliance on fellow prisoners should only be an option in unforeseeable emergency circumstances; when the LEP inmate signs a waiver that is in his/her language and in a form designed for him/her to understand; or where the topic of communication is not sensitive, confidential, important, or technical in nature and the prisoner is competent in the skill of interpreting.

In addition, a department of corrections that receives federal financial assistance would be ultimately responsible for ensuring that LEP inmates have meaningful access within a prison run by a private or other entity with which the department has entered into a contract. The department may provide the staff and materials necessary to provide required language services, or it may choose to require the

[2] Some state laws prohibit police officers from serving as interpreters during custodial interrogation of suspects.

[3] In this Guidance, the terms ''prisoners'' or ''inmates'' include all of those individuals, including Immigration and Naturalization Service (INS) detainees and juveniles, who are held in a facility operated by a recipient. Certain statutory, regulatory, or constitutional mandates/rights may apply only to juveniles, such as educational rights, including those for students with disabilities or limited English proficiency. Because a decision by a recipient or a federal, state, or local entity to make an activity compulsory serves as strong evidence of the program's importance, the obligation to provide language services may differ depending upon whether the LEP person is a juvenile or an adult inmate.

entity with which it contracted to provide the services itself.

2. Applying the Four Factors Along the Corrections Continuum

As with law enforcement activities, critical and predictable contact with LEP individuals poses the greatest obligation for language services. Corrections facilities have somewhat greater abilities to assess the language needs of those they encounter, although inmate populations may change rapidly in some areas. Contact affecting health and safety, length of stay, and discipline present the most critical situations under the four-factor analysis.

a. Assessment. In order to create a plan for providing language services, each department of corrections that receives federal financial assistance should assess the number of LEP prisoners who are in the system, in which prisons they are located, and the languages he or she speaks. Each prisoner's LEP status, and the language he or she speaks, should be placed in his or her file. Although this Guidance and Title VI are not meant to address literacy levels, agencies should be aware of literacy problems so that LEP services are provided in a way that is meaningful and useful (*e.g.,* translated written materials are of little use to a nonliterate inmate). After the initial assessment, new LEP prisoners should be identified at intake or orientation, and the data should be updated accordingly.

b. Intake/Orientation. Intake/Orientation plays a critical role not merely in the system's identification of LEP prisoners, but in providing those prisoners with fundamental information about their obligations to comply with system regulations, participate in education and training, receive appropriate medical treatment, and enjoy recreation. Even if only one prisoner doesn't understand English, that prisoner should be given the opportunity to be informed of the rules, obligations, and opportunities in a manner designed effectively to communicate these matters. An appropriate analogy is the obligation to communicate effectively with deaf prisoners, which is most frequently accomplished through sign language interpreters or written materials. Not every prison will use the same method for providing language assistance. Prisons with large numbers of Spanish-speaking LEP prisoners, for example, will likely need to translate written rules, notices, and other important orientation material into Spanish, with oral instructions, whereas prisons with very few such inmates may choose to rely upon a language line or qualified community volunteers to assist.

Example: The department of corrections in a state with a 5% Haitian Creole-speaking LEP corrections population and an 8% Spanish-speaking LEP population receives federal financial assistance to expand one of its prisons. The department of corrections has developed an intake video in Haitian Creole and another in Spanish for all of the prisons within the department to use when orienting new prisoners who are LEP and speak one of those languages. In addition, the department provides inmates with an opportunity to ask questions and discuss intake information through either bilingual staff who are competent in interpreting who are present at the orientation or who are patched in by phone to act as interpreters. The department also has an agreement whereby some of its prisons house a small number of INS detainees. For those detainees or other inmates who are LEP and do not speak Haitian Creole or Spanish, the department has created a list of sources for interpretation, including department staff, contract interpreters, university resources, and a language line. Each person receives at least an oral explanation of the rights, rules, and opportunities. This orientation plan would be considered consistent with Title VI.

c. Disciplinary Action. When a prisoner who is LEP is the subject of disciplinary action, the prison must provide language assistance. That assistance must ensure that the LEP prisoner had adequate notice of the rule in question and is meaningfully able to understand and participate in the process afforded prisoners under those circumstances. As noted previously, fellow inmates cannot serve as interpreters in disciplinary hearings.

d. Health and Safety. Prisons providing health services should refer to Department of Health and Human Services' guidance [4] regarding health care providers' Title VI obligations, as well as with this Guidance.

Health care services are obviously extremely important. LEP individuals must be provided with access to those services. How that access is provided depends upon the number or proportion of LEP individuals, the frequency of contact with those LEP individuals, and the resources available to the recipient. If, for instance, a prison serves a high proportion of LEP individuals who speak Spanish, then the prison health care provider should have available qualified bilingual medical staff or interpreters versed in medical terms. If the population of LEP individuals is low, then the prison may choose instead, for example, to rely on a local community volunteer program that provides qualified interpreters through a university. Due to the private nature of medical situations, only in unpredictable emergency situations or in non-emergency cases where the inmate has waived rights to a non-inmate interpreter would the use of other bilingual inmates be appropriate.

e. Participation Affecting Length of Sentence. If a prisoner's LEP status makes him/her unable to participate in a particular program, such a failure to participate cannot be used to adversely impact the length of stay or significantly affect the conditions of imprisonment. Prisons have options in how to apply this standard. For instance, prisons could: (1) make the program accessible to the LEP inmate; or (2) waive the requirement.

Example: State law provides that otherwise eligible prisoners may receive early release if they take and pass an alcohol counseling program. Given the importance of early release, LEP prisoners must be provided access to this prerequisite in some fashion. How that access is provided depends on the three factors other than importance. If, for example, there are many LEP prisoners speaking a particular language in the prison system, the class could be provided in that language for those inmates. If there were far fewer LEP prisoners speaking a particular language, the prison will still need to ensure access to this prerequisite because of the importance of early release opportunities. Options include, for example, use of bilingual teachers, contract interpreters, or community volunteers to interpret during the class, reliance on videos or written explanations in a language the inmate understands, and/or modification of the requirements of the class to meet the LEP individual's ability to understand and communicate. Another possible option would be to waive the requirement for the LEP prisoners and allow early release without this prerequisite.

f. ESL Classes. States often mandate English-as-a-Second language (ESL) classes for LEP inmates. Nothing in this Guidance prohibits or requires such mandates. ESL courses often serve as an important part of a proper LEP plan in prisons because, as prisoners gain proficiency in English, fewer language services are needed. However, the fact that ESL classes are provided does not obviate the need to provide meaningful access for prisoners who are not yet English proficient.

g. Community Corrections. This guidance also applies to community corrections programs that receive, directly or indirectly, federal financial assistance. For them, the most frequent contact with LEP individuals will be with an offender, a victim, or the family members of either, but may also include witnesses and community members in

[4] A copy of that guidance can be found on the HHS website at *http://www.hhs.gov/ocr/lep/* and at *http://www.usdoj.gov/crt/cor.*

the area in which a crime was committed.

As with other recipient activities, community corrections programs should apply the four factors and determine areas where language services are most needed. Important oral communications include, for example: Interviews; explaining conditions of probations/release; developing case plans; setting up referrals for services; regular supervision contacts; outlining violations of probations/parole and recommendations; and making adjustments to the case plan. Competent oral language services for LEP persons are important for each of these types of communication. Recipients have great flexibility in determining how to provide those services.

Just as with all language services, it is important that language services be competent. Some knowledge of the legal system may be necessary in certain circumstances. For example, special attention should be given to the technical interpretation skills of interpreters used when obtaining information from an offender during pre-sentence and violation of probation/parole investigations or in other circumstances in which legal terms and the results of inaccuracies could impose an enormous burden on the LEP person.

In addition, just as with other recipients, corrections programs should identify vital written materials for probation and parole that should be translated when a significant number or proportion of LEP individuals that speak a particular language is encountered. Vital documents in this context could include, for instance: probation/parole department descriptions and grievance procedures, offender rights information, the pre-sentence/release investigation report, notices of alleged violations, sentencing/release orders, including conditions of parole, and victim impact statement questionnaires.

C. Other Types of Recipients

DOJ provides federal financial assistance to many other types of entities and programs, including, for example, courts, juvenile justice programs, shelters for victims of domestic violence, and domestic violence prevention programs. Title VI and this Guidance apply to those entities. Examples involving some of those recipients follow:

1. Courts.

Application of the four-factor analysis requires recipient courts to ensure that LEP parties and witnesses receive competent language services. At a minimum, every effort should be taken to ensure translations for LEP individuals during all hearings, trials, and motions during which the LEP individual must and/or may be present. When a recipient court appoints an attorney to represent an LEP defendant, the court should ensure that either the attorney is proficient in the LEP person's language or that a competent interpreter is provided during consultations between the attorney and the LEP person.

Many states have created certification procedures for interpreters. This is one way of meeting the Title VI requirement that recipients ensure competency of interpreters. Courts will not, however, always be able to find a certified interpreter, particularly for less frequently encountered languages.

Example: A state court receiving DOJ federal financial assistance has frequent contact with LEP individuals as parties and witnesses, but has experienced a shortage in certified interpreters in the range of languages encountered. State court officials work with training and testing consultants to broaden the number of certified interpreters available in the top several languages spoken by LEP individuals in the state. Because resources are scarce and the development of tests expensive, state court officials decide to partner with other states that have already established agreements to share proficiency tests and to develop new ones together. The state court officials also look to other existing state plans for examples of: codes of professional conduct for interpreters; mandatory orientation and basic training for interpreters; interpreter proficiency tests in Spanish and Vietnamese language interpretation; a written test in English for interpreters in all languages covering professional responsibility, basic legal term definitions, court procedures, etc. They are considering working with other states to expand testing certification programs in coming years to include several other most frequently encountered languages. This type of assessment of need, planning, and implementation is consistent with Title VI principles.

Many individuals, while able to communicate in English to some extent, are still LEP. Courts should consider carefully whether a person will be able to understand and communicate effectively in the stressful role of a witness or party and in situations where knowledge of language subtleties and/or technical terms and concepts are involved.

Example: Judges in a county court receiving federal financial assistance have adopted a *voir dire* for determining a witness' need for an interpreter. The voir dire avoids questions that could be answered with ''yes'' or ''no.'' It includes questions about comfort level in English, and questions that require active responses, such as: ''How did you come to court today?'' etc. The judges also ask the witness more complicated conceptual questions to determine the extent of the person's proficiency in English. Such a procedure is consistent with Title VI principles.

When courts experience low numbers or proportions of LEP individuals from a particular language group and infrequent contact with that language group, creation of a new certification test for interpreters may be overly burdensome. In such cases, other methods should be used to determine the competency of interpreters for the court's purposes.

Example: A witness in a county court in a large city speaks Urdu and not English. The jurisdiction has no court interpreter certification testing for Urdu language interpreters because very few LEP individuals encountered speak Urdu. However, a non-certified interpreter is available and has been given the standard English-language test on court processes and interpreter ethics. The judge brings in a second, independent, bilingual Urdu-speaking person from a local university, and asks the prospective interpreter to interpret the judge's conversation with the second individual. The judge then asks the second Urdu speaker a series of questions designed to determine whether the interpreter accurately interpreted their conversation. Given the infrequent contact, the low number and proportion of Urdu LEP individuals in the area, and the high cost of providing certification tests for Urdu interpreters, this ''second check'' solution is one appropriate way of ensuring meaningful access to the LEP individual.

Another key to successful use of interpreters in the courtroom is to ensure that everyone in the process understands the role of the interpreter.

Example: Judges in a recipient court administer a standard oath to each interpreter and make a statement to the jury that the role of the interpreter is to interpret, verbatim, the questions posed to the witness and the witness' response. The jury should focus on the words, not the non-verbals, of the interpreter. The judges also clarify the role of the interpreter to the witness and the attorneys. These are important steps in providing meaningful access to the court for LEP individuals.

Just as corrections recipients must take care to ensure that eligible LEP individuals have the opportunity to reduce the term of their sentence to the same extent that non-LEP individuals do, courts must ensure that LEP persons have access to programs that would give them the opportunity to avoid serving a sentence at all.

Example: An LEP defendant should be given the same access to alternatives to sentencing, such as anger management and alcohol abuse counseling, as is given to non-LEP persons in the same circumstances.

Courts have significant contact with the public outside of the courtroom. Providing meaningful access to the legal process for LEP individuals requires more than just providing interpreters in the courtroom. Recipient courts should assess the need for language services all along the process, particularly in areas with high numbers of unrepresented individuals, such as family and small claims courts.

Example: Only twenty thousand people live in a rural county. The county superior court receives DOJ funds but does not have a budget comparable to that of a more-populous urbanized county in the state. Over 1000 LEP Hispanic immigrants have settled in the rural county. The urbanized county also has more than 1000 LEP Hispanic immigrants. Both counties have ''how to'' materials in English helping unrepresented individuals negotiate the family court processes. The urban county has taken the lead in developing Spanish-language translations of materials that would explain the process. The rural county modifies these slightly and thereby benefits from the work of the urban county. Because this type of outreach material can be vital for an unrepresented person seeking access to a vital service of the court, such a translation is consistent with Title VI obligations and falls within the safe harbor. Creative solutions, such as sharing resources across jurisdictions, can help overcome serious financial concerns in areas with few resources.

Just as with police departments, courts and/or particular divisions within courts may have more contact with LEP individuals than an assessment of the general population would indicate. Recipients should consider that higher contact level when determining the number or proportion of LEP individuals in the contact population, and the frequency of such contact.

Example: A county has very few residents who are LEP. However, many Vietnamese-speaking LEP motorists go through a major freeway running through the county, which connects two areas with high populations of Vietnamese speaking LEP individuals. As a result, the Traffic Division of the county court processes a large number of LEP persons, but it has taken no steps to train staff or provide forms or other language access in that Division because of the small number of LEP individuals in the county. The Division should assess the number and proportion of LEP individuals processed by the Division and the frequency of such contact. With those numbers high, the Traffic Division may find that it needs to provide key forms or instructions in Vietnamese. It may also find, from talking with community groups, that many older Vietnamese LEP individuals do not read Vietnamese well, and that it should provide oral language services as well. The court may already have Vietnamese-speaking staff competent in interpreting in a different section of the court; it may decide to hire a Vietnamese-speaking employee who is competent in the skill of interpreting; or it may decide that a language line service suffices.

2. Juvenile Justice Programs

DOJ provides funds to many juvenile justice programs to whom this Guidance applies.

Example: A county coordinator for an anti-gang program operated by a DOJ recipient has noticed that increasing numbers of gangs have formed comprised primarily of LEP individuals speaking a particular foreign language. The coordinator should assess the number of LEP youths at risk of involvement in these gangs, so that she can determine whether the program should hire a counselor who is bilingual in the particular language and English, or provide other types of language services to the LEP youths.

3. Domestic Violence Prevention/ Treatment Programs

Several domestic violence prevention and treatment programs receive DOJ financial assistance and thus must apply this Guidance to their programs and activities.

Example: A shelter for victims of domestic violence is operated by a recipient of DOJ funds and located in an area where 15 percent of the women in the service area speak Spanish and are LEP. Seven percent of the women in the service area speak various Chinese dialects and are LEP. The shelter uses community volunteers to help translate vital outreach materials into Chinese (which is one written language despite many dialects) and Spanish. The shelter hotline has a menu providing key information, such as location, in English, Spanish, and two of the most common Chinese dialects. Calls for immediate assistance are handled by the bilingual staff. The shelter has one counselor and several volunteers fluent in Spanish and English. Some volunteers are fluent in different Chinese dialects and in English. The shelter works with community groups to access interpreters in the several Chinese dialects that they encounter. Shelter staff train the community volunteers in the sensitivities of domestic violence intake and counseling. Volunteers sign confidentiality agreements. The shelter is looking for a grant to increase its language capabilities despite its tiny budget. This program is consistent with Title VI principles.

D. Framework for Creating a Model Plan

The following is an example of a framework for a model LEP policy that is potentially useful for all recipients, but is particularly appropriate for recipients serving and encountering significant and diverse LEP populations. The framework for a model plan incorporates a variety of options and methods for providing meaningful access to LEP persons. Recipients should consider some or all of these options for their plans:

- A formal written LEP policy;
- Identification and assessment of the number or proportion of LEP persons likely to be encountered through a review of census, school district, community agency, recipient and/or other data. The data will clearly be more within the control of some recipients than others. For instance, corrections facilities will likely be able to obtain accurate data more easily than police departments. Nevertheless, police departments should take reasonable steps to identify the language needs of the population they serve.
- Identification of the frequency of contact with LEP language groups.
- Identification of important information, services, and encounters that may require language services.
- Identification of resources available to provide services.
- Posting of signs in waiting areas and public entry points, in several languages, informing people what interpreter services are available and inviting them to identify themselves as needing language assistance.
- Informing LEP suspects, detainees, inmates and others potentially subject to criminal or disciplinary action of their right to language assistance.
- Use of ''I speak'' cards by those who encounter the public in-person, in order to identify the language an LEP person speaks.
- If a record is normally kept on encounters with individuals, noting the language of the LEP person in his or her record.
- Employing bilingual staff in public contact positions such as police officers, 911 operators, guards, etc.
- Contracting with interpreting services that can provide competent interpreters in a variety of languages in a timely manner.
- Formal arrangements with community groups for competent and timely interpreter services by community volunteers.
- An arrangement with a telephone language interpreter line (these can be arranged by, for instance, contacting major telephone services and asking if they have language line services).
- Where certain LEP populations make up a significant number of the population in the recipient's target

area and are frequently encountered by the recipient, translation of vital documents into the languages of those LEP populations.
- Notice and training to staff, particularly those with public contact, of the LEP policy and how to access language services.
- Outreach to the LEP population on available language services.
- Appointing a senior level employee to coordinate the language assistance program, and ensure that there is regular monitoring of the program.

As noted, these suggestions for a model plan are particularly appropriate for larger recipients encountering significant LEP populations. However, several of these steps will help smaller recipients prepare for and provide meaningful access when LEP individuals are encountered.

For smaller recipients with few LEP encounters, identifying the most important activities is critical, and determining how to provide language services in those critical areas should be a priority. This may be as simple as accessing a commercially available language line. Plans for such recipients should include monitoring and expanding services as needed.

Appendix B—Coverage and Legal Background

A. Who Is Covered?

Title VI applies to every entity that manages or administers a program or activity receiving direct or indirect federal financial assistance from DOJ. The term ''recipients,'' as used in this guidance, includes all covered entities. ''Covered entities'' include any state or local agency, private institution or organization, or any public or private individual that receives federal financial assistance from DOJ directly or through another DOJ recipient. Examples of covered entities include but are not limited to: police departments; sheriffs' departments; state departments of corrections; courts; shelters for victims of domestic violence; community corrections programs; juvenile justice programs; and nonprofit organizations with law enforcement missions. DOJ operates over eighty different grant programs that provide funding to these and other different types of non-federal entities. Many of those grants are disbursed to subrecipients, which are also covered entities.

Grants are not the only type of ''federal financial assistance'' to which Title VI applies. Federal financial assistance includes, but is not limited to: grants and loans of federal funds; grants or donations of federal surplus or real property; details of federal personnel; use of federal facilities; or any agreement, arrangement, or other contract which has as one of its purposes the provision of assistance. See 28 CFR 42.102(c). Training, equitable sharing of federally forfeited property, and use of FBI computers can also be considered federal financial assistance.[1]

In 1988, Congress clarified what constitutes a ''program or activity'' covered by Title VI when it enacted the Civil Rights Restoration Act of 1987 (CRRA). The CRRA provides that, in most cases, when a recipient receives federal financial assistance for a particular program or activity, all operations of the recipient are covered by Title VI, not just the part of the program that uses the federal assistance. Thus, Title VI covers all parts of the recipient's operations, even if only one part of the agency uses the federal assistance. For example, when DOJ provides federal financial assistance to a state department of corrections to improve a particular prison facility, all of the operations of the entire department of corrections—not just the particular prison—are covered by Title VI.[2]

The Department of Justice also has jurisdiction over enforcement of the antidiscrimination provisions of the Omnibus Crime Control and Safe Streets Act, as amended, 42 U.S.C. 3789d(c) (Safe Streets Act). The standards for compliance with Title VI's prohibition against national origin discrimination also apply to the prohibition against national origin discrimination by recipients of Safe Streets Act funds.

B. Legal Background and Authority

The Title VI requirement to provide meaningful access to LEP persons is not new. The Department's position with regard to written language assistance is articulated in 28 CFR 42.405(d)(1), which is contained in the DOJ Coordination Regulations, 28 CFR part 42, subpart F, issued in 1976. These regulations ''govern the respective obligations of Federal agencies regarding enforcement of Title VI.'' 28 CFR 42.405. Section 42.405(d)(1) addresses the prohibitions cited by the Supreme Court in *Lau* v. *Nichols,* 414 U.S. 563 (1974). Thus, this Guidance draws its authority from Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, *et seq.*; 28 CFR part 42, subpart C (DOJ Title VI Regulations) and the Title VI regulations of other federal agencies; 28 CFR part 42, subpart F. Further, this Guidance is issued pursuant to Executive Order 12250, reprinted at 42 U.S.C. 2000d, note; Executive Order 13166, 65 FR 50121 (August 16, 2000); and is consistent with the DOJ ''Policy Guidance Document: on Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency (LEP Guidance),'' reprinted at 65 FR 50123 (August 16, 2000).

For additional background on Title VI and its methods of enforcement, see the DOJ *Title VI Legal Manual* (September, 1998); DOJ's Investigation Procedures Manual for the *Investigation and Resolution of Complaints Alleging Violations of Title VI and Other Nondiscrimination Statutes* (September 1998); DOJ Guidelines for the Enforcement of Title VI, 28 CFR 50.3; the Attorney General's ''Memorandum for Heads of Departments and Agencies that Provide Federal Financial Assistance Regarding the Use of the Disparate Impact Standard in Administrative Regulations Under Title VI of the Civil Rights Act of 1964'' (July 14, 1994); and the Assistant Attorney General for Civil Rights' ''Policy Guidance Document: Enforcement of Title VI and Related Statutes in Block Grant-Type Programs'' (January 28, 1999).[3]

1. Existing State and Local Laws

State and local laws may provide additional obligations to serve LEP individuals, but such laws cannot compel recipients of federal financial assistance to violate Title VI. For instance, given our constitutional structure, state or local ''English-only'' laws do not relieve an entity that receives federal funding from its responsibilities under federal anti-discrimination laws. Entities in states and localities with ''English-only'' laws are certainly not required to accept federal funding—but if they do, they have to comply with Title VI, including its prohibition against national origin discrimination by recipients of federal assistance. Failing to make federally assisted programs and activities accessible to individuals who are LEP will, in certain circumstances, violate Title VI.

[1] *See* Appendix A to Subpart C of the Department of Justice's regulations implementing Title VI of the Civil Rights Act of 1964 (Subpart C, 28 CFR 42.101–112).

[2] However, if a federal agency were to decide to terminate federal funds based on noncompliance with Title VI, only funds directed to the specific entity that is out of compliance—*e.g.,* a particular prison—would be terminated. 42 U.S.C. 2000d-1.

[3] The documents referenced in this section are available for viewing or downloading at *http://www.usdoj.gov/crt/cor.*

2. Basic Requirements Under Title VI

Title VI prohibits recipients of federal financial assistance from discriminating against or otherwise excluding individuals on the basis of race, color, or national origin in any of their activities. Section 601 of Title VI, 42 U.S.C. 2000d, provides:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

The term ''program or activity'' is broadly defined. 42 U.S.C. 2000d–4a.

On its face, Title VI prohibits only intentional discrimination.[4] However, virtually every federal agency, including DOJ, that grants federal financial assistance has promulgated regulations implementing Title VI. Those regulations prohibit recipients from ''restrict[ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program'' and ''utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination'' or have ''the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.'' 28 CFR 42.04(b)(2). The Supreme Court has consistently upheld agency regulations prohibiting unjustified discriminatory effects.[5]

In *Lau* v. *Nichols,* 414 U.S. 563 (1974), the Supreme Court interpreted similar U.S. Department of Education regulations to require recipients of federal financial assistance to ensure, in appropriate circumstances, that language barriers did not exclude LEP persons from effective participation in federally assisted programs or activities. In *Lau,* a recipient provided the same services—an education provided solely in English—for a group of students who did not speak English as it did for students who did speak English. In finding for the Chinese-American students, the Court held that, under these circumstances, the school's practice violated the Title VI regulations' prohibition against discrimination on the basis of national origin. The Court observed that ''[i]t seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents' school system which denies them a meaningful opportunity to participate in the educational program—all earmarks of the discrimination banned by'' the Title VI implementing regulations.[6]

While *Lau* arose in the educational context, its core holding—that the failure to address limited English proficiency among beneficiary classes could constitute national origin discrimination in violation of Title VI—has equal vitality with respect to any federally assisted program or activity providing services to the public.[7]

The failure to provide language assistance has significant discriminatory effects on the basis of national origin. The Department of Justice has consistently adhered to the view that these effects place the treatment of LEP individuals comfortably within the ambit of Title VI and agencies' implementing regulations.[8] Also, existing language barriers may reflect underlying intentional or invidious discrimination of the type prohibited directly by Title VI itself.

Title VI does not require recipients to remove language barriers when English is an essential aspect of the program (such as providing civil service examinations in English when the job requires person to communicate in English, *see Frontera* v. *Sindell,* 522 F.2d 1215 (6th Cir. 1975)), or there is another non-pretextual ''substantial legitimate justification for the challenged practice'' and there is no comparably effective alternative practice with less discriminatory affects. *Elston* v. *Talladega County Bd. of Educ.,* 997 F.2d 1394, 1407 (11th Cir. 1993); *New York City Environmental Alliance* v. *Giuliani,* 214 F.3d 65, 72 (2nd Cir. 2000) (plaintiffs failed to show less discriminatory options available to accomplish defendant city's legitimate goal of building new housing and fostering urban renewal). Similar balancing tests are used in other nondiscrimination provisions that are concerned with effects of an entity's actions. For example, under Title VII of the Civil Rights Act of 1964, employers need not cease practices that have a discriminatory effect if they are job-related and ''consistent with business necessity'' and there is no equally effective ''alternative employment practice'' that is less discriminatory. 42 U.S.C. 2000e–2(k). Under Section 504 of the Rehabilitation Act, 29 U.S.C. 794, recipients do not need to provide access to persons with disabilities if such steps impose an undue burden on the recipient. *Alexander* v. *Choate,* 469 U.S. at 300. Thus, in situations where all of the factors identified in the text are at their nadir, it may be ''reasonable'' not to take affirmative steps to provide further access.

Executive Order 13166 reaffirms and clarifies the obligation to eliminate limited English proficiency as a barrier to full and meaningful participation in federally assisted programs and activities. 65 FR 50121 (August 16, 2000). That order states, in part:

> The Federal Government is committed to improving the accessibility of * * * services to eligible [limited English proficiency] persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English* * * [E]ach Federal agency shall* * * work to ensure that recipients of Federal financial assistance (recipients) provide meaningful access to their LEP applicants and beneficiaries* * * . [R]ecipients must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.[9]

The Executive Order requires each federal agency to develop agency-specific LEP guidance for recipients of federal financial assistance. As an aid in developing this Guidance, the Executive Order incorporates the Department of Justice's Policy Guidance Document: ''Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency ('LEP Guidance')'' issued contemporaneously with the Executive Order.[10] That general LEP Guidance ''sets forth the

[4] *Alexander* v. *Choate,* 469 U.S. 287, 293 (1985).

[5] *Id.* at 293–294; *Guardians Ass'n* v. *Civil Serv. Comm'n,* 463 U.S. 582, 584 n.2 (1983) (White, J.), 623 n.15 (Marshall, J.), 642–645 (Stevens, Brennan, Blackmun, JJ.); *Lau* v. *Nichols,* 414 U.S. at 568; *id.* at 571 (Stewart, J., concurring in result). Further, in a July 24, 1994, Memorandum to Heads of Departments and Agencies that Provide Federal Financial Assistance concerning Use of the Disparate Impact Standard in Administrative Regulations Under Title VI of the Civil Rights Act of 1964, the Attorney General stated that each agency ''should ensure that the disparate impact provisions of your regulations are fully utilized so that all persons may enjoy equally the benefits of federally financed programs.''

[6] 414 U.S. at 568. Congress manifested its approval of the *Lau* decision by enacting provisions in the Education Amendments of 1974, Pub. L. 93–380, secs. 105, 204, 88 Stat. 503–512, 515 codified at 20 U.S.C. 1703(f), and the Bilingual Education Act, 20 U.S.C. 7401, *et seq.*, which provided federal financial assistance to school districts to provide language services to LEP students.

[7] For cases outside the educational context, *see, e.g., Sandoval* v. *Hagan,* 7 F. Supp. 2d 1234 (M.D. Ala. 1998), *affirmed,* 197 F.3d 484,(11th Cir. 1999), *rehearing and suggestion for rehearing en banc denied,* 211 F.3d 133 (11th Cir. Feb. 29, 2000) (Table, No. 98–6598–II), *petition for certiorari granted, Alexander* v. *Sandoval* 121 S. Ct. 28 (Sept. 26, 2000) (No. 99–1908) (giving drivers' license tests only in English violates Title VI); and *Pabon* v. *Levine,* 70 F.R.D. 674 (S.D.N.Y. 1976) (summary judgment for defendants denied in case alleging failure to provide unemployment insurance information in Spanish violated Title VI).

[8] *See, e.g.*, 28 CFR 42.405(d)(1).

[9] Section 1, Executive Order 13166.

[10] LEP Guidance, 65 FR 50123.

compliance standards that recipients must follow to ensure that programs and activities they normally provide in English are accessible to LEP persons.'' [11] This LEP Guidance for DOJ Recipients represents the application of DOJ's general LEP Guidance to recipients of DOJ's federal financial assistance.

While the Department of Justice's Coordination Regulation, 28 CFR 42.405(d)(1),[12] expressly addresses requirements for provision of written language assistance, a recipient's obligation to provide meaningful opportunity is not limited to written translations.

Oral communication between recipients and beneficiaries, clients, customers, wards, or other members of the public often is a necessary part of the exchange of information. In some cases, ''meaningful opportunity'' to benefit from the program requires the recipient to take steps to assure that translation services are promptly available. In other circumstances, instead of translating all of its written materials, a recipient may meet its obligation by making available oral assistance, or by commissioning written translations on reasonable request. Thus, a recipient that limits its language assistance to the provision of written materials may not be allowing LEP persons ''effectively to be informed of or to participate in the program.'' This Guidance provides information to recipients on how to comply with the meaningful access requirement.

D. Explanation of Title VI Compliance Procedures

This Guidance, including appendices, is not intended to be exhaustive. DOJ recipients have considerable flexibility in determining how to comply with their legal obligations in the LEP setting, and are not required to use all of the suggested methods and options listed. However, DOJ recipients must establish and implement policies and procedures for providing language assistance sufficient to fulfill their Title VI responsibilities and provide LEP persons with meaningful access to services. DOJ encourages recipients to document efforts to comply with the provisions of this Guidance. DOJ will make assessments on a case-by-case basis and will consider the four factors in assessing whether the steps taken by a DOJ recipient provide meaningful access.

DOJ enforces Title VI through the procedures identified in the Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance. In addition, aggrieved individuals may seek judicial relief.

The Title VI regulations provide that DOJ will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI. If the investigation results in a finding of compliance, DOJ will inform the recipient in writing of this determination, including the basis for the determination. DOJ uses voluntary mediation to resolve most complaints. However, if a case is fully investigated and results in a finding of noncompliance, DOJ must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, DOJ must secure compliance through the termination of federal assistance after the DOJ recipient has been given an opportunity for an administrative hearing, and/or by referring the matter to a DOJ litigation section to seek injunctive relief or pursue other enforcement proceedings.

DOJ engages in voluntary compliance efforts and provides technical assistance to recipients at all stages of an investigation. During these efforts, DOJ proposes reasonable timetables for achieving compliance and consults with and assist recipients in exploring cost-effective ways of coming into compliance by sharing information on potential community resources, by increasing awareness of emerging technologies, and by sharing information on how other recipient/covered entities have addressed the language needs of diverse populations.

In determining a recipient's compliance with Title VI, DOJ's primary concern is to ensure that the recipient's policies and procedures overcome barriers resulting from language differences that would deny LEP persons a meaningful opportunity to participate in and access programs, services, and benefits.

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[11] *See* Executive Order 13166 at Section 1.

[12] Section 42.405(d)(1) states: ''Where a significant number or proportion of the population eligible to be served or likely to be affected by a federally assisted program (e.g., affected by relocation) needs service or information in a language other than English in order effectively to be informed or to participate in the program, the recipient shall take reasonable steps, considering the scope of the program and the size and concentration of such population, to provide information in appropriate languages to such persons. This requirement applies with regard to written material of the type which is ordinarily distributed to the public.'' This LEP Guidance for DOJ Recipients is intended to clarify obligations under this regulation and further obligations under Title VI to provide language services outside of the context of such written documents.

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. The 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 tot he provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1994, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 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, constitutes 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 the section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and

supersedes 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 governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number f the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

None

Volume IV

None

Volume V

None

Volume VI

None

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage determinations Issued Under the Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon.*

They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specifiy the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 10th day of January 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–1073 Filed 1–17–02; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2002–06; Exemption Application No. D–10894, et al.]

Grant of Individual Exemptions; Brookshire Brothers, Ltd., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition, the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Brookshire Brothers, Ltd. (Brookshire) Located in Lufkin, Texas

[Prohibited Transaction Exemption 2002–06 Application No. D–10894]

Exemption

Section I. Transaction

The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the establishment by Brookshire of a minimum price guarantee (the Minimum Price Guarantee) for the valuation and purchase by Brookshire of Profit Sharing Stock owned by the Brookshire Brothers Employee Stock Ownership Plan (the ESOP), provided the conditions set forth in Section II are satisfied:

Section II. Conditions

A. The ESOP shall pay no consideration, interest or other fee or expense in connection with the Minimum Price Guarantee.

B. The Minimum Price Guarantee shall expire on the first date after December 22, 1999 upon which the fair market value of a share of the Profit Sharing Stock exceeds the minimum price per share established by the Minimum Price Guarantee.

Section III. Definitions

A. The term ''Brookshire'' means Brookshire Brothers, Ltd., a Texas limited partnership with headquarters in Lufkin, Texas.

B. The term ''Profit Sharing Plan'' means the Brookshire Brothers Profit Sharing Plan, as amended and restated effective April 30, 1988.

C. The term ''Profit Sharing Stock'' means approximately 600,182 shares of the common stock of Brookshire Brothers Holding, Inc., Brookshire's parent company, transferred from the Profit Sharing Plan to the ESOP on November 19, 1999.

D. The term ''Minimum Price Guarantee'' means the guarantee established pursuant to the ESOP whereby the value of the Profit Sharing Stock will be equal to the price of such stock prior to December 22, 1999 plus a 4% annual increase.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on September 7, 2001 at 66 FR 46837.

EFFECTIVE DATE: The exemption is effective as of November 19, 1999.

Written Comments

The Department received one comment letter with respect to the Notice. The comment letter was submitted by the Applicant's legal counsel, and concerned a typographical error in the Notice. The comment stated that the Profit Sharing Stock was transferred from the Profit Sharing Plan to the ESOP on November 19, 1999, rather than December 19, 1999 as stated in the Notice. Accordingly, the Applicant noted the following corrections:

First, Section III.C. would be restated to read as follows: ''The term 'Profit Sharing Stock' means approximately 600,182 shares of the common stock of Brookshire Brothers Holding, Inc., Brookshire's parent company, transferred from the Profit Sharing Plan to the ESOP on November 19, 1999.''

Second, the effective date of the exemption would be changed from December 19, 1999 to November 19, 1999.

Third, the second sentence of paragraph 3 of the Summary of Facts and Representations would read as follows: ''As of November 19, 1999, the Profit Sharing Plan held approximately 600,182 shares of the common stock (the Stock) of Brookshire Brothers Holding, Inc. (Holding), Brookshire's parent company.''

Finally, the first sentence of paragraph 4 of the Summary of Facts and Representations would read as follows: ''On November 19, 1999, the Stock was transferred from the Profit Sharing Plan to the ESOP.''

The Department concurs with the Applicant's comment and has modified the language of the final exemption accordingly.

After giving full consideration to the entire record, including the written comment, the Department has decided to grant the exemption as modified herein.

FOR FURTHER INFORMATION CONTACT: Karen Lloyd of the Department, telephone (202) 693–8540. (This is not a toll-free number).

Ford Motor Company (Ford) Located in Dearborn, Michigan

[Prohibited Transaction Exemption 2002–07; Exemption Application No. L–10937]

Exemption

The restrictions of section 406(a) and 406(b) of the Employee Retirement Income Security Act of 1974 (ERISA) shall not apply, effective August 4, 2000, to: (1) the receipt by the Ford-UAW Benefits Trust (the VEBA) of approximately $2.9 billion of certain securities (the Partnership Securities) pursuant to the redemption (the Redemption) by the VEBA of its interest in the Ford Enhanced Investment Partnership and the Ford Super-Enhanced Investment Partnership (collectively, the Partnerships); and (2) the transfer of the Partnership Securities by the VEBA to Ford in exchange for the transfer of approximately $2.9 billion of certain securities (the Ford-Owned Securities) to the VEBA (the Exchange), provided that the following conditions were met:

(a) The terms of the Redemption and the terms of the Exchange were at least as favorable to the VEBA as the terms that would have been available in arm's-length transactions between unrelated parties;

(b) The total value of the Partnership Securities received by the VEBA pursuant to the Redemption equaled the value of the VEBA's pro rata interest in the Partnerships on the date of the Redemption;

(c) The net asset value of the VEBA's interest in the Partnerships and each Partnership Security received by the VEBA pursuant to the Redemption were valued in the same manner using August 4, 2000 close-of-market bid prices as determined by an independent, recognized pricing service;

(d) In the case of the Exchange, the VEBA received Ford-Owned Securities equal in value to the Partnership Securities transferred to Ford;

(e) Each Partnership Security transferred to Ford by the VEBA pursuant to the Exchange was valued according to its August 4, 2000 close-of-market bid price as determined by an independent, recognized pricing service;

(f) Each Ford-Owned Security transferred to the VEBA by Ford pursuant to the Exchange was valued according to its August 4, 2000 close-of-market bid price as determined by an independent, recognized pricing service, or to the extent that a price could not be obtained in this manner, such security was priced according to

the average of three (or a minimum of two) August 4, 2000 close-of-market bid prices obtained from independent market-makers;

(g) The Ford-Owned Securities transferred to the VEBA pursuant to the Exchange were not issued by Ford and were comprised solely of cash and marketable short-term debt securities under the management of unrelated, independent investment managers;

(h) The Partnership Securities transferred to Ford pursuant to the Exchange were comprised solely of cash and marketable short-term debt securities;

(i) Upon the completion of the Exchange, no single issue of Ford-Owned Securities accounted for more than 25% of the assets of the VEBA;

(j) State Street Bank and Trust Company (SSBT), acting as an independent fiduciary on behalf the VEBA, monitored the Redemption and the Exchange; and

(k) SSBT, as independent fiduciary, approved the Redemption and the Exchange upon determining that the Redemption and the Exchange were in the best interests of the VEBA and its participants.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on September 27, 2001 at 66 FR 49415.

FOR FURTHER INFORMATION CONTACT: Christopher Motta of the Department, telephone (202) 693–8544 (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 15th day of January, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–1365 Filed 1–17–02; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 02–08; Exemption Application No. D–10997]

Grant of Individual Exemption To Modify Prohibited Transaction Exemption 97–08 (PTE 97–08) Involving Morgan Stanley Dean Witter & Co. Incorporated (MSDW&Co) Located in New York, NY

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Grant of individual exemption to modify PTE 97–08.

SUMMARY: This document contains a final exemption before the Department of Labor (the Department) which amends PTE 97–08 (62 FR 4811, January 31, 1997), an exemption granted to Morgan Stanley & Co., Incorporated (MSC), a subsidiary of MSDW&Co.

PTE 97–08 provided relief for certain securities lending, principal transactions, and extensions of credit. This exemption modifies PTE 97–08 to permit a U.S. affiliate of a foreign broker-dealer to guaranty the obligations of such broker-dealer that arise in connection with transactions described in PTE 97–08 and affects the participants and beneficiaries of certain employee benefit plans (the Plans or Plan) participating in such transactions and the fiduciaries with respect to such plans.

EFFECTIVE DATE: The amendments to PTE 97–08 are effective, as of August 25, 1995, the effective date of PTE 97–08.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 693–8540. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 7, 2001, the Department published in the **Federal Register**, at 66 FR 46843, a Notice of Proposed Exemption that would amend PTE 97–08. PTE 97–08 provides an exemption from certain prohibited transaction restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code. Specifically, PTE 97–08 provides retroactive exemptive relief from the restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, for certain principal transactions between Plans and broker-dealers affiliated with MSC which are subject to British law (the MSC/UK Affiliates), the lending of securities that are assets of Plans to MSC/UK Affiliates, and any extensions of credit to Plans by MSC/UK Affiliates to permit the settlement of securities transactions or in connection with the writing of options contracts; provided certain conditions are satisfied.

The amendment was requested in an application filed on behalf of MSDW&Co, MSC, and any current and future U.K. broker-dealer affiliates of MSDW&CO and MSC, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR 2570, Subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this final exemption is issued solely by the Department.

The Notice of Proposed Exemption invited all interested persons to comment on the proposed amendment to PTE 97–08 and to request a public hearing. During the comment period, the Department received no comments and no requests for a hearing.

For further information regarding the matters discussed herein, interested persons are encouraged to obtain copies

of the exemption application file (Exemption Application No. D–10997) that the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department are made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption to modify PTE 97–08.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The exemption will not extend to transactions prohibited under section 406(b)of the Act and section 4975(c)(1)(E) or (F) of the Code;

(3) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990), and based upon the entire record, the Department finds that the exemption is administratively feasible, in the interest of plans and of their participants and beneficiaries and protective of the rights of participants and beneficiaries of such plans;

(4) The exemption will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This exemption is subject to the express condition that the Summary of Facts and Representations set forth in the Notice of Proposed Exemption relating to PTE 97–08, as amended by the Notice of Proposed Exemption relating to this exemption, accurately describes, where relevant, the material terms of the transactions to be consummated pursuant to this exemption.

Exemption

Based on the facts and representations set forth in the application, under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990), the Department hereby amends PTE 97–08 to include in Section I an additional transaction (D), as set forth below:

Section I. Transactions

D. Effective August 25, 1995, the restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, to a guaranty given to a Plan by MSDW&Co or any U.S. affiliate of MSDW&Co, provided that the guaranty when given:

(a) Is in connection with one of the transactions, described in section I (A), (B), or (C) of PTE 97–08, for which the specific conditions for such transaction and all of the general conditions, as set forth in PTE 97–08 have been satisfied;

(b) Is lawful under the applicable securities laws;

(c) Is provided at no separate cost to the Plan; and

(d) Is not a prohibited transaction under section 503(b) of the Code.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the application change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant PTE 97–08, refer to the Notice of Proposed Exemption (61 FR 58237, November 13, 1996) and the Final Exemption (62 FR 4811, January 31, 1997). For a more complete statement of the facts and representations supporting the Department's decision to grant this amendment to PTE 97–08, refer to the Notice of Proposed Exemption to Modify PTE 97–08 (66 FR 46843, September 7, 2001).

Signed at Washington, DC, this 15th day of January, 2002.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–1366 Filed 1–17–02; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–11035, et al.]

Proposed Exemptions; Smart Chevrolet Co. Employees' Profit Sharing Retirement Plan et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration (PWBA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No._____, stated

in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *''moffittb@pwba.dol.gov''*, or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Smart Chevrolet Co. Employees' Profit Sharing Retirement Plan (the Plan) Located in Pine Bluff, Arkansas

[Application No. D–11035]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) The proposed secured loans (the Loans) by the Plan to Motors Finance Company (Motors), a party in interest with respect to the Plan, and (2) the guaranty of such Loans (the Guaranty) by the individual partners of Motors; provided that the following conditions are met: (a) The terms and conditions of the Loans are at least as favorable as those which the Plan could have received in similar transactions with an unrelated third party; (b) an independent fiduciary negotiates, reviews, approves, and monitors the Loans and the Guaranty under the terms and conditions, as set forth in paragraph #6 below; and (c) the balance of all Loans will at no time exceed 15% of the assets of the Plan.[1]

Temporary Nature of Exemption

The proposed exemption is temporary and, if granted, will expire September 16, 2007. However, the exemption will extend until the maturity of any of the 90 day Loans made prior to September 16, 2007.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan which, as of December 31, 2000, had assets totaling $3,261,663. As of the same date, the Plan had forty-one (41) participants. Richard L. Smart (Mr. Smart), S. Ray West, Jr. (Mr. West), Lee Smart (Lee) and Roger Smart (Roger) are participants in and are the Advisory Committee of the Plan. Smart Chevrolet Company (the Employer) is the sponsor of the Plan. The Employer sells new and used automobiles in the Pine Bluff, Arkansas area. As of December 31, 2000, the Employer had a net worth of $5,260,199. Mr. Smart is the president of and a shareholder in the Employer.

2. Motors is engaged in financing the purchase of new and used automobiles sold by the Employer to its customers. The net worth of Motors, as of December 31, 2000, was $300,000. Certain of the principal owners of the Employer are also partners in Motors. Mr. Smart is a five percent (5%) managing partner in Motors. Meredith S. Maxwell, Felix Smart, Lee, Roger and Mr. West each own a fifteen percent (15%) partnership interest in Motors. The collective net worth of the partners of Motors, as of December 31, 2000, was $11,700,000. The net worth of the partners of Motors includes their respective interests in Motors, in the Employer, and in certain notes payable to its partners by Motors.

3. The current trustee of the Plan is Pine Bluff National Trust Department (the Trustee), successor in interest to Boatmen's Trust Company of Arkansas (Boatmen's), the trustee at the time Prohibited Transaction Exemption (PTE) 97–52 (see rep. 4, below) was granted. Pine Bluff National Bank (PBNB) is the parent corporation of the Trustee, and participates in a line of credit to supply Motors with operating funds of from $100,000 to $200,000 daily.

4. On July 8, 1985, the Department granted an exemption (PTE 85–121, 50 FR 27863) which permitted for a period of seven (7) years beginning July 8, 1985, certain Loans to Motors by two employee benefit plans (the Plans) then sponsored by the Employer, and to the guaranty of such Loans by the Employer and the individual partners of Motors. Subsequent to the grant of PTE 85–121, the Smart Chevrolet Employees Retirement Plan, one of the Plans which participated in the exemption for PTE 85–121, was merged into the Plan.[2] On June 17, 1992, the Department granted an exemption (PTE 92–43, 57 FR 27073) which permitted, for a period of five (5) years, certain Loans by the Plan to Motors. On September 16, 1997, the Department granted an exemption (PTE 97–52, 62 FR 48673) extending PTE 92–43 for a period of five years, thus permitting certain Loans by the Plan to Motors for an additional five-year period.

It is represented that under the three prior exemptions Motors has made all payments on the Loans in a timely manner and has never defaulted on any of the Loans made by the Plans. As a result of such Loans made pursuant to PTE 97–52, the Plan received an interest rate of between 6.50% to 8.00%, depending on the Federal Discount Rate in effect at the time such Loans were executed. Further, though the principal balance of these Loans has varied from time to time, the terms and conditions of each of the Loans complied with the requirements set forth in the exemptions. The aggregate fair market value of these Loans by the Plan to Motors, as of the most recent annual report, was $486,224, which represented 14.91% of the fair market value of the total assets of the Plan. The applicant,

[1] For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[2] All references in this Summary of Fact and Representations to the Plan will, if applicable, include both Plans prior to the merger unless the context clearly dictates otherwise.

herein, is requesting another exemption which will permit the continuation of such Loans for a period of five (5) years beginning on the date of the grant of this proposed exemption. The applicant has represented that with respect to Loans made pursuant to the exemption proposed herein, the Loans will not exceed 15% of aggregate Plan assets.

5. Jess P. Walt (Mr. Walt), who served as the Plan's independent fiduciary for purposes of the transactions exempted by PTE 97–52, has agreed to continue to serve as the independent fiduciary. Mr. Walt, who is a banker, represents that he is independent in that none of the partners of Motors, or the stockholders, officers, or directors of the Employer are officers or directors of the bank where Mr. Walt is employed, the First National Bank of Altheimer, Arkansas (the Bank). In addition, Mr. Walt represents that none of these persons are stockholders of the Bank, except Felix Smart, who owns 35 of the 7,500 outstanding shares, which represent a .47% ownership percentage of the Bank. It is represented that the partners of Motors, the Employer and its officers, directors, and shareholders do not have any loans or accounts outstanding at the Bank. Further, the Bank represents that it does not participate in the line of credit extended to Motors by PBNB.

Mr. Walt represents that he is qualified to act on behalf of the Plan in that he, as a Bank officer, has been involved for many years in making automobile installment loans and evaluating credit and collateral considerations related to such loans. Mr. Walt also represents that he is knowledgeable in selecting appropriate rates of return on short term investments and will be continuously aware of the fluctuations in short term interest rates and the alternative low risk short term investments that would be available to the Plan.

6. Mr. Walt will accept fiduciary responsibility with respect to the proposed transactions. In this regard, Mr. Walt will be responsible for determining whether it is advisable for the Plan to enter into the Loans and the Guaranty which are the subject of this proposed exemption and to continue to participate in such transactions, taking into account the rate of return of such investment and the liquidity and diversification of the Plan.

It is represented that Mr. Walt will approve Loans in an amount not to exceed fifteen percent (15%) of the assets of the Plan, provided that all of the terms and conditions described herein are met.[3] All Loans will have a maturity of ninety (90) days and will bear interest at a rate which is two percentage points above the Federal Discount Rate. Mr. Walt represents that such interest rate reflects the prevailing fair market interest rate on comparable short-term investments. Mr. Walt represents that he will receive copies of all the promissory notes evidencing the Loans in order to insure that the interest rate is two percent (2%) above the Federal Discount Rate. If at any time a rate of two percentage points above the Federal Discount Rate is not reflective of the prevailing fair market rate of return on comparable ninety (90) day investments, Mr. Walt indicates that the Loans should be liquidated at the next maturity date, or the yield on such Loans be increased to the then prevailing fair market rate.

The Loans will be secured by all of the installment sale contracts (the Contracts) of Motors. As of December 31, 2000, Motors had 1,098 outstanding Contracts totaling $10,530,000, with an average balance of $9,590 per Contract. Mr. Walt has represented that he will examine the security agreement and financing statements with regard to the Contracts and will ascertain that the Plan's security interest in all of the Contracts is properly executed, and that such security interest is perfected by properly filed financing statements in conformity with the applicable Uniform Commercial Code (UCC) provisions, as adopted in Arkansas. It is represented that Mr. Walt, through a combination of monthly reports from PBNB and monthly Certification of Compliance Statements signed by Mr. Smart, will insure that at all times the aggregate face value of the Contracts equals at least 200% of the total outstanding balance of the Loans. It is further represented that if at the end of any month the report from the Trustee indicates that the aggregate face value of the Contracts does not equal at least 200% of the total outstanding balance of the Loans, Mr. Walt will direct Motors to pay the Plan an amount sufficient to bring the Loans into compliance with the 200% collateral requirement.

Mr. Walt, on behalf of the Plan, has accepted the commitment of the Employer and Motors that the Contracts will conform to the following loan policy guidelines: (a) A complete credit history will be performed for each customer; (b) a customer's credit history will be analyzed together with the customer's equity and the terms of the Loan; (c) depending on the use of the vehicle, a customer equity of from 10% to 30% will be required; (d) with an extension of six months available in circumstances of minimal vehicle use, the maximum term of any of the Contracts will be 60 months on new and current year used vehicles, 54 months, 42 months, 42 months, 36 months, and 24 months, respectively, on one, two, three, four, and five-year old vehicles; (e) prior to closing on any Contracts, a written certificate of insurance from an insurance agent will be required showing that the automobile is covered for physical damage with no more than a $250 deductible; (f) such insurance coverage includes fire, theft, and other perils and shows Motors as loss payee; and (g) Motors will employ a full time collector and strict management supervision will be maintained daily over collections.

Motors has represented that if, at any time, it changes the above-described loan policy guidelines it will notify Mr. Walt. Therefore, it is the responsibility of Mr. Walt to determine whether such changes materially affect the value of the Contracts. Mr. Walt represents that if the value of the Contracts is materially affected, such Contracts will be excluded from the collateral which secures the Loans by the Plan to Motors.

The Loans will also be secured by the Guaranty of the partners of Motors. In this regard, the partners of Motors have executed a blanket Guaranty in order to satisfy the requirements of PTE's 92–43 and 97–52. Mr. Walt is responsible for ascertaining that any Loans entered by the Plan pursuant to this proposed exemption are also covered by this blanket Guaranty or, if necessary, a new Guaranty will be executed. In addition, it is represented that all of the partners in Motors are jointly and severally liable for the debts of the partnership, specifically including the Loans.

It is represented that from time to time in order to secure its line of credit to Motors, PBNB may take a security interest in the Contracts. However, it is represented that such security interest will be at all times subordinated to 200% of the indebtedness of Motors to the Plan. Further, it is represented that other notes payable from Motors to its partners will be subordinated to the Loans. As of December 31, 2000, a total amount of $4,994,560 was due to the partners of Motors under the terms of the notes, but such amount was subordinated to the indebtedness of Motors to the Plans.

[3] PTE's 85–121 and 92–43 permitted the Plan to invest up to 25% of its assets in these Loans. PTE 97–52 limited the Plan's investment in these Loans to no more than 15% of the Plan's assets. The applicant has represented that no more than 15% of the Plan's assets will be invested in the Loans under the exemption proposed herein.

In addition, it is represented that all of the Contracts provide Motors with recourse against the Employer for the amount of any defaulted Contracts. In this regard, should there be defaults on any of the Contracts, it is represented that the Employer will repurchase such Contracts from Motors after giving legal notice to the customer under Arkansas law. Once the Employer repurchases any defaulted Contracts, the Employer, not Motors, will repossess the vehicles. The Employer has informed the Department that for 1999 and 2000, the average number of Contracts equaled 1,100. Of these Contracts, twenty-one (21) vehicles were repossessed in 1999 and forty-six (46) vehicles were repossessed in 2000. The Employer maintains that defaults and repossessions constitute a very small percentage of the total number of Contracts outstanding at any time.

In addition to the responsibilities outlined above, Mr. Walt is responsible for monitoring Motors' compliance with the terms of the Loans and the Guaranty. In this regard, Mr. Walt has reviewed certain monthly reports (the Monthly Reports) which have been furnished by PBNB and by Boatmen's, the trustee at the time PTE 97–52 was granted. Mr. Walt represents that such Monthly Reports are appropriate for the purposes of monitoring the proposed transactions. If this proposed exemption is granted, it is represented that similar Monthly Reports will be provided to Mr. Walt and will be reviewed monthly by Mr. Walt, or more frequently as Mr. Walt determines is necessary.

In addition, Mr. Walt is responsible for receiving and reviewing the monthly financial statements for Motors and for the Employer and annual financial statements of the partners of Motors. Mr. Walt represents that this information will assist him in monitoring the credit-worthiness of the Employer and Motors. If there are any material decreases in the net worth of any of the parties involved, it is represented that Mr. Walt will liquidate the Loans at the next maturity date. In this regard, Mr. Walt represents that he places the most significance on the ability of the Employer to repurchase any of the Contracts that are in default and considers the net worth of the partners of Motors to be a secondary source of protection for the Plan. Mr. Walt further represents that if, in reviewing the monthly financial statements of the Employer, he determines that a decrease in the net worth of the Employer has impaired the Employer's ability to repurchase any of the Contracts, he will carefully review the aggregate net worth of the partners of Motors. After such review, if he determines, based on his banking experience, judgment, and other factors, that the Plan is not properly protected, Mr. Walt will instruct the Trustee to liquidate the Loans at the next maturity date. In the event of a default by Motors on the Loans, Mr. Walt will be responsible for taking all necessary steps to protect the Plan and for enforcing all of the rights of the Plan, including pursuing the partners of Motors under the terms of the Guaranty.

In the opinion of Mr. Walt, the terms and conditions of the Loans and Guaranty are based on arm's-length considerations. After reviewing the proposed transactions, Mr. Walt represents that he would make the Loans, on behalf of the Bank, under the same terms to Motors. In conclusion, Mr. Walt has determined that the proposed transactions are in the best interest of the Plan and its participants and beneficiaries for the following reasons: (a) The Loans by the Plan to Motors are well collateralized; (b) the risk of loss to the Plan is almost non-existent; (c) the ninety (90) day maturity of the Loans will enable the Plan to shift its investments from the Loans in a short period of time, if necessary, to provide liquidity to the Plan; (d) the yield to the Plan is expected to be approximately 200 basis points greater than that of a ninety (90) day bank certificate of deposit; (e) the rate of return, which will be at all times two percentage points above the Federal Discount Rate, prevents the Plan from becoming locked into a below market interest rate and insures a favorable rate on a continuing basis; and (f) administration of the proposed transactions should generate less expense than that of other investments.

7. The applicant maintains that the wide diversity of customers executing the Contracts significantly spreads the risk to the Plan. Further, the Employer will bear all costs of filing the application for exemption, providing notice to interested persons, and paying for the services rendered by Mr. Walt, as independent fiduciary to the Plan. In the event that it becomes necessary to appoint a successor independent fiduciary (the Successor) to replace Mr. Walt, the applicant will notify the Department at least sixty (60) days in advance of such appointment. The applicant states that the successor will be independent and will possess comparable experience and responsibilities as those of Mr. Walt. In addition, it is represented that throughout the five (5) year duration of this proposed exemption, the Plan will not pay any fees or other expenses in connection with the proposed transactions.

8. In summary, the applicant represents that the Loans will satisfy the criteria of section 408(a) of the Act because, among other things: (a) Mr. Walt, the independent fiduciary of the Plan, has agreed to review, approve, and monitor the terms and conditions of the Loans and the Guaranty; (b) Mr. Walt has represented that the Loans will be in the best interest of the participants and beneficiaries of the Plan; (c) the Loans will be short-term loans limited to no more than 15% of the total assets of the Plan; (d) the Loans will be adequately secured by a perfected security interest in the Contracts, through properly filed financing statements in conformity with the UCC provisions adopted in Arkansas; (f) the face amount of the Contracts will at all times exceed 200% of the total amount of the Loans; (g) the Loans are guaranteed by the partners of Motors; (h) the terms of the Contracts provide Motors with recourse to the Employer in the event of a default on any of the Contracts; and (i) the Plan will receive a return on the Loans of at least two percentage points above the Federal Discount Rate which is represented to be the prevailing fair market rate of return on comparable short-term investments.

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll free number.)

Prudential Insurance Company of America (Prudential Insurance) and Its Affiliates (collectively, Prudential) Located in Newark, NJ

[Application No. D–11051]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[4]

Section I. Exemption for the Acquisition, Holding and Disposition of Prudential Stock

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(D), 406(b)(1) and section 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(D) and

[4] For purposes of this proposed exemption, references to provisions of the Act refer also to corresponding provisions of the Code.

(E) of the Code, shall not apply, effective December 13, 2001, to the acquisition, holding and disposition of common stock issued by Prudential Financial, Inc. (the Prudential Financial Stock) and/or common stock issued by a Prudential affiliate (the Prudential Affiliate Stock; together, the Prudential Stock), by Index and Model-Driven Funds that are managed by Prudential, in which client plans of Prudential invest, provided that the following conditions and the General Conditions of Section II are met:

(a) The acquisition or disposition of Prudential Stock is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based, and does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring Prudential Stock which is intended to benefit Prudential or any party in which Prudential may have an interest.

(b) Whenever Prudential Stock is initially added to an index on which an Index or Model-Driven Fund is based, or initially added to the portfolio of an Index or Model-Driven Fund, all acquisitions of Prudential Stock necessary to bring the Fund's holdings of such stock either to its capitalization-weighted or other specified composition in the relevant index, as determined by the independent organization maintaining such index, or to its correct weighting as determined by the model which has been used to transform the index, occur in the following manner:

(1) Purchases are from, or through, only one broker or dealer on a single trading day;

(2) Based on the best available information, purchases are not the opening transaction for the trading day;

(3) Purchases are not effected in the last half hour before the scheduled close of the trading day;

(4) Purchases are at a price that is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry from non-affiliated brokers;

(5) Aggregate daily purchases do not exceed 15 percent of the average daily trading volume for the security, as determined by the greater of either (i) the trading volume for the security occurring on the applicable exchange and automated trading system on the date of the transaction, or (ii) an aggregate average daily trading volume for the security occurring on the applicable exchange and automated trading system for the previous 5 business days, both based on the best information reasonably available at the time of the transaction;

(6) All purchases and sales of Prudential Stock occur either (i) on a recognized U.S. securities exchange (as defined in Section III(k) below), (ii) through an automated trading system (as defined in Section III(j) below) operated by a broker-dealer independent of Prudential that is registered under the Securities Exchange Act of 1934 (the 1934 Act), and thereby subject to regulation by the Securities and Exchange Commission (the SEC), which provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) through an automated trading system (as defined in Section III(j) below) that is operated by a recognized U.S. securities exchange (as defined in Section III(k) below), pursuant to the applicable securities laws, and provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; and

(7) If the necessary number of shares of Prudential Stock cannot be acquired within 10 business days from the date of the event which causes the particular Fund to require Prudential Stock, Prudential appoints a fiduciary which is independent of Prudential to design acquisition procedures and monitor compliance with such procedures.

(c) Subsequent to acquisitions necessary to bring a Fund's holdings of Prudential Stock to its specified weighting in the index or model pursuant to the restrictions described in Section I(b) above, all aggregate daily purchases of Prudential Stock by the Funds do not exceed on any particular day the greater of:

(1) 15 percent of the average daily trading volume for Prudential Stock occurring on the applicable exchange and automated trading system (as defined below) for the previous 5 business days, or

(2) 15 percent of the trading volume for Prudential Stock occurring on the applicable exchange and automated trading system (as defined below) on the date of the transaction, as determined by the best available information for the trades that occurred on such date.

(d) All transactions in Prudential Stock not otherwise described above in Section I(b) are either—(i) entered into on a principal basis in a direct, arm's length transaction with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of Prudential and is registered under the 1934 Act, and thereby subject to regulation by the SEC, (ii) effected on an automated trading system (as defined in Section III(j) below) operated by a broker-dealer independent of Prudential that is subject to regulation by either the SEC or another applicable regulatory authority, or an automated trading system operated by a recognized U.S. securities exchange (as defined in Section III(k) below) which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) effected through a recognized U.S. securities exchange (as defined in Section III(k) below), so long as the broker is acting on an agency basis.

(e) No transactions by a Fund involve purchases from, or sales to, Prudential (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption).

(f) No more than 5 percent of the total amount of Prudential Stock, that is issued and outstanding at any time, is held in the aggregate by Index and Model-Driven Funds managed by Prudential.

(g) Prudential Stock constitutes no more than 5 percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based.

(h) A fiduciary of a plan which is independent of Prudential authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds Prudential Stock, pursuant to the procedures described herein.

(i) A fiduciary independent of the Prudential directs the voting of Prudential Stock held by an Index or Model-Driven Fund on any matter in which shareholders of Prudential are required or permitted to vote.

Section II. General Conditions

(a) Prudential maintains or causes to be maintained for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (b) of this Section II to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Prudential, the records are lost or destroyed prior to the end of the six year period, and (2) no party in interest other than Prudential shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by

section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) of this Section II and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of this Section II are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the SEC,

(B) Any fiduciary of a plan participating in an Index or Model-Driven Fund who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an Index or Model-Driven Fund or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an Index or Model-Driven Fund, or a representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this Section II(b)(1) shall be authorized to examine trade secrets of Prudential or commercial or financial information which is considered confidential.

Section III. Definitions

(a) The term ''Index Fund'' means any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by Prudential, in which one or more investors invest, and—

(1) Which is designed to track the rate of return, risk profile and other characteristics of an independently maintained securities Index, as described in Section III(c) below, by either (i) replicating the same combination of securities which compose such Index or (ii) sampling the securities which compose such Index based on objective criteria and data;

(2) For which Prudential does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(3) That contains ''plan assets'' subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3–101, Definition of ''plan assets''—plan investments); and,

(4) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund which is intended to benefit Prudential or any party in which Prudential may have an interest.

(b) The term ''Model-Driven Fund'' means any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by Prudential, in which one or more investors invest, and—

(1) Which is composed of securities the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria using independent third party data, not within the control of Prudential, to transform an independently maintained Index, as described in Section III(c) below;

(2) Which contains ''plan assets'' subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3–101, Definition of ''plan assets''—plan investments); and

(3) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund or the utilization of any specific objective criteria which is intended to benefit Prudential or any party in which Prudential may have an interest.

(c) The term ''Index'' means a securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States, but only if—

(1) The organization creating and maintaining the index is—

(A) Engaged in the business of providing financial information, evaluation, advice or securities brokerage services to institutional clients,

(B) A publisher of financial news or information, or

(C) A public stock exchange or association of securities dealers; and,

(2) The index is created and maintained by an organization independent of Prudential; and,

(3) The index is a generally-accepted standardized index of securities which is not specifically tailored for the use of Prudential.

(d) The term ''opening date'' means the date on which investments in or withdrawals from an Index or Model-Driven Fund may be made.

(e) The term ''Buy-up'' means an acquisition of Prudential Stock by an Index or Model-Driven Fund in connection with the initial addition of such stock to an independently maintained index upon which the Fund is based or the initial investment of a Fund in such stock.

(f) The term ''Prudential'' refers to Prudential Insurance Company of America, its indirect parent and holding company, Prudential Financial, and any current or future affiliates, as defined below in paragraph (h).

(g) The term ''Prudential Financial'' refers to Prudential Financial, Inc., the indirect parent and holding company of Prudential Insurance Company of America.

(h) An ''affiliate'' of Prudential includes:

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with the person;

(2) Any officer, director, employee or relative of such person, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(i) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(j) The term ''automated trading system'' means an electronic trading system that functions in a manner intended to simulate a securities exchange by electronically matching orders on an agency basis from multiple buyers and sellers, such as an ''alternative trading system'' within the meaning of the SEC's Reg. ATS [17 CFR part 242.300], as such definition may be amended from time to time, or an ''automated quotation system'' as described in section 3(a)(51)(A)(ii) of the 1934 Act [15 USC 8c(a)(51)(A) (ii)].

(k) The term ''recognized U.S. securities exchange'' means a U.S. securities exchange that is registered as a ''national securities exchange'' under section 6 of the 1934 Act (15 USC 78f), as such definition may be amended from time to time, which performs with respect to securities the functions commonly performed by a stock exchange within the meaning of definitions under the applicable securities laws (e.g., 17 CFR part 240.3b–16).

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of December 13, 2001.

Summary of Facts and Representations

1. Prudential Insurance is a stock life insurance company, which converted from a mutual life insurance company on December 18, 2001. Prudential Insurance is organized under the laws of the State of New Jersey. Its principal place of business is located at Prudential Plaza, Newark, New Jersey. Prudential Insurance is licensed to conduct the insurance business in all 50 states comprising the United States, as well as in the District of Columbia.

As of June 30, 2001, Prudential Insurance had $21.7 billion in total equity and $303.1 billion in total assets.

Also as of that date, Prudential Insurance had—

• Total assets under management and administration of $605.8 billion, consisting of total assets under management (including assets in general and separate accounts) of approximately $393.5 billion, and additional assets in securities brokerage and bank custodial accounts and other assets under administration of $212.3 billion.

• Total gross life insurance in force in the United States of $1.3 trillion (including individual and group insurance), and

• Total gross life insurance in force in Japan and other countries outside the United States of $508.2 billion (including individual and group insurance).

As of December 31, 2000 (the latest date for which such information is available), Prudential Insurance had the third largest individual life insurance business in the United States in terms of statutory in force premiums and in terms of total gross life insurance in force in the United States according to A.M. Best.

2. Prudential Insurance's principal products include individual and group life insurance contracts, endowment contracts, insurance contracts, annuities, including tax deferred annuities described in section 403(b) of the Code and individual retirement annuities described in section 408(b) of the Code, and a wide variety of pension contracts. Additionally, Prudential Insurance has a number of affiliates that provide financial services and products, including investment management, brokerage, and mutual funds, as well as real estate services. Prudential Insurance and its affiliates (together, Prudential) provide fiduciary and other services to ''employee benefit plans'' described in section 3(3) of the Act and to other plans described in section 4975(e)(1) of the Code.

As a mutual life insurance company, Prudential Insurance had no authorized, issued, or outstanding stock. Instead, policyholders of a mutual insurance company are both customers and owners of the company. Specifically, the life insurance, endowment, annuity, and certain other insurance and pension plan contracts issued by Prudential Insurance combined both insurance coverage and proprietary rights, so-called ''membership interests.''

Prudential Insurance demutualized on December 18, 2001. The company's Board of Directors, its policyholders, and the New Jersey Department of Banking and Insurance approved the proposed Plan of Reorganization prior to the demutualization. Following the demutualization of Prudential Insurance and the simultaneous corporate reorganizations of its affiliates, Prudential Insurance and its affiliates are now owned indirectly by Prudential Financial, a holding company, the common stock of which (i.e., Prudential Financial Stock) is publicly traded, as is or may be certain of its debt or other securities. In connection with the demutualization, Prudential Insurance is distributing Prudential Financial Stock, cash and policy credits to eligible policyholders in exchange for their membership interests. Demutualization, registration of the Prudential Financial Stock and other Prudential securities under federal securities laws, an initial public offering of Prudential Financial Stock and its listing on the New York Stock Exchange took place during December 2001.[5]

3. Prudential Insurance and certain of its affiliates, including Prudential Investment Management, Inc., and Jennison Associates Capital Corporation, offer asset management and investment advisory services, insurance, securities brokerage and other types of financial services, as well as trust services, to ERISA-covered plans. Among the services offered are investment management or advisory services for investment accounts of ERISA-covered plans. These investment accounts may be structured as pooled and single client insurance company separate accounts, single client bank trust accounts and bank collective investment trust accounts in which employee benefit plans have invested. In some cases, the trust accounts will be maintained with a Prudential Insurance affiliate as trustee, while in other cases, the Prudential Insurance affiliated investment manager will direct investment of assets held by an unrelated trustee.

4. Prudential Insurance and its affiliates act as investment managers of institutional accounts, including those of employee benefit plans. As of June 30, 2001, the asset management units of Prudential managed approximately $300 billion of Prudential's $394 billion of total assets under management, as follows:

• $100 billion of retail customer assets, including mutual funds and variable insurance and variable annuity products;

• $91 billion of institutional customer assets; and

• $109 billion of insurance company general account assets.

In providing investment management services with respect to the assets of plans, Prudential is a ''fiduciary'' of plans, as defined in section 3(21) of the Act and a ''party in interest,'' as defined in section 3(14)(A) and (B). Although it acts as an investment manager for the accounts, amounts invested in Prudential accounts are made at the direction of an independent plan fiduciary or by plan participants who have the ability to direct investments for their own plan accounts.[6]

5. Among the types of investment products and services Prudential provides to plans are Index and Model-Driven Funds. An Index Fund is an investment portfolio which may be, or form part of,[7] a single client trust account, a pooled or single client insurance company separate account, or a bank collective trust, with the investment objective of replicating the performance of an independently-maintained stock or bond index representing the performance of a specific segment of the public market for equity or debt securities. The Index Funds are passively-managed, in that the choice of stocks or bonds purchased and sold, and the volume purchased and sold, are made according to predetermined third party indexes rather than according to active decisionmaking on the basis of fundamental research on the valuation and prospects of the securities in which the portfolio invests. Plan fiduciaries often favor Index Funds because (a) their risks and returns tend to mirror an established market index, (b) they offer broad diversification within the asset class and strategy represented by the index, and (c) they are extremely competitive in fees and expenses.

A Model-Driven Fund is an investment portfolio which may be, or

[5] With respect to the demutualization, Prudential Insurance has requested an administrative exemption from the Department. On September 27, 2001, a notice of proposed exemption was published in the **Federal Register** at 66 FR 49408.

[6] For a relatively few plan clients, Prudential has discretionary asset management authority to allocate a plan's assets among several approved investment accounts, subject to investment guidelines. In those cases, the plan's fiduciary, who is independent of Prudential, decides whether or not the plan will be permitted to invest in a particular account, including the Index or Model-Driven Funds described herein, and agrees to the particular investment guidelines used for the allocation among the approved accounts.

[7] In some cases, an Index or Model-Driven Fund may be a discrete portfolio of equity securities that is part of a larger investment fund. For example, an Index Fund may be a component of a balanced investment fund that includes both a portfolio of equities and a portfolio of debt securities and the entire balanced fund constitutes one insurance company separate account or bank trust account. Financial institutions commonly offer balanced investment funds because they offer plan fiduciaries and participants the advantage of diversifying investments across equities and bonds through a single investment.

form part of, a single client trust account, a pooled or single client insurance company separate account, or a bank collective trust, the performance of which is based on computer models using prescribed objective criteria to transform an independently-maintained stock or bond index representing the performance of a specific segment of the public market for equity or debt securities. The portfolio of a Model-Driven Fund is determined by the details of the computer model, which examines structural aspects of the stock or bond market rather than the underlying values of individual securities in which a portfolio may invest. An example of a Model-Driven Fund would include a fund which transforms an index, making investments according to a computer model which uses quantitative data as earnings, dividends and price to earnings ratios for common stocks included in the index with the goal of exceeding the investment returns achieved by the index.

Prudential represents that the process it uses for the establishment and operation of all Model-Driven Funds is disciplined and consistent with the quantitative nature of such funds. In this regard, objective rules are established for each model as part of the computer programming for the model. Once established, these computer programs are rarely changed. The data used by the programs are updated regularly by the electronic feeds of the quantitative information (e.g., changes in corporate earnings) necessary for analysis. The computer models generally cannot be overriden in the management of the portfolios except in the event of errors or questionable data from the usual sources of data input. For example, errors in data transmission may cause an unwarranted direction by the model to sell a security due to an erroneously low valuation for the security on a given day, or public notice of the SEC. In addition, allegations of accounting improprieties in the issuer's financial statements may cause a portfolio manager to override the model with respect to a direction by the model to buy that security, because the issuer's quantitative data used for the model may be drawn from the financial statements of the issuer of the security. Such exceptions are rare and must be justified on a case-by-case basis. Prudential represents, however, that it will not exercise any discretion to override the computer model with respect to the acquisition, holding or disposition of Prudential Stock. Such transactions will always follow the output of the relevant computer model.

6. Prudential currently offers a number of Funds that are invested according to the criteria of various third party indexes or are model-driven based on such indexes. These indexes are compiled by financial information agencies that are engaged in the provision of financial information or securities brokerage services to institutional investors and/or are publishers of financial information. For example, Prudential offers some Funds that track the Wilshire 5000 Total Market Index,[8] the Russell 2000 Index,[9] and the Standard & Poor's 500 Composite Stock Price Index (the S&P 500 Index).[10] In each instance, the indexes are compiled by organizations that are independent of Prudential and are generally-accepted standardized indexes of securities that are not tailored for the use of Prudential.

7. On or after the effective date of Prudential Insurance's demutualization and initial public offering of Prudential Financial Stock, Prudential Insurance represents that the indexes employed by Index and Model-Driven Funds may include Prudential Financial Stock and/or Prudential Affiliate Stock. Prudential represents that the ability of all Funds to invest in Prudential Stock, when that stock is included in an index, is necessary to ensure tracking of the indexes. In addition, the ability of the Model-Driven Funds to invest in Prudential Stock, when that stock is included in the index on which the model is based, avoids disruption to the computer modeling that is designed to transform the index in the manner approved by plans when the investment in the Model-Driven Fund is authorized.

8. Accordingly, Prudential Insurance requests an administrative exemption from the Department. If granted, the exemption will permit Prudential Insurance and its current and future affiliates to maintain individual and pooled separate accounts, collective trusts, and single client trusts that hold Prudential Stock, provided certain conditions enumerated in the operative language of the exemption are met.

Specifically, the exemption will allow Index and Model-Driven Funds which are managed by Prudential Insurance or its affiliates, in which client plans of Prudential participate, to invest in Prudential Stock if such stock is included among the securities listed in the index utilized by the Fund. Prudential Insurance is not requesting, nor is the Department providing, administrative exemptive relief herein for plans sponsored by Prudential. Prudential believes that investments on behalf of its in house plans in Index and Model-Driven Funds have been made (and will be made) in accordance with the statutory exemption provided under section 408(e) of the Act.[11] Therefore, the subject exemption will apply to client plans of Prudential only. With respect to Prudential client plans, Prudential Insurance states that plan fiduciaries which are independent of Prudential have authorized or will authorize the investment of a plan's assets in an Index or Model-Driven Fund which acquires, holds, or disposes of Prudential Stock pursuant to procedures described herein.

Prudential Insurance requests that the proposed exemption be made effective as of December 13, 2001, which is the initial public offering date for Prudential Financial Stock as well as the date such stock commenced trading on the New York Stock Exchange. Prudential Insurance states that any exemptive relief for cross-trades of securities, including Prudential Stock, by Index and Model-Driven Funds maintained by it should be considered separately.[12]

9. Prudential Insurance states that the proposed exemption is necessary to allow Funds holding plan assets to purchase and hold Prudential Stock in order to replicate, properly, the capitalization-weighted or other specified composition of Prudential Stock in an independently-maintained,

[8] The Wilshire 5000 Total Market Index was established and is maintained by Wilshire Associates Incorporated, which is not an affiliate of Prudential. The Wilshire 5000 Total Market Index is a market weighted index of returns of over 6,500 U.S. stocks with readily available price data. It is the broadest U.S. equity index available and reflects the performance of the organized securities exchanges as well as the Over the Counter markets.

[9] The Russell 2000 Index was established and is maintained by the Frank Russell Company, which is not an affiliate of Prudential. The Russell 2000 Index is a subset of the larger Russell 3000 Index. The Russell 3000 Index consists of the largest 3,000 publicly-traded stocks of U.S. domiciled corporations, identified by the Frank Russell Company, and includes large, medium and small stocks.

[10] The S&P 500 Index is composed of 500 stocks that are traded on the New York Stock Exchange and the NASDAQ National Market System. The S&P 500 Index is a market-weighted index (i.e., shares outstanding times the stock price) in which each company's influence on the Index's performance is directly proportional to its market value.

[11] The Department is not providing an opinion in this proposed exemption on whether the conditions of section 408(e) of the Act have been or will be met for such transactions.

[12] In this regard, the Department directs interested persons to the Proposed Class Exemption for Cross-Trades of Securities by Index and Model-Driven Funds (the Cross-Trading Proposal) which was published in the **Federal Register** on December 15, 1999 (64 FR 70057).

third party index used by an Index Fund or to achieve the desired transformation of an index used to create a portfolio for a Model-Driven Fund.

In addition, Prudential Insurance represents that when Prudential Stock is added to an index on which a Fund is based, or when Prudential Stock is added to the portfolio of a Fund which tracks an index that includes Prudential Stock, all acquisitions necessary, as an initial matter, to bring the Fund's holdings of Prudential to its capitalization or other specified weighting in the applicable index,[13] will comply with conditions (see Section I(b)(1)–(7) above) that are designed to prevent possible market price manipulation and which are based, in part, on the restrictions of SEC Rule 10b–18.[14]

The conditions required for a ''Buy-up'' of Prudential Stock are as follows:

• Purchases are from, or through, only one broker or dealer on a single trading day;

• Based on the best available information, purchases are not the opening transaction for the trading day;

• Purchases are not be effected in the last half hour before the scheduled close of the trading day;

• Purchases are at a price that is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry from non-affiliated brokers;

• Aggregate daily purchases do not exceed 15 percent of the average daily trading volume for the security, as determined by the greater of either (i) the trading volume for the security occurring on the applicable exchange and automated trading system on the date of the transaction, or (ii) an aggregate average daily trading volume for the security occurring on the applicable exchange and automated trading system for the previous 5 business days, both based on the best information reasonably available at the time of the transaction;

• All purchases and sales of Prudential Stock occur either (i) on a recognized U.S. securities exchange [as defined in Section III(k)], (ii) through an automated trading system [as defined in Section III(j)] operated by a broker-dealer independent of Prudential that is registered under the 1934 Act, and thereby subject to regulation by the SEC, which provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) through an automated trading system [as defined in Section III(j)] that is operated by a recognized U.S. securities exchange, pursuant to the applicable securities laws, and provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; and

• If the necessary number of shares of Prudential Stock cannot be acquired within 10 business days from the date of the event which causes the particular Fund to require Prudential Stock, Prudential appoints an independent fiduciary to design acquisition procedures and monitor compliance with such procedures.

10. Prudential Insurance states that, if an independent fiduciary is required, such independent fiduciary and its principals will be parties completely unrelated to Prudential. The independent fiduciary will also be experienced in developing and operating investment strategies for individual and collective investment vehicles that track third party indexes. Furthermore, the independent fiduciary will not act as the broker for any purchases or sales of Prudential Stock and will not receive any consideration as a result of the initial acquisition program.

As its primary goal, the independent fiduciary will develop trading procedures that minimize the market impact of purchases made pursuant to the initial acquisition program by the particular Fund. Thus, Prudential Insurance believes that, under the trading procedures established by the independent fiduciary, the trading activities will be conducted in a low profile, mechanical, non-discretionary manner and involve a number of small purchases over the course of each day, randomly-timed. Prudential Insurance further believes that such a program will allow Prudential to acquire the necessary shares of Prudential Stock for the Funds with minimum impact on the market and in a manner that is in the best interests of any employee benefit plans that participate in such Funds.

The independent fiduciary will also be required to monitor compliance with the trading program and procedures developed for the initial acquisition of Prudential Stock. During the course of any initial acquisition program, the independent fiduciary will be required to review the activities weekly to determine compliance with the trading procedures and notify Prudential should any non-compliance be detected. Should the trading procedures need modifications due to unforeseen events or consequences, the independent fiduciary will be required to consult with Prudential and must approve in advance any alteration of the trading procedures.

11. Subsequent to the initial acquisitions necessary to bring a Fund's holdings of Prudential Stock to their specified weightings in the index or model pursuant to the restrictions described above, all aggregate daily purchases of Prudential Stock by the Funds will not exceed on any particular day the greater of—

• 15 percent of the average daily trading volume for Prudential Stock occurring on the applicable exchange and automated trading system for the previous 5 business days, or

• 15 percent of the trading volume for Prudential Stock occurring on the applicable exchange and automated trading system on the date of the transaction, as determined by the best available information for the trades that occurred on such date.

12. Prudential Insurance represents that all transactions by the Funds involving Prudential Stock which do not occur in connection with a Buy-up of such stock by a Fund, as described above, will be either (a) entered into on a principal basis in a direct arm's length transaction with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of Prudential and is registered under the 1934 Act, and thereby subject to regulation by the SEC; (b) effected on an automated trading system (as defined in Section III(j) of the proposed exemption) operated by a broker-dealer independent of Prudential that is either registered under the 1934 Act, and thereby subject to regulation by the SEC or another applicable regulatory agency, or an automated trading system operated by a recognized U.S. securities exchange (as defined in Section III (k)) which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (c) through a recognized U.S. securities exchange (as defined in Section III(k)),

[13] These instances are referred to herein as a ''Buy-up.'' Prudential Insurance believes that acquisitions of Prudential by an Index or Model-Driven Fund in a ''Buy-up'' will occur within 10 business days from the date of the event which causes the particular Fund to acquire Prudential. Prudential does not believe that the amounts of Prudential acquired by a Fund in a ''Buy-up'' will be significant. In this regard, the Department notes that the conditions required herein are designed to minimize the market impact of purchases made by the Funds in any ''Buy-up'' of Prudential.

[14] SEC Rule 10b–18 provides a ''safe harbor'' for issuers of securities from section 9(a)(2) of the 1934 Act and SEC Rule 10b–5 (which generally prohibits persons from manipulating the price of a security and engaging in fraud in connection with the purchase or sale of a security).

so long as the broker is acting on an agency basis.[15]

13. Prudential Insurance represents that all acquisitions, holdings, and dispositions of Prudential Stock by Index or Model-Driven Funds maintained by Prudential will also not involve purchases from or sales to Prudential (including officers, directors or employees thereof), or any party in interest that is a fiduciary with discretion to invest assets into the Fund (unless the transaction by the Fund with such party in interest is otherwise subject to an exemption).[16]

14. Prudential Insurance represents that no more than 5 percent of the total outstanding shares of Prudential will be held in the aggregate by the Index or Model-Driven Funds managed by Prudential. In addition, for purposes of acquisitions, holdings and dispositions of Prudential Stock by the Funds, Prudential Insurance states that such stock will not constitute more than 5 percent of the value of any independent third party index on which investments of an Index or Model-Driven Fund are based. Therefore, Prudential Insurance requests that the proposed exemption allow Prudential to design a passive investment strategy for an Index or Model-Driven Fund which seeks to track any index that contains Prudential Stock, or which transforms such an index in a fashion prescribed by the model, as long as the Prudential Stock does not constitute more than 5 percent of the index.

With respect to an index's specified composition of particular stocks in its portfolio, Prudential Insurance states that future Funds may track an index where the selection of a particular stock by the index and the amount of stock to be included in the index is not based on the market capitalization of the corporation issuing such stock. Therefore, since an independent organization may choose to create an index where there are other index weightings for stocks composing the index, the Prudential Insurance requests that the exemption allow for Prudential Stock to be acquired by a Fund in the amounts which are specified by the particular index, subject to the other restrictions imposed under this proposed exemption. In addition, Prudential Insurance represents that, in all instances, the acquisition, holding or disposition of Prudential Stock by a Fund is for the sole purpose of maintaining quantitative conformity with the relevant index upon which the Fund is based, or in the case of a Model-Driven Fund, a modified version of such an index as created by a computer model based on prescribed objective criteria and third party data.

15. Prudential Insurance will appoint an independent fiduciary to direct the voting of any Prudential Stock held by the Funds. The independent fiduciary will be a firm specializing in corporate governance issues and proxy voting on behalf of public and private pension funds. The independent fiduciary will be required to develop and follow standard guidelines and procedures for the voting of proxies by institutional fiduciaries.

Prudential Insurance will provide the independent fiduciary with all necessary information regarding the Funds that hold Prudential Stock on the record date for Prudential's shareholder meetings, and all proxy and consent materials with respect to Prudential Stock. The independent fiduciary will maintain records with respect to its activities as an independent fiduciary on behalf of the Funds, including the number of shares of Prudential Stock voted, the manner in which such shares were voted, and the rationale for the vote if the vote was not consistent with the independent fiduciary's procedures and current voting guidelines in effect at the time of the vote. The independent fiduciary will supply Prudential with the information after each shareholder meeting. The independent fiduciary will be required to acknowledge that it will be acting as a fiduciary with respect to the plans which invest in the Funds which own Prudential Stock, when voting such stock.

16. In summary, it is represented that the subject transactions have met or will meet the statutory criteria for an exemption under section 408(a) of the Act because:

(a) Each Index or Model-Driven Fund involved has been based or will be based on an index, as defined in Section III(c) above;

(b) The acquisition, holding and disposition of Prudential Stock by the Index or Model-Driven Fund has been or will be for the sole purpose of maintaining strict conformity with the relevant index upon which an Index or Model-Driven Fund is based, and will not involve an agreement, arrangement or understanding regarding the design or operation of the Fund acquiring Prudential Stock which is intended to benefit Prudential or any party in which Prudential may have an interest;

(c) Whenever Prudential Stock is initially added to an index on which a Fund is based, or initially added to the portfolio of a Fund (i.e., a Buy-up), all acquisitions of Prudential Stock necessary to bring the Fund's holdings of such stock either to its capitalization-weighted or other specified composition in the relevant index, as determined by the independent organization maintaining such index, or its correct weighting as determined by the computer model which has been used to transform the index, has been or will be restricted by conditions which are designed to prevent possible market price manipulations;

(d) Subsequent to acquisitions necessary to bring a Fund's holdings of Prudential Stock to its specified weighting in the index or model, pursuant to the restrictions above, all aggregate daily purchases of Prudential Stock by the Funds have not exceeded nor will exceed the greater of (i) 15 percent of the average daily trading volume for the Prudential Stock occurring on the applicable exchange and automated trading system for the previous 5 business days, or (ii) 15 percent of the trading volume for Prudential Stock occurring on the applicable exchange and automated trading system on the date of the transaction, as determined by the best available information for the trades that occurred on such date;

(e) All transactions in Prudential Stock, other than acquisitions of such stock in a Buy-up described above, have been or will be either (i) entered into on a principal basis with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of Prudential and is registered under the 1934 Act, and thereby subject to regulation by the SEC, (ii) effected on an automated trading system operated by a broker-dealer independent of Prudential that is subject to regulation by either the SEC or another applicable regulatory authority, or an automated trading system operated by a recognized U.S. securities exchange which, in either case, provides a mechanism for

[15] The Department notes that no relief is being provided herein for purchases and sales of securities between a Fund and a broker-dealer acting as principal, which may be considered prohibited transactions as a result of such broker-dealer being a party in interest under section 3(14) of the Act, with respect to any plans that are investors in the Fund. However, such transactions may be covered by one or more of the Department's existing class exemptions. For example, Prohibited Transaction Class Exemption 84–14 (49 FR 9497, March 13, 1984) permits, under certain conditions, parties in interest to engage in various transactions with plans whose assets are invested in an investment fund managed by a ''qualified professional asset manager'' (i.e., a QPAM) who is independent of the parties in interest (with certain limited exceptions) and meets specified financial standards.

[16] In this regard, the Department is providing no opinion herein on whether such principal transactions would be covered by any existing exemption.

customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) effected through a recognized U.S. securities exchange (as described herein) so long as the broker is acting on an agency basis;

(f) No transactions by a Fund has involved or will involve purchases from or sales to Prudential (including officers, directors or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption);

(g) No more than 5 percent of the total amount of Prudential Stock that is issued and outstanding at any time has been held or will be held, in the aggregate, by Index or Model-Driven Funds managed by Prudential;

(h) Prudential Stock has not constituted nor will constitute more than 5 percent of the value of any independent third party index on which investments of an Index or Model-Driven Fund are based;

(i) A plan fiduciary independent of Prudential has authorized or will authorize the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds Prudential Stock, pursuant to the procedures described herein; and

(j) A fiduciary independent of Prudential will direct the voting of Prudential Stock held by an Index or Model-Driven Fund on any matter in which shareholders of Prudential are required or permitted to vote.

Notice to Interested Persons

Notice of the proposed exemption will be mailed by first-class mail to interested persons, including the appropriate fiduciaries of employee benefit plans currently invested in the Index and/or Model-Driven Funds that may acquire and hold Prudential Stock. The notice will include a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required under 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment and/or to request a hearing with respect to the proposed exemption. All notices will be sent to interested persons within 30 days of the publication of the proposed exemption in the **Federal Register**. Any written comments and/or requests for a hearing are due within 60 days after the date of publication of the pendency notice in the **Federal Register**.

In addition, Prudential will provide, upon request, a copy of the proposed exemption and, if granted, a copy of the final exemption to all ERISA-covered plans which invest in any Index or Model-Driven Fund containing Prudential Stock in their respective portfolios after the date the final exemption is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 693–8556. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 15th day of January, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits, Administration, U.S. Department of Labor.

[FR Doc. 02–1367 Filed 1–17–02; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application Number D–11041]

Notice of Proposed Individual Exemption To Modify Prohibited Transaction Exemption 90–23 (PTE 90–23); Prohibited Transaction Exemption 90–31 (PTE 90–31) and Prohibited Transaction Exemption 90–33 (PTE 90–33) Involving J.P. Morgan Chase & Company and Its Affiliates (the Applicants) Located in New York, NY

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed individual exemption to modify PTE 90–23; PTE 90–31; and PTE 90–33 (collectively, the Exemptions).

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed individual administrative exemption which, if granted, would amend: PTE 90–23 (55 FR 20545, May 17, 1990), an exemption which was granted to J.P. Morgan Securities, Inc.; PTE 90–31 (55 FR 23144, June 6, 1990), an exemption which was granted to Chase Manhattan Bank; and PTE 90–33 (55 FR 23151, June 6, 1990), an exemption which was granted to Chemical Banking Corporation.[1] The Exemptions provide relief for the operation of certain asset pool investment trusts and the acquisition, holding and disposition by employee benefit plans (the Plans) of certificates or debt instruments that are issued by such trusts with respect to which one of the Applicants is the lead underwriter or a co-managing underwriter. If granted, this proposed amendment would permit the trustee of the trust to be an affiliate of the underwriter. If adopted, the proposed amendment would affect the participants and beneficiaries of the Plans participating

[1] The notice of proposed exemption for PTE 90–23 was published on February 20, 1990 at 55 FR 5906; the notice of proposed exemption for PTE 90–31 was published on February 21, 1990 at 55 FR 6074; and the notice of proposed exemption for PTE 90–33 was published on February 21, 1990 at 55 FR 6082.

in such transactions and the fiduciaries with respect to such Plans.

DATES: Written comments and requests for a public hearing should be received by the Department on or before 45 days from the date of the publication in the **Federal Register** of this notice of proposed amendment.

ADDRESSES: All written comments and requests for a public hearing (preferably three copies) should be addressed to the U.S. Department of Labor, Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, 200 Constitution Avenue, NW., Washington, DC 20210, (attention: Application No. D–11041; Proposal to Amend Certain Individual Exemptions for J.P. Morgan Chase & Co. and its Affiliates). Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *''moffittb@pwba.dol.gov''* or by FAX to (202) 219–0204 by the end of the scheduled comment period. The application pertaining to the exemptive relief proposed herein (Application No. D–11041) and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 693–8546. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed amendment that would modify the Exemptions. The Exemptions provide relief from certain prohibited transaction restrictions of sections 406 and 407(a) of the Employee Retirement Income Security Act of 1974 (the Act), as amended, and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code. Specifically, the Exemptions are three of the individual exemptions commonly known as the ''underwriter exemptions,'' all of which are essentially identical to the original underwriter exemptions issued by the Department in 1989 to permit Plans to invest in pass-through certificates representing undivided interests in certain categories of investment trusts, if certain conditions are met. All of the underwriter exemptions, including the Exemptions, were subsequently amended by Prohibited Transaction Exemption 97–34 (PTE 97–34, 62 FR 39021, July 21, 1997) and by Prohibited Transaction Exemption 2000–58 (PTE 2000–58, 65 FR 67765, November 13, 2000).

The proposed amendment has been requested in an application filed on behalf of J.P. Morgan Chase & Company and its Affiliates, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this proposed exemption is issued solely by the Department.

In their current form, the Exemptions permit employee benefit plans to purchase certain securities representing interests in asset- or mortgage-backed investment pools for which one of the Applicants is the lead underwriter or a co-managing underwriter. The securities generally take the form of certificates issued by a trust (the Trust). The Exemptions permit transactions involving a Trust (including the servicing, management and operation of the Trust) and certificates evidencing interests therein (including the sale, exchange or transfer of certificates in the initial issuance of the certificates or in the secondary market for such certificates). The entities covered include the sponsor of the Trust as well as the underwriter for the certificates issued by the Trust when the sponsor, servicer, trustee or insurer of the Trust, the underwriter of the certificates issued by the Trust, or an obligor of the receivables contained in the Trust, is a party in interest with respect to an investing plan.[2]

One of the requirements of the Exemptions (as amended by PTE 2000–58) is that the trustee of the Trust not be an affiliate of any member of what the Exemptions define as the ''Restricted Group''; i.e., in addition to the trustee, each underwriter, each servicer, each insurer, the sponsor, any more than 5% obligor with respect to receivables included in the Trust, each counterparty in an Eligible Swap Agreement, and any affiliate of such persons. This restriction is common to all of the underwriter exemptions.

The Applicants represent that, while the provision requiring an independent trustee was not a major issue in 1989, developments in the banking industry over the past twelve years have caused the requirement to become onerous and disadvantageous to investors, including Plans. As the banking industry has consolidated, the number of banks participating in the corporate trust business has shrunk dramatically. This trend has been due to a number of factors which have made participation in the trust business less attractive to banks. On the income side, these factors include competitive pressure on pricing corporate trust services and loss of transactional fees and traditional float income due to the growth in book entry securities. On the expense side, the cost of entry into the corporate trust business and the cost of remaining in the business have increased dramatically. This increase includes both technological and personnel costs. The cost increase is particularly acute in the structured finance sector of the corporate trust business, where both systems and staff need to have the capability of supporting increasingly complex transactions.The Applicants represent that the changes in the securities underwriting business are equally significant. These include the increased participation by banks and bank affiliates, and consolidation within the industry. As of the calendar year 2000, four of the top ten underwriters for structured finance transactions had affiliated corporate trust businesses. Eight of the top ten trustees, a group with a combined market share of over 76 percent in 2000, were affiliates of underwriters active in the structured finance sector. The trend in the market to broadly syndicate underwriting exacerbates the problem: the underwriter exemptions, including the Exemptions, prohibit affiliation not only between the trustee and the lead underwriter, but between the trustee and any underwriter, without regard to the amount underwritten.

The Applicants state that currently most providers of corporate trust and related services in the structured finance marketplace are large banks that have the requisite staff and systems resources to efficiently serve this marketplace. Most of these same banks, particularly those that are profitable and well-capitalized, have expanded into the securities underwriting business, including underwriting of structured finance transactions. Not only will investors (including Plans) be disadvantaged if banks and their

[2] Interested persons should review the Department's regulations at 29 CFR 2510.3–101 (Definition of ''plan assets''—plan investments) for the reasons why a Plan's investment in certificates issued by a Trust may raise prohibited transaction issues with respect to parties in interest.

affiliates which underwrite securities continue to be precluded from providing trust services, but further, it is clearly not in the best interest of investors, including Plan investors, to eliminate those banks— often the most competent in the servicing of structured finance transactions—from the pool of available corporate trust providers.

A trustee in a structured finance transaction, while involved in complex calculations and reporting, typically does not perform any discretionary functions. Such a trustee operates as a stakeholder and strictly in accordance with the explicit terms of the governing agreements so that the intent of the crafters of the transaction may be carried out. These functions are essentially ministerial, such as establishing accounts, receiving funds, making payments and issuing reports, all in a predetermined manner. Unlike trustees for corporate or municipal debt, there is no need for trustees in structured finance transactions to assume discretionary functions in order to protect the interests of debt holders in the event of default or bankruptcy, because structured finance entities are bankruptcy remote vehicles. There is no ''issuer'' outside the structured transaction to pursue for repayment of the debt. The trustee's role is defined by a contract, which provides an explicit structure spelling out the action to be taken upon the happening of specified events. There is no opportunity or incentive for the trustee in a structured finance transaction, by reason of its affiliation with an underwriter or otherwise, to take or not to take actions which might benefit the underwriter to the detriment of Plan investors. The Applicants represent that the role of the underwriter in a structured financing involves, among other things, assisting the sponsor or originator in structuring the contemplated transaction. The trustee becomes involved later in the process, after the principal parties have agreed on the essential components, to review the proposed transaction from the limited standpoints of technical workability and potential trustee liability. After the issuance of securities to the public, in a structured financing, while the trustee performs its role as trustee over the life of the transaction, the underwriter has no further role in the transaction. The trustee has no opportunity to take or not take action, or to use information in ways which might advantage the underwriter to the detriment of Plan investors. In fact, from the point of view of enhancing its reputation, the underwriter clearly wants the transaction to succeed as it was structured, which includes the trustee performing in a manner independent of the underwriter. Accordingly, the Applicants have requested this modification to the Exemptions to permit the trustee of the Trust to be an affiliate of the underwriter.

In summary, the Applicants represent that the proposed modification of the Exemptions satisfies the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (a) The amendment will benefit Plans by ensuring that the most capable corporate trustees will continue in the corporate trust business; (b) the amendment will not be harmful to Plans because the affiliation of the trustee to an underwriter will not cause any benefit to the underwriter to the detriment of any Plan investor; and (c) the safeguards provided by the Exemptions will not otherwise be altered.

Notice to Interested Persons

The Applicants believe that the market for the securities described in their application is so broad, and the number of potentially affected Plans is so large, that notice by mailing is impracticable and inadequate. Thus, publication of this Notice in the **Federal Register** is the only practical means of providing notice to interested persons. Written comments and hearing requests are due within 45 days of the publication of the Notice in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption can be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) This proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) This proposed exemption, if granted, is subject to the express condition that the Summary of Facts and Representations set forth in the notices of proposed exemption relating to the Exemptions, as modified by this Notice, accurately describe, where relevant, the material terms of the transactions to be consummated pursuant to this exemption.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time frame set forth above, after the publication of this proposed exemption in the **Federal Register**. All comments will be made a part of the record. Comments received will be available for public inspection with the referenced applications at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, subpart B (55 FR 32836, August 10, 1990), the Department proposes to modify PTE 90–23, PTE 90–31 and PTE 90–33, each as subsequently amended by PTE 97–34 and PTE 2000–58, as set forth below:

The first sentence of section II.A.(4) of the Exemptions is amended to read: ''The trustee is not an Affiliate of any member of the Restricted Group, other than an Underwriter.''

The availability of this proposed exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of

the material facts or representations described in the applications change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant the Exemptions, refer to the proposed exemptions and the grant notices that are cited above.

Signed at Washington, DC, this 15th day of January, 2002.

Ivan L. Strasfeld,

Director of Exemption, Determinations, Pension and Welfare Benefits, Administration, U.S. Department of Labor.

[FR Doc. 02–1364 Filed 1–17–02; 8:45 am]

BILLING CODE 4510–29–P

NUCLEAR REGULATORY COMMISSION

DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS

BUREAU OF LAND MANAGEMENT

DEPARTMENT OF TRANSPORTATION

SURFACE TRANSPORTATION BOARD

[Docket No. 72–22]

Notice of Availability of Final Environmental Impact Statement for the Proposed Private Fuel Storage, L.L.C.; Independent Spent Fuel Storage Installation on the Reservation of the Skull Valley Band of Goshute Indians and the Related Transportation Facility in Tooele County, UT

AGENCY: Nuclear Regulatory Commission; Bureau of Indian Affairs, Interior; Bureau of Land Management, Interior; Surface Transportation Board, Transportation.

ACTION: Notice of availability of Final Environmental Impact Statement.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC), in cooperation with the U.S. Department of Interior's Bureau of Indian Affairs (BIA) and Bureau of Land Management (BLM), and the Surface Transportation Board (STB), has published a Final Environmental Impact Statement (FEIS), ''Final Environmental Impact Statement for the Construction and Operation of an Independent Spent Fuel Storage Installation on the Reservation of the Skull Valley Band of Goshute Indians and the Related Transportation Facility in Tooele County, Utah'' NUREG–1714, January 2002, regarding the proposal of Private Fuel Storage, L.L.C. (PFS) to construct and operate an independent spent fuel storage installation (ISFSI) on the Reservation of the Skull Valley Band of Goshute Indians and construct and operate a new rail line and rail siding.

The Reservation is located approximately 44 km (27 miles) west-southwest of Tooele, Utah. PFS intends to transport spent nuclear fuel (SNF) by rail from commercial power reactor sites to an existing rail line north of Skull Valley. To transport the SNF from the existing rail line to the proposed facility, PFS proposes the construction and operation of a new rail siding and rail line on public land administered by BLM. This FEIS discusses the purpose and need for the PFS proposal and describes the proposed action and its reasonable alternatives, including the No-action Alternative. The FEIS also discusses the environment potentially affected by the proposal, presents and compares the potential environmental impacts resulting from the proposed action and its alternatives, and identifies mitigation measures that could eliminate or lessen the potential environmental impacts.

The PFS proposal requires approval from four federal agencies: NRC, BIA, BLM, and STB. The environmental issues that each of these agencies must evaluate pursuant to the National Environmental Policy Act of 1969 (NEPA) are interrelated. Therefore, the agencies have cooperated in the preparation of this FEIS, and this document serves to satisfy each agency's statutory responsibilities under NEPA.

Based on the evaluation in this FEIS, the NRC, BIA, BLM, and STB environmental review staffs have concluded that (1) the measures required by Federal, State, and Tribal permitting authorities other than the Cooperating Agencies and (2) the mitigation measures that the Cooperating Agencies propose be required would reduce any short-or long-term adverse environmental impacts associated with the proposed action (i.e., construction and operation of the proposed ISFSI and rail line) to acceptable levels. This FEIS reflects the final analysis of the environmental impacts of the PFS proposal and its alternatives including the consideration of public comments received by the NRC. In addition, the FEIS provides summaries of the substantive public comments received within the time allotted for public comment on the draft EIS, and responses, as appropriate, to such comments.

ADDRESSES: The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The FEIS and its appendices may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*The FEIS is also available for inspection at the Commission's Public Document Room, U.S. NRC's Headquarters Building, 11555 Rockville Pike (first floor), Rockville, Maryland. Upon written request and to the extent supplies are available, a single copy of the FEIS can be obtained for a fee by writing to the Office of the Chief Information Officer, Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by E-mail (*DISTRIBUTION@nrc.gov*); or by fax at (301) 415–2289.

FOR FURTHER INFORMATION CONTACT: Chester Poslusny Jr., Sr. Project Manager, Licensing and Inspection Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 415–1341, or E-mail (*CXP1@nrc.gov*).

SUPPLEMENTARY INFORMATION: The proposed action involves the construction and operation of a proposed SNF storage facility at a site (known as Site A) located on the Reservation, and transporting SNF from the existing railroad to the site by constructing a new rail siding and rail line to connect the proposed facility to the existing main line in Utah. This FEIS has been prepared in compliance with NEPA, NRC regulations for implementing NEPA (10 CFR Part 51), guidance provided by the Council on Environmental Quality (CEQ) regulations implementing the procedural provisions of NEPA (40 CFR Parts 1500–1508), STB regulations for implementing NEPA (49 CFR Part 1105), and BLM and BIA policy, procedures, and guidance documents.

Federal agencies' actions are considered in this FEIS. NRC's action is to grant or deny a 20-year license to PFS to receive, transfer, and possess SNF on the Reservation. BIA's action is to either approve or disapprove a 25-year lease between PFS and the Skull Valley Band for use of Reservation land to construct

and operate the proposed facility. If granted, both the NRC license and the BIA lease could be renewed. BLM's action is to either grant one or deny both requests for rights-of-way through public land administered by the BLM for transporting SNF from the existing rail line to the proposed facility site. Approval of the proposed action would require amending the Pony Express Resource Management Plan. STB's action is to grant or deny PFS's application for a license to construct and operate a new rail line to the proposed facility site.

This FEIS sets forth not only the Cooperating Agencies' evaluation of the proposed action (Alternative 1) described above, but also their evaluation of the environmental impacts of the alternative actions. Alternatives involving the Skull Valley site include an alternative site location on the Reservation (known as Site B), and an alternative transportation method (i.e., heavy-haul vehicles). Consideration of an alternative site location on the Reservation and an alternative transportation method resulted in evaluating the following alternatives:

Alternative 2—the construction and operation of the proposed facility at Site B on the Reservation with a rail siding and a rail line similar to that described above.

Alternative 3—construction and operation of the proposed facility at Site A, construction and operation of a new Intermodal Transfer Facility (ITF) near Timpie, Utah, and use of heavy-haul vehicles to transport SNF to the Reservation.

Alternative 4—the construction and operation of the proposed facility at Site B with the same ITF and SNF transport described in Alternative 3 above.

Additionally, the FEIS compares the construction and operation of an SNF storage facility in Wyoming in lieu of the Skull Valley site. This comparison was made to determine if an identified alternative site is obviously superior to the proposed site. Lastly, the FEIS sets forth the Cooperating Agencies' evaluation of the No-Action Alternative, i.e, not to construct and operate the proposed facility in Skull Valley. Under the No-Action Alternative, the potential impacts of constructing and operating the proposed facility and associated SNF transportation facilities in Skull Valley would not occur.

As set forth in the FEIS, the Cooperating Agencies assessed the impacts of the proposed action and its alternatives on minerals, soils, water resources, air quality, ecological resources, socioeconomics and community resources, cultural resources, human health impact, noise, scenic qualities, recreation, and environmental justice. Additionally, the NRC staff performed an analysis and comparison of the costs and benefits of the proposed action.

Based on the evaluation in the FEIS, the NRC staff's preferred alternative is the proposed action, with implementation of the mitigation measures that the Cooperating Agencies propose be required. The BIA lease will not be approved or disapproved unless the NRC issues a license to PFS, and commitments to the mitigation measures are made by PFS. BIA did not indicate a preferred alternative in the DEIS, however in the FEIS, BIA has chosen the proposed action, based on consideration of environmental impacts and mitigation measures identified in the FEIS. A BLM decision to grant a right-of-way to PFS would be dependent upon the decisions made by the NRC and BIA. If the NRC issues a license to PFS for the proposed facility and BIA approves the lease, then BLM's preferred alternative would be to amend the Pony Express Resource Management Plan and issue a right-of-way for the new rail siding and rail line. Absent such findings by the NRC and BIA, BLM would not grant either of PFS' rights-of-way requests. BLM would require resolution of a planning restriction imposed by Section 2815 of the National Defense Authorization Act for Fiscal Year 2000, and completion of the plan amendment process in accordance with 43 CFR part 1600, prior to issuance of the right-of-way grant. Based on the information and analysis to date, the STB environmental review staff has concluded that the proposed project, with the implementation of the mitigation measures that the Cooperating Agencies propose be required, would not result in significant adverse impacts to the environment and that construction and operation of the proposed rail line is the environmentally preferred alternative.

Dated at Rockville, Maryland, this 11th day of January 2002.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

Dated at Washington, D.C., this 8th day of January 2002.

For the Surface Transportation Board.

Victoria J. Rutson,

Chief, Section of Environmental Analysis.

Dated at Salt Lake City, Utah, this 9th day of January 2002.

For the Bureau of Land Management.

Glenn A. Carpenter,

Field Office Manager, Salt Lake Field Office.

Dated at Phoenix, Arizona, this 9th day of January 2002.

For the Bureau of Indian Affairs.

Barry W. Welch,

Acting Director, Western Regional Office.

[FR Doc. 02–1351 Filed 1–17–02; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of an Expiring Information Collection: SF 3102

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for an expiring collection. SF 3102, Designation of Beneficiary, is used by employees and annuitants covered under the Federal Employees Retirement System to designate a beneficiary to receive any lump sum due in the event of his/her death.

Approximately 1,136 SF 3102 forms are completed annually. Each form takes approximately 15 minutes to complete. The annual estimated burden is 284 hours.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or e-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before March 19, 2002.

ADDRESSES: Send or deliver comments to—John C. Crawford, Chief, FERS Division, Retirement and Insurance Service, U.S. Office of Personnel

Management, 1900 E Street, NW, Room 3313, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Team Leader, Forms Analysis & Design, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–1321 Filed 1–17–02; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of an Expiring Information Collection: SF 2809

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of an expiring information collection. SF 2809, Employee Health Benefits Election Form, is used by Federal employees, certain separated former Federal employees, and former dependents of Federal employees, to enroll for health insurance coverage under the Federal Employees Health Benefits (FEHB) Program. Certain former spouses who are eligible for enrollment under the Spouse Equity Act of 1984 (Pub. L. 98–615), and former employees and former dependents who are eligible for enrollment under the Temporary Continuation of Coverage (TCC) provisions of FEHB law (5 U.S.C. 8905a) also use this form.

Approximately 9,000 SF 2809 forms are completed annually. Each form takes approximately 30 minutes to complete. The annual estimated burden is 4,500 hours.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or e-mail to *mbtoomey@opm.gov*. Please be sure to include a mailing address with your request.

DATES: Comments on this proposal should be received on or before March 19, 2002.

ADDRESSES: Send or deliver comments to—Abby L. Block, Assistant Director, Office of Insurance Programs, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3400, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Team Leader, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–1323 Filed 1–17–02; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of an Expiring Information Collection: SF 2809–1

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for review of an expiring collection. SF 2809–1, Annuitant/OWCP Health Benefits Election Form, is used by annuitants of Federal retirement systems other than the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS), including the Foreign Service Retirement System and the Office of Workers' Compensation Programs (OWCP), and certain former dependents of these individuals. These former dependents include certain former spouses who are eligible for enrollment under the Spouse Equity Act of 1984 (Pub. L. 98–615), and certain former dependents who are eligible for enrollment under the Temporary Continuation of Coverage (TCC) provisions of FEHB law (5 U.S.C. 8905a).

Approximately 9,000 SF 2809–1 forms are completed annually. Each form takes approximately 30 minutes to complete. The annual estimated burden will be 4,500 hours.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or e-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before March 19, 2002.

ADDRESSES: Send or deliver comments to—Abby L. Block, Assistant Director, Office of Insurance Programs, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3400, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Team Leader, Forms Analysis & Design, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–1325 Filed 1–17–02; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 38–45

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised information collection. RI 38–45, We Need the Social Security Number of the

Person Named Below, is used by the Civil Service Retirement System and the Federal Employees Retirement System to identify the records of individuals with similar or the same names. It is also needed to report payments to the Internal Revenue Service.

Comments are particularly invited on:

—Whether this collection of information is necessary for the proper performance of functions of OPM, and whether it will have practical utility;

—Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

—Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

Approximately 3,000 RI 38–45 forms are completed annually. Each form requires approximately 5 minutes to complete. The annual estimated burden is 250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251or E-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before March 19, 2002.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349A, Washington, DC 20415–3540.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Team Leader, Forms Analysis and Design, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–1326 Filed 1–17–02; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for the Reinstatement of a Revised Information Collection: OPM Online Form 1417

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management is submitting to the Office of Management and Budget a request for reinstatement of a revised information collection. OPM Online Form 1417, CFC Online Results Report, is used to record Combined Federal Campaign pledges from local Principle Combined Fund Organizations (PCFOs).

We estimate 360 OPM Online Form 1417's will be completed annually. Each form takes approximately 30 minutes to complete. The annual estimated burden is 180 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on 202/606–8358, Fax 202/418–3251 or e-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before February 19, 2002.

ADDRESSES: Send or deliver comments to:

Elizabeth Barber, Office of CFC Operations, U.S. Office of Personnel Management, 1900 E Street, NW, Room 5450, Washington, DC 20415, (202) 606–2564

and

Joseph Lackey, OPM Desk Manager, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building NW, Rm. 10235, Washington, DC 20503.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–1322 Filed 1–17–02; 8:45 am]

BILLING CODE 6325–46–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Pam Shivery, Director, Washington Service Center, Employment Service (202) 606–1015.

SUPPLEMENTARY INFORMATION: Individual authorities established or revoked under Schedule C between November 1, 2001, and November 30, 2001, appear in the listing below. A consolidated listing of all authorities as of June 30 is published each year.

Schedule C

Commission on Civil Rights

Special Assistant to the Staff Director. Effective November 29, 2001.

Department of Agriculture

Confidential Assistant to the Chief Financial Officer. Effective November 13, 2001.

Confidential Assistant to the Administrator, Rural Business-Cooperative Service. Effective November 19, 2001.

Confidential Assistant to the Administrator, Rural Business-Cooperative Service. Effective November 20, 2001.

Special Assistant to the Under Secretary for Natural Resources and Environment. Effective November 27, 2001.

Department of Commerce

Legislative Affairs Specialist to the Director of Legislative Affairs. Effective November 1, 2001.

Senior Advisor to the Assistant Secretary for Economic Development. Effective November 1, 2001.

Special Assistant to the Director, Office of Policy and Strategic Planning. Effective November 1, 2001.

Confidential Assistant to the Assistant Secretary for Market Access and Compliance. Effective November 1, 2001.

Director of Congressional Affairs to the Under Secretary for International Trade. Effective November 6, 2001.

Chief Counsel to the Assistant Secretary for Economic Development. Effective November 15, 2001.

Public Affairs Specialist to the Assistant Secretary for Communications and Information. Effective November 15, 2001.

Public Affairs Specialist to the Assistant Secretary for Economic Development. Effective November 19, 2001.

Senior Advisor to the Assistant Secretary for Import Administration. Effective November 19, 2001.

Deputy Press Secretary to the Director, Office of Public Affairs. Effective November 19, 2001.

Senior Advisor to the Under Secretary for Technology, International Trade Administration. Effective November 26, 2001.

Public Affairs Specialist to the Press Secretary. Effective November 28, 2001.

Special Assistant to the Assistant Secretary for Market Access and

Compliance. Effective November 28, 2001.

Director, Intergovernmental Affairs to the Deputy Assistant Secretary for Program Research and Evaluation. Effective November 29, 2001.

Director, Office of White House Liaison to the Chief of Staff. Effective November 30, 2001.

Department of Defense

Special Assistant to the Deputy Under Secretary of Defense (Logistics and Material Readiness). Effective November 1, 2001.

Special Assistant to the Assistant Secretary of Defense (Legislative Affairs). Effective November 20, 2001.

Personal and Confidential Assistant to the Under Secretary of Defense (Acquisition, Technology and Logistics). Effective November 20, 2001.

Staff Specialist to the Deputy Under Secretary of Defense (Logistics and Material Readiness). Effective November 26, 2001.

Department of Education

Special Assistant to the Deputy Assistant Secretary for Regional Services. Effective November 6, 2001.

Confidential Assistant to the Director, Scheduling and Briefing Staff. Effective November 6, 2001.

Confidential Assistant to the Senior Advisor to the Secretary of Education. Effective November 6, 2001.

Special Assistant to the Chief of Staff. Effective November 6, 2001.

Confidential Assistant to the Chief of Staff, Office of the Deputy Secretary. Effective November 7, 2001.

Confidential Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective November 7, 2001.

Special Assistant to the Deputy Assistant Secretary for Regional Services. Effective November 13, 2001.

Deputy Director to the Director, Office of Bilingual Education and Minority Language Affairs. Effective November 21, 2001.

Press Secretary to the Director, Office of Public Affairs. Effective November 21, 2001.

Confidential Assistant to the Director, Scheduling and Briefing Staff. Effective November 21, 2001.

Special Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective November 21, 2001.

Special Assistant to the Director, Scheduling and Briefing Staff. Effective November 21, 2001.

Special Assistant to the Director, Office of Public Affairs. Effective November 21, 2001.

Confidential Assistant to the Director, Scheduling and Briefing Staff. Effective November 21, 2001.

Deputy Director to the Chief of Staff. Effective November 29, 2001.

Department of Energy

Special Assistant to the Principal Deputy Assistant Secretary, Office of Congressional and Intergovernmental Affairs. Effective November 5, 2001.

Legislative Counsel to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective November 19, 2001.

Senior Advisor, Legislative Affairs to the Assistant Secretary for Energy Efficiency and Renewable Energy. Effective November 20, 2001.

Deputy Director of Scheduling to the Director of Scheduling and Advance. Effective November 20, 2001.

Trip Coordinator to the Director, Office of Scheduling and Advance. Effective November 20, 2001.

Staff Assistant to the Director, Office of Scheduling and Advance. Effective November 20, 2001.

Director, Press Office to the Director, Office of Public Affairs. Effective November 20, 2001.

Staff Assistant to the Assistant Secretary for International Affairs. Effective November 28, 2001.

Department of Health and Human Services

Special Assistant to the Administrator, Human Resources and Services Administration. Effective November 1, 2001.

Congressional Liaision Specialist to the Deputy Assistant Secretary for Legislation, Office of Congressional Liaison. Effective November 1, 2001.

Executive Director, President's Advisory Commission and White House Initiative on Asian Americans and Pacific Islanders to the Assistant Secretary for Health. Effective November 6, 2001.

Confidential Assistant to the Chief Operating Officer and Deputy Administrator. Effective November 7, 2001.

Special Assistant to the Administrator, Centers for Medicare and Medicaid Services. Effective November 15, 2001.

Special Assistant to the Deputy Assistant Secretary for Legislation. Effective November 27, 2001.

Special Assistant to the Assistant Secretary for Aging. Effective November 27, 2001.

Special Assistant for International and Immigration Issues to the Assistant Secretary, Administration for Children and Families. Effective November 27, 2001.

Secretary's Regional Representative-Seattle, Washington, to the Director, Office of the Intergovernmental Affairs. Effective November 27, 2001.

Department of Housing and Urban Development

Staff Assistant to the Assistant Secretary for Housing. Effective November 15, 2001.

Deputy Assistant Secretary for International Affairs to the Assistant Secretary for Policy Development and Research. Effective November 15, 2001.

Staff Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs. Effective November 16, 2001.

Special Assistant to the Assistant Secretary for Community Planning and Development. Effective November 16, 2001.

Staff Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs. Effective November 16, 2001.

Special Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs. Effective November 16, 2001.

Special Assistant to the Assistant Secretary for Fair Housing and Equal Opportunity. Effective November 19, 2001.

Department of the Interior

Associate Director—House to the Director, Office of Congressional and Legislative Affairs. Effective November 5, 2001.

Assistant Director, Legislative and Congressional Affairs to the Director, National Park Service. Effective November 29, 2001.

Department of Justice

Confidential Assistant to the Director, Office of Intergovernmental Affairs. Effective November 6, 2001.

Special Assistant to the Assistant Attorney General, Office of Justice Programs. Effective November 6, 2001.

Counsel to the Assistant Attorney General, Criminal Division. Effective November 8, 2001.

Counsel to the Assistant Attorney General, Civil Rights Division. Effective November 15, 2001.

Counsel to the Assistant Attorney General, Antitrust Division. Effective November 15, 2001.

Counsel to the Assistant Attorney General, Environmental and Natural Resources Division. Effective November 20, 2001.

Counsel to the Assistant Attorney General, Civil Rights Division. Effective November 20, 2001.

Special Assistant to the Director, Community Oriented Policing Services. Effective November 21, 2001.

Special Assistant to the Assistant Attorney General, Office of Legislative Affairs. Effective November 27, 2001.

Confidential Assistant to the Assistant Attorney General, Antitrust Division. Effective November 28, 2001.

Department of Labor

Senior Legislative Officers to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective November 1, 2001.

Special Assistant to the Assistant Secretary for Occupational Safety and Health. Effective November 1, 2001.

Special Assistant to the Chief of Staff. Effective November 7, 2001.

Special Assistant to the Assistant Secretary for Mine Safety and Health. Effective November 7, 2001.

Chief Economist to the Assistant Secretary for Policy. Effective November 8, 2001.

Staff Assistant to the Director, Office of Faith Based Initiatives. Effective November 27, 2001.

Department of State

Attorney-Advisor to the Legal Advisor. Effective November 1, 2001.

Special Assistant to the Under Secretary for Economic, Business and Agricultural Affairs. Effective November 5, 2001.

Department of Transportation

Associate Director to the Assistant Secretary for Governmental Affairs. Effective November 6, 2001.

Special Assistant to the Assistant to the Secretary and Director of Public Affairs. Effective November 19, 2001.

Special Assistant to the Assistant Secretary for Governmental Affairs. Effective November 27, 2001.

Special Assistant to the Assistant Secretary for Policy. Effective November 27, 2001.

Department of the Treasury

Senior Advisor to the Assistant Secretary (Financial Markets). Effective November 8, 2001.

Special Assistant for Advance to the Director of Scheduling. Effective November 21, 2001.

Department of Veterans Affairs

Special Assistant (Assistant White House Liaison) to the Deputy Assistant Secretary for Public Affairs. Effective November 5, 2001.

Special Assistant to the Assistant Secretary for Congressional and Legislative Affairs. Effective November 20, 2001.

Export-Import Bank of the United States

Administrative Specialist to the Executive Assistant to the President and Chairman. Effective November 15, 2001.

Federal Mine Safety and Health Review Commission

Confidential Assistant to the Chairman. Effective November 1, 2001.

General Services Administration

Special Assistant to the Chief of Staff, Public Building Service. Effective November 29, 2001.

National Aeronautics and Space Administration

Staff Support Specialist to the Associate Administrator for Public Affairs. Effective November 7, 2001.

National Transportation Safety Board

Special Counsel to the Chairman. Effective November 8, 2001.

Office of Management and Budget

Legislative Assistant to the Associate Director for Legislative Affairs. Effective November 1, 2001.

Public Affairs Officer to the Associate Director for Communications. Effective November 26, 2001.

Staff Assistant to the Deputy Director. Effective November 28, 2001.

President's Commission on White House Fellowships

Special Assistant to the Executive Director. Effective November 19, 2001.

Associate Director to the Executive Director. Effective November 20, 2001.

Securities and Exchange Commission

Director, Public Affairs to the Chairman, Securities and Exchange Commission. Effective November 13, 2001.

Confidential Assistant to the Chairman. Effective November 13, 2001.

Small Business Administration

Regional Administrator, Region VIII, Denver Colorado to the Associate Administrator for Field Operations. Effective November 5, 2001.

Regional Administrator, Region II, New York, NY to the Associate Administrator for Field Operations. Effective November 5, 2001.

Regional Administrator to the Associate Administrator for Field Operations. Effective November 5, 2001.

Regional Administrator to the Associate Administrator for Field Operations. Effective November 5, 2001.

Special Assistant to the Associate Administrator for Communications and Public Liaision. Effective November 6, 2001.

Special Assistant (Scheduling) to the Administrator. Effective November 15, 2001.

Director of International Trade to the Associate Deputy Administrator for Capital Access. Effective November 15, 2001.

Special Assistant to the Associate Administrator for Women's Business Ownership. Effective November 15, 2001.

Senior Advisor to the Associate Deputy Administrator for Government Contracting and Business Development. Effective November 15, 2001.

United States Trade and Development Agency

Special Projects Officer to the Director, Trade and Development Agency. Effective November 30, 2001.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954—1958 Comp., P.218

Office of Personnel Management,

Kay Coles James,

Director.

[FR Doc. 02–1324 Filed 1–17–02; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25362; 812–12716]

CityFed Financial Corp.; Notice of Application

January 14, 2002.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of an application for an order under sections 6(c) and 6(e) of the Investment Company Act of 1940 (''Act'') for exemption from all provisions of the Act, except sections 9, 17(a) (modified as discussed in the application), 17(d) (modified as discussed in the application), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act and the rules thereunder.

Summary of Application: The requested order would exempt the applicant, CityFed Financial Corp. (''CityFed''), from certain provisions of the Act until the earlier of one year from the date the requested order is issued or such time as CityFed would no longer be required to register as an investment company under the Act. The order would extend an exemption granted until February 6, 2002.[1]

Filing Dates: The application was filed on December 7, 2001, and amended on January 14, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing.

[1] CityFed Financial Corp., Investment Company Act Release Nos. 24825 (Jan. 11, 2001) (notice) and 24851 (Feb. 6, 2001) (order).

Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 pm on February 5, 2002, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. CityFed, 4 Young's Way, P.O. Box 3126, Nantucket, MA 02584.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0634, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. no. 202–942–8090).

Applicant's Representations

1. CityFed was a savings and loan holding company that conducted its savings and loan operations through its wholly-owned subsidiary, City Federal Savings Bank (''City Federal''). During the five-year period ending December 31, 1988, City Federal was the source of substantially all of CityFed's revenues and income. As a result of substantial losses in its mortgage banking and real estate operations, City Federal was unable to meet its regulatory capital requirements. Accordingly, on December 7, 1989, the Office of Thrift Supervision (''OTS'') placed City Federal into receivership and appointed the Resolution Trust Corporation (''RTC'') as City Federal's receiver. City Federal's deposits and substantially all of its assets and liabilities were acquired by a newly created federal mutual savings bank, City Savings, F.S.B. (''City Savings''). The OTS appointed the RTC as receiver of City Savings.

2. Once City Federal was placed into receivership, CityFed no longer conducted savings and loan operations through any subsidiary. Thus, since December 8, 1989, almost all of CityFed's assets consisted of cash that has been invested in (a) money market instruments with a maturity of one year or less; and (b) Money market mutual funds.

3. On June 2, 1994, the OTS issued a Notice of Charges (''OTS Action'') against CityFed and certain current or former directors and, in some cases, officers of CityFed and City Federal (''Individual Respondents''). The OTS Action sought restitution from and a civil money penalty against both CityFed and the Individual Respondents. Also on June 2, 1994, the OTS issued a Temporary Order to Cease and Desist (''Temporary Order'') against CityFed. The Temporary Order sought to freeze CityFed's assets by placing them in various respects under the control of the OTS. On October 26, 1994, CityFed and the OTS entered into an escrow agreement with CoreStates Bank, N.A. (now First Union National Bank (''First Union'')) (''Escrow Agreement'') pursuant to which CityFed transferred substantially all of its assets to First Union for deposit into an escrow account. The Escrow Agreement provided CityFed with $15,000 per month for operating expenses and allowed CityFed to sell and purchase securities in the escrow account.

4. On May 19, 2000, CityFed finalized with the OTS and the Federal Deposit Insurance Corporation (''FDIC''), the statutory successor to the RTC, a settlement of the OTS Action (''Settlement''). Pursuant to the Settlement, the OTS dismissed with prejudice the OTS Action and the FDIC gave full and complete releases to CityFed and the Individual Respondents. In turn, CityFed and the Individual Respondents gave full and complete releases to the OTS and the FDIC. The OTS also dissolved the Temporary Order and authorized First Union to release to CityFed all of its assets remaining in the escrow account. Although the Escrow Agreement was terminated, CityFed's assets continue to be invested in money market instruments and money market mutual funds.

5. On December 7, 1992, the RTC filed suit against CityFed and two former officers of City Federal seeking damages of $12 million dollars for failure to maintain the net worth of City Federal (''First RTC Action''). In light of the filing of the OTS Action on June 2, 1994, the RTC and CityFed agreed to dismiss without prejudice the RTC's claim against CityFed in the First RTC Action. Pursuant to the Settlement, the FDIC released CityFed from all claims in the First RTC Action.

6. The RTC also filed suit against several former directors and officers of City Federal alleging gross negligence and breach of fiduciary duty with respect to certain loans (''Second RTC Action''). The RTC sought in excess of $200 million in damages. CityFed states that all of the defendants in the Second RTC Action have settled with the RTC or the FDIC. Pursuant to the Settlement, the FDIC assigned any rights it acquired in these settlements to CityFed. Under its bylaws, CityFed may be obligated to indemnify these former officers and directors and pay their legal expenses, including settlement amounts. On the advice of counsel to a special committee of CityFed's board of directors, comprised of directors who were not named in the First or Second RTC Action, CityFed has paid a portion of the defendants' reasonable defense costs on behalf of former directors and officers in connection with the Actions. CityFed does not know whether the amounts claimed to date might change and thus is unable to determine with any accuracy the extent of its liability with respect to these indemnification claims. CityFed is in the process of making offers of settlement with respect to the claims of certain of its current and former officers and directors and employees who have previously requested indemnification from CityFed.

7. On August 7, 1995, CityFed, acting in its own right and as shareholder of City Federal, filed a civil action in the United States Court of Federal Claims seeking damages for loss of ''supervisory goodwill'' on its books as a result of various acquisitions by City Federal of troubled depository institutions. Pursuant to the Settlement, CityFed assigned to the FDIC all of CityFed's interest in its supervisory goodwill action, ceased to be a party to the case, and has no right to share in the recovery in that case, should there be one.

8. CityFed is subject to a number of loss contingencies for which it is currently unable to assess reasonably the probability or range of loss. CityFed intends to resolve all claims against it at the minimum cost possible. While CityFed's board of directors has considered from time to time whether to engage in an operating business, CityFed states that it cannot resume an operating business at the present time because the amount required to resolve its currently outstanding claims cannot be reasonably estimated and could exceed CityFed's assets. Following the Settlement, CityFed may reorganize, perhaps involving a bankruptcy proceeding. It is anticipated that CityFed's outstanding claims, including its indemnification claims, will be addressed prior to, or as part of, any reorganization.

9. CityFed states that at present there is no public market for its stock and that it is traded sporadically in the over-the-counter market. Since City Federal's receivership, the operating expenses of CityFed have consisted of the employees' salaries, office expenses, and accounting and legal expenses. CityFed currently has one full-time employee and one office. As of September 30, 2001, CityFed held cash and securities of approximately $6.2 million.

Applicant's Legal Analysis

1. Section 3(a)(1)(A) defines an investment company as any issuer who ''is or holds itself out as being engaged primarily * * * in the business of investing, reinvesting or trading in securities.'' Section 3(a)(1)(C) further defines an investment company as an issuer who is engaged in the business of investing in securities that have a value in excess of 40% of the issuer's total assets (excluding government securities and cash).

2. Section 6(c) of the Act provides that the SEC may exempt any person from any provision of the Act ''if and to the extent that such exemption is necessary or appropriate in the public interest.'' Section 6(e) provides that in connection with any SEC order exempting an investment company from any provision of section 7, certain specified provisions of the Act shall be applicable to such company, and to other persons in their transactions and relations with such company, as though such company were registered under the Act, if the SEC deems it necessary or appropriate in the public interest or for the protection of investors.

3. CityFed acknowledges that it may be deemed to fall within one of the Act's definitions of an investment company. Accordingly, CityFed requests an exemption under sections 6(c) and 6(e) from all provisions of the Act, subject to certain exceptions described below. CityFed requests an exemption until the earlier of one year from the date of the requested order or such time as it would no longer be required to register as an investment company under the Act.

4. In determining whether to grant an exemption for a transient investment company, the SEC considers such factors as whether the failure of the company to become primarily engaged in a non-investment business or excepted business or liquidate within one year was due to factors beyond its control; whether the company's officers and employees during that period tried, in good faith, to effect the company's investment of its assets in a non-investment business or excepted business or to cause the liquidation of the company; and whether the company invested in securities solely to preserve the value of its assets. CityFed believes that it meets these criteria.

5. CityFed believes that its failure to become primarily engaged in a non-investment business by February 6, 2002, is due to factors beyond its control. CityFed asserts that the amount required to resolve its currently outstanding claims cannot be reasonably estimated and could exceed its assets. If CityFed is unable to resolve these claims successfully, it states that it may seek protection from the bankruptcy courts or liquidate. CityFed also asserts that it probably will not be in a position to determine what course of action to pursue until most, if not all, of its contingent liabilities are resolved. Additionally, CityFed states that its circumstances are unlikely to change over the requested one-year period in light of the number of claims currently pending against it. Since the filing of its initial application for exemptive relief under sections 6(c) and 6(e) on October 19, 1990, CityFed has invested in money market instruments and money market mutual funds solely to preserve the value of its assets.

6. During the term of the proposed exemption, CityFed states that it will comply with sections 9, 17(a) and (d) (subject to the modifications described in condition 4, below), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act and the rules thereunder.

Applicant's Conditions

CityFed agrees that the requested order will be subject to the following conditions:

1. CityFed will not purchase or otherwise acquire any securities other than short-term U.S. government securities, certificates of deposit, commercial paper rated A–1/P–1, and shares of registered money market funds; except that CityFed may acquire equity securities of an issuer that is not an investment company as defined in section 3(a) of the 1940 Act or is relying on an exclusion from the definition of investment company under section 3(c) of the Act other than section 3(c)(1) or 3(c)(7), in connection with the acquisition of an operating business as evidenced by a resolution approved by CityFed's board of directors.

2. CityFed will not hold itself out as being engaged in the business of investing, reinvesting, owning, holding, or trading in securities.

3. CityFed's Form 10–KSB, Form 10–QSB and annual reports to shareholders will state that an exemptive order has been granted pursuant to sections 6(c) and 6(e) of the Act and that CityFed and other persons, in their transactions and relations with CityFed, are subject to sections 9, 17(a), 17(d), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act, and the rules thereunder, as if CityFed were a registered investment company, except as permitted by the order requested hereby.

4. Notwithstanding sections 17(a) and 17(d) of the Act, an affiliated person (as defined in section 2(a)(3) of the Act) of CityFed may engage in a transaction that otherwise would be prohibited by these sections with CityFed:

a. If such proposed transaction is first approved by a bankruptcy court on the basis that (i) the terms thereof, including the consideration to be paid or received, are reasonable and fair to CityFed; and (ii) The participation of CityFed in the proposed transaction will not be on a basis less advantageous to CityFed than that of other participants; and

b. In connection with each such transaction, CityFed shall inform the bankruptcy court of (i) the identity of all of its affiliated persons who are parties to, or have a direct or indirect financial interest in, the transaction; (ii) the nature of the affiliation; and (iii) the financial interests of such persons in the transaction.

For the Commission, by the Division of Investment Management, underdelegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1352 Filed 1–17–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of January 21, 2002:

A closed meeting will be held on Tuesday, January 22, 2002, at 9:30 a.m.

Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(A), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(i), 9(ii) and (10), permit

consideration of the scheduled matters at the closed meetings.

The subject matters of the closed meeting scheduled for Tuesday, January 22, 2002, will be:

—Institution and settlement of injunctive actions;
—Institution and settlement of administrative proceedings of an enforcement nature; and
—Formal orders of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: January 15, 2002.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–1456 Filed 1–16–02; 11:06 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45269; File No. SR–CBOE–2001–72]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Amending Its Fee Schedule With Respect to Certain Communications Fees

January 11, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4[2] thereunder, notice is hereby given that on December 26, 2001, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. 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 CBOE proposes to make certain changes to its fee schedule. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange represents that the purpose of this proposed rule change is to implement certain fee changes. The Exchange is proposing to increase certain monthly communications fees to recover the incremental cost of replacing the Exchange's current analog trading floor telephone system with a new digital telephone system. These fee increases were approved by the Exchange's Board of Directors pursuant to CBOE Rule 2.22 and will take effect on January 1, 2002.

The Exchange is amending the following fees: (1) The ''Exchangefone Maintenance'' monthly fee will be increased from $47.25 to $70.88; (2) the ''Lines Voice Circuits'' monthly fee will be increased from $13.12 to $19.68; (3) the ''Data Circuits at Ameritech Frame (Entrance)'' monthly fee will be increased from $13.12 to $19.68; (4) the ''Data Circuits at In-house Frame: Lines Between Ameritech and Communications Center'' monthly fee will be increased from $10.50 to $15.75; (5) the ''Data Circuits at In-house Frame: Lines Direct from Ameritech to the Trading Floor'' monthly fee will be increased from $10.50 to $15.75; (6) the ''Data Circuits at In-house Frame: Lines Between the Communications Center and the Trading Floor'' monthly fee will be increased from $10.50 to $15.75; and (7) the ''Wireless Phone Rentals'' monthly fee will be increased from $100.00 to $150.00.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[3] in general, and Section 6(b)(4) of the Act,[4] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received any written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and subparagraph (f)(2) of Rule 19b–4[6] thereunder, because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[7]

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. Copies of such filing will also be available for inspection and copying at

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] *See* 15 U.S.C. 78(b)(3)(C).

the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2001–72 and should be submitted by February 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1427 Filed 1–17–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45268; File No. SR–CHX–2001–24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Pricing of Preopening Orders for Nasdaq/NM Securities

January 11, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 14, 2001, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CHX. 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 Exchange proposes to amend Article XX, rule 37(a)(4) of the CHX Rules, which governs, among other things, pricing of preopening orders for Nasdaq/NM securities. The text of the proposed rule change is as follows. New text is italicized. Deleted text is bracketed.

RULE 37.

(a) No change to text.

1–3. No change to text.

4. Preopenings. Preopening orders in Dual Trading System issues must be accepted and filled at the primary market opening trade price. In trading halt situations occurring in the primary market, orders will be executed based upon the reopening price. Preopening orders in NASDAQ/NM securities must be accepted and filled [on a single price opening at or better than the NBBO] at or better than the first unlocked, uncrossed *bid (for a sell order or offer (for a buy order) in the Nasdaq* market. In trading halt situations, orders will be executed at or better than *the first unlocked uncrossed bid or offer in the Nasdaq market after reopening.* For purposes of this rule, (a) pre-opening orders in Dual Trading System Issues are orders that are received before a primary market opens a subject security based on a print or based on a quote and (b) preopening orders in NASDAQ/NM securities are orders received at or prior to 8:25 a.m. (Central Time) on the date of the opening.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Article XX, rule 37(a)(4) of the CHX Rules, which governs, among other things, pricing of preopening orders for Nasdaq/NM securities. The proposed rule change would eliminate reference to a single price opening for such preopening orders. The amended rule would provide that opening prices would instead be determined based on the first unlocked, uncrossed bid and offer in the Nasdaq market. This standard would apply to both preopening orders and to orders executed at the opening following a trading halt.

The rule change is being proposed in response to changing practices in the Nasdaq market relating to calculation of opening prices. The vast majority of the Exchange's competitors in the Nasdaq market now calculate opening prices in a manner consistent with the proposed rule change. The Exchange believes that this rule change is not only in line with market custom and practice, but is also responsive to customer preferences. Moreover, this rule change could incentivize specialists to provide greater price improvement intraday, thereby improving execution quality statistics, to the ultimate benefit of investors in Nasdaq/NM securities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[3] in general, and furthers the objectives of Section 6(b)(5)[4] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange represents that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–2001–24 and should be submitted by February 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1355 Filed 1–17–02; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45271; File No. SR–CHX–2001–17]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by The Chicago Stock Exchange, Incorporated Relating to Eligibility of Limit Orders for Trade Through Protection

January 11, 2002.

On August 6, 2001, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change that would amend CHX Article XX, Rule 37(b)(6) to require that a limit order be resident in the specialist's book for a time period of 0–15 seconds (as designated by the specialist) before it would be eligible for trade through protection.

The proposed rule change was published for comment in the **Federal Register** on December 5, 2001.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act[6] in that it designed to promote just and equitable principles of trade, to remove impediments to, and to perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–CHX–2001–17) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1357 Filed 1–17–02; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45115 (November 28, 2001), 66 FR 63269 (December 5, 2001).

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78s(b)(2).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45270; File No. SR–NASD–99–12]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change Establishing a Pilot Program To Establish Fees for a Volume and Issue Data Package Known as Post Data

January 11, 2002.

I. Introduction

On February 18, 1999, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASD Rule 7010, System Services, to establish a fee for a Volume and Issue Data Package (''Post Data'') provided through the *Nasdaq Trader.com* Web site. The proposal would establish one fee to be paid by subscribers, and another fee to be paid by market data vendors.

Post Data would provide three separate reports in a single package, consisting of (1) Daily share volume reports for each Nasdaq security; (2) daily issue data containing a summary of the previous day's activity for each Nasdaq issue; and (3) monthly summaries of trading volume statistics for the top 50 market participants broken down by industry sector, security, and type of trading (such as block or total). The proposed rule change will be implemented for a one-year pilot period.

On March 24, 1999, Nasdaq amended the proposal, which amendment replaced and superseded the original proposal.[3] Notice of the proposed rule change, as modified by Amendment No. 1, appeared in the **Federal Register** on April 9, 1999.[4] The Commission received three comment letters on the proposed rule change.[5]

Nasdaq also amended the proposal on May 30, 2001,[6] and again on July 10, 2001.[7] Because Amendment Nos. 2 and

[3] Nasdaq's initial proposal was to provide T+1 daily share volume reports in each Nasdaq security to market data vendors, NASD members, and non-NASD member Qualified Institutional Buyers (''QIBs'') as defined in Rule 144A under the Securities Act of 1933. 17 CFR 230.144A. In Amendment No. 1, Nasdaq revised the proposal to include daily issue summaries of the previous day's activity for every Nasdaq issue, and monthly summaries of trading volume statistics for the top 50 market participants broken down by industry sector, security, and type of trade.

[4] Securities Exchange Act Release No. 41244 (April 1, 1999), 64 FR 17429.

[5] *See* April 30, 1999 letter from Matthew W. Johnson, Managing Director, Lehman Brothers Inc., to Margaret H. McFarland, Deputy Secretary, SEC (''Lehman Letter''); April 12, 1999 letter from Stephen K. Lynner, President, AutEx Group (''AutEX''), to Jonathan G. Katz, Secretary, SEC; and June 23, 1999 letter from Stephen K. Lynner, President, AutEx, to Katherine England, Assistant Director, Division of Market Regulation (''Division''), SEC.

[6] *See* May 29, 2001 letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq. to Katherine A. England, Assistant Director, Division, SEC, and attachments (''Amendment No. 2''). Amendment No. 2 completely replaced and superseded Amendment No. 1, and proposed new fees for Post Data, as well as minor adjustments to the original proposal.

[7] *See* July 9, 2001 letter form Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Belinda Blaine, Associate Director, Division, SEC (''Amendment No. 3''). In Amendment No. 3, Nasdaq clarified that: (1) Amendment No. 2, as further amended by Amendment No. 3, replaces and supersedes the original proposal and Amendment No. 1; (2) the proposal is filed by the NASD, acting through its subsidiary, Nasdaq; (3) the footnote that defines a ''qualified institutional buyer'' should be included in the proposed rule language of NASD Rule 7010(p); and (4) modifications to Post Data during the pilot period will be limited to minor enhancements to the content of the package and will be made in accordance with Section 19(b) of the Act and Rule 19b–4 thereunder. 15 U.S.C. 78s(b)

3 proposed different fees than those proposed in the original filing and Amendment No. 1, notice of the proposed rule change, as amended since it original publication, appeared in the **Federal Register** on July 20, 2001.[8] As amended, the proposal would establish a fee of $70 per month for subscribers for each entitled user receiving the Nasdaq Volume and Issue Data Package, and $35 per month for each end user receiving the information through market data vendors. The Commission received six comment letters on the proposal,[9] one of which was retracted. This order approves the proposed rule change, as amended.

II. Summary of Comments

Four commenters asked the Commission to approve the proposal.[10] These commenters generally expressed support for the proposal because they believe Post Data will be a valuable tool that will allow them to trade more effectively.[11] By providing immediate and reliable trading data, these commenters believe Post Data will allow them to make better-informed decisions.[12] Two commenters also suggested that the proposal might reduce costs.[13] Three of commenters that supported the proposal emphasized the value in having verified information available to market participants.[14]

One commenter asked the Commission not to approve the proposal in its current form. This commenter believes the Commission should establish safeguards to ensure that preexisting commercial trade reporting services are not driven out of the market due to ''a business advantage conferred on Nasdaq by virtue of its status as a regulator.''[15] The commenter suggests that Nasdaq's pricing strategy for Post Data should be scrutinized to ensure that Nasdaq does not subsidize Post Data with revenue Nasdaq derives from performing regulatory functions such as trade reporting fees.[16]

The commenter also asserts that because Nasdaq pays nothing to collect the data used in Post Data, and in fact is paid to collect this data by virtue of the NASDA's status as a self-regulatory organization, Nasdaq should only be able to recover from vendors the costs incurred from passing the data on the vendors.[17]

The commenter further argues that, while proposal states that Nasdaq will make future enhancements to Post Data available to data vendors for redistribution, the proposal is ambiguous as to whether Nasdaq will charge vendors for the enhancements. The commenter believes that charging only the customers who received the enhancements through a private vendor would impose an impermissible burden on competition.[18]

The commenter also requests that Nasdaq affirmatively state that Nasdaq will not impose restrictions on a private vendor's right to redistribute trade data to the vendor's customers, whomever those customers might be.[19] This issue arises from Nasdaq's proposal to make Post Data available to NASD members, QIBs, and the retail customers of participating market data vendors, without defining ''retail customers.'' Nasdaq discusses elsewhere in the proposal the need to restrict access to this data to entities that are likely to have proper staff and resources to comply with security mandates and are unlikely to use the data improperly. Because these two statements in conjunction with each other create an ambiguity for the commenters, the commenter asks the Commission to require Nasdaq to disclose whether or not Nasdaq will impose limitations on vendor redistribution of Post Data's content, and if so, to describe the limitations.

Nasdaq's Response to the Comments.

Nasdaq filed its response to comments with the Commission on September 27, 2001.[20] In Nasdaq's Response letter, Nasdaq asserts that Post Data does not impose an unfair burden on competition. Nasdaq maintains that no regulatory fees will be used to subsidize Post Data. As Nasdaq stated in the proposal, the projected costs of development, enhancement, maintenance, operation, and marketing of Post Data, as well as overhead costs allocable to Post Data, should be covered by the fees assessed to market data vendors. The fees Nasdaq will assess to retail customers should cover costs associated with maintenance and administration of the Nasdaq web security infrastructure used to grant and validate access to Post Data.[21] Because vendors with established data networks will be able to obtain the data directly from Nasdaq, vendors will not incur the cost associated with the Web site. Nasdaq believes vendors therefore will be able to use the price differential to provide a superior product or complete with the price of Nasdaq's product.[22]

While one commenter[23] cited *NASD* v. *SEC*[24] in support of its position that Nasdaq is precluded from charging the fees it has proposed for Post Data, Nasdaq distinguishes the facts and circumstances of the present proposal from that in *NASD* v. *SEC.* Nasdaq notes that its proposal would establish two separate fees (one for market data vendors, and one for Nasdaq's direct subscribers), and the fees are designed to be allocated equitably among product users without subsidy from other Nasdaq revenue streams.[25] Unlike the direct subscribers in *NASD* v. *SEC,* Nasdaq asserts taht market data vendors will pay only for the costs of Post Data attributable to wholesale purchasers. Nasdaq will not require market data vendors to pay for web security costs associated with providing Post Data to Nasdaq's direct subscribers.[26]

Product Enhancements. In Nasdaq's Response letter, Nasdaq clarifies that it will make product enhancements

and 17 CFR 240.19b–4. Amendment No. 3 also provided further explanation of the basis for the proposed fees.

[8] Securities Exchange Act Release No. 44558 (July 16, 2001), 66 FR 38049.

[9] *See* July 31, 2001 letter from Dennis A. Green, Senior Vice President, Nasdaq Trading, Legg Mason, Inc. (via e-mail) (''Legg Mason letter''); August 2, 2001 letter from Matt Johnson, Head of U.S. Cash Trading, Lehman Brothers (via e-mail) (''Lehman Brothers letter''); August 9, 2001 letter from Stephen K. Lynner, President, Thomson Financial Sales and Trading Group to Jonathan G. Katz, Secretary, SEC (''Thomson Financial letter''); August 9, 2001 letter from Lene Jensen, Regional Manager, Global Data Acquisition, Thomson Financial (via e-mail); August 16, 2001 letter from Lene Jensen, Regional Manager, Global Data Acquisition, Thomson Financial (via e-mail, retracting comments filed in August 9, 2001 letter); August 16, 2001 letter from Mary McDermott-Holland, Chairman, Nasdaq Institutional Traders Council, Franklin Portfolio Associates to Jonathan G. Katz, Secretary, SEC (''NITC letter''); and August 15, 2001 letter from James P. Ryan, Vice President and Senior Counsel, Fund Business Management Group, Capital Research and Management Company, to Jonathan G. Katz, Secretary, SEC (''Capital Research letter'').

[10] Legg Mason letter; Lehman Brothers letter; Capital Research letter; and NITC letter.

[11] Capital Research letter.

[12] NITC letter; and Capital Research letter.

[13] NITC letter; and Legg Mason letter.

[14] NITC letter as 1 (''Post Data represents a tremendous step forward in providing accurate and vital trading information to market participants.''); Capital Research letter (''By providing verified trading information to market participants, Post Data will allow us to make more informed broker selection decisions.''); and Lehman Brothers letter (''The fact that this trade data will be confirmed by ACT reporting will allow customers to have an accurate portrayal of their volume data.'').

[15] Thomson Financial letter at 4.

[16] *Id.*

[17] Thomson Financial letter at 5, citing *NASD* v. *SEC,* 801 F.2d 1415 (D.C. Cir. 1986).

[18] *Id.* at 6.

[19] *Id.* at 7–8

[20] *See* undated letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Belinda Blaine, Associate Director, Division, SEC (''Nasdaq Response letter'').

[21] Nasdaq Response letter at 2.

[22] Nasdaq Response letter at 3.

[23] *See* Thomson Financial letter at 5.

[24] 801 F.2d 1415 (D.C. Cir. 1986).

[25] Nasdaq Response letter at 3.

[26] *Id.*

available to all Post Data users, whether the users are Nasdaq customers or customers of a participating market data vendor. If Nasdaq offers a free product enhancement during the pilot program, Nasdaq will make the enhancement available to all direct and indirect users at no cost, and provide notice to vendors to allow vendors an opportunity to implement programming changes if necessary.[27]

Retail Customers. Nasdaq states unequivocally that it will not limit the ability of private data vendors to redistribute the product to their respective customers. To that end, Nasdaq clarifies that it defines a ''retail'' user as a direct or indirect user—in other words, any user who receives the data, be it from a market data vendor or from Nasdaq.[28]

III. Discussion

After careful review, the Commission finds the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.[29] In particular, the Commission finds that the proposed rule change is consistent with Sections 15A(b)(5) and (6) of the Act.[30]

Section 15A(b)(5)[31] requires the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that a national securities association operates or controls. Section 15A(b)(6)[32] requires that the rules of a national securities association be designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Commission finds that the proposal is consistent with both of these Sections of the Act. Specifically, the Commission has reviewed the comment letters and Nasdaq's response to the comment letters. Nasdaq has stated it will make the Post Data product available to retail subscribers for $70 per month, and to market data vendors for $35 per month for each end user receiving the information through the data vendor. The Commission finds that the fees that Nasdaq proposes to charge for both the retail and the wholesale distribution of Post Data are equitably allocated among members and nonmembers. The differential between the retail and wholesale fees potentially will allow market data vendors the opportunity to sell the data on a retail basis at prices higher than $35 but lower than $70, and remain competitive with Nasdaq's retail price of $70. In addition, Nasdaq has clarified that the wholesale fee does not include the costs associated with the maintenance and security of the retail web-based product.

Furthermore, the Commission believes the information contained in Post Data may help to foster cooperation and coordination with persons engaged in facilitating transactions in securities, by providing consistent, reliable, and verified market data to market participants who choose to subscribe to the service or purchase the information from market data vendors. The Commission believes that investors will benefit by the timely dissemination of this reliable market data.[33] The Commission further finds that the proposal places no undue burden on competition, and in fact, may foster competition, as market data vendors obtain verified data from Post Data, provide enhancements to the data, and in turn, sell the enhanced data to retail customers.[34] Finally, the Commission is satisfied that Nasdaq has fully and properly addressed the questions raised by the commenter regarding product enhancements and the ability of vendors to redistribute the data to their respective customers.

The Commission notes that Post Data will be provided on a one-year pilot basis. The Commission expects that Nasdaq will evaluate the fees it has established for Post Data, and provide the Commission with a report of its findings before the expiration of, or extension of, the one-year pilot program.

While minor modifications to Post Data are anticipated, should Nasdaq wish to modify the contents of Post Data in any substantive way, Nasdaq must do so pursuant to Section 19(b)[35] and Rule 19b–4[36] thereunder.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[37] that the proposed rule change (SR–NASD–99–12), as amended, be and hereby is approved on a pilot basis through January 10, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[38]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1299 Filed 1–17–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45266; File No. SR–NASD–2001–88]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Relating to Computer to Computer Interface Fees

January 10, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 7, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On January 10, 2001, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change increase the fee assessed on NASD non-members that continue to use the x.25 Computer-

[27] Nasdaq Response letter at 4.

[28] *Id.*

[29] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[30] 15 U.S.C. 78o–3(b)(5) and (6).

[31] 15 U.S.C. 780–3(b)(5).

[32] 15 U.S.C. 78o–3(b)(6).

[33] In this regard, the Commission notes Nasdaq's representation that Nasdaq generally will provide the Post Data information to vendors approximately five minutes before it posts the information on the Web site for direct end-users. This time differential enables the vendor to capture and post the data on its own terminals before Nasdaq's release time.

[34] The Commission notes that this proposal relates to enhanced data that is not integral to the ability of a broker-dealer or customer to trade. *Cf. NASD* v. *SEC,* footnote 17, *supra.*

[35] 15 U.S.C. 78s.

[36] 17 CFR 240.19b–4.

[37] 15 U.S.C. 78s(b)(2).

[38] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 contains the rule text of the proposed rule filing, as well as represented that all non-members affected by the proposed rule change had been alerted about the filing and that no unlisted trading privilege exchange would be affected by the filing. *See* letter from John Yetter, Assistant General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated January 8, 2002 (''Amendment No. 1'').

to-Computer Interface (''CTCI'') to access Nasdaq services rather than transitioning to the Transmission Control Protocol/Internet Protocol (''TCP/IP'') CTCI.

The text of the proposed rule change is set forth below. New text is italicized. Deleted text is bracketed.

* * * * *

Rule 7010. System Services

(a)–(e) No change.

(f)(1)–(2) No change.

(3) The following charges shall apply for each CTCI subscriber:*

Options	Price
Option 1—Dual 56kb lines (one for redundancy) and single hub and router.	$1275/month.
Option 2—Dual 56kb lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy).	$1600/month.
Option 3—Dual T1 lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy), and dual routers (one for redundancy). Includes base bandwidth of 128kb.	$8000/month.
Disaster Recovery Option—Single 56kb line with single hub and router. (For remote disaster recovery sites only.).	$975/month.
Bandwidth Enhancement Fee (for T1 subscribers only)	$4000/month per 64kb increase above 128kb T1 base.
Installation Fee	$2000 per site for dual hubs and routers. $1000 per site for single hub and router.
Relocation Fee (for the movement of TCP/IP—Lines within a single location.	$1700 per relocation.

(g)–(q) No change.

* * * * *

In prior rule filings, Nasdaq established the fees to be charged for TCP/IP CTCI linkages, which are now reflected in NASD Rule 7010(f)(3).[4] In those filings, Nasdaq indicated that it would impose TCP/IP fees on a rolling basis on NASD non-members as they converted to TCP/IP CTCI linkages. Accordingly, Nasdaq has continued to charge the previous CTCI fee of $200 per month per CTCI circuit to NASD members that have continued to use x.25 CTCI circuits. In this filing, Nasdaq is increasing the monthly charge to $1,275 per circuit.[5] Nasdaq plans to assess the new fee during the months of February and March 2002 and to terminate remaining x.25 CTCI circuits at the end of March, although both the date for implementing the new fee and the date for terminating x.25 CTCI circuits are subject to adjustment.[6] Nasdaq has provided and will continued to provide notice to market participants of these dates through NasdaqTrader.com alerts, direct mail, and telephone calls to NASD members that have not yet converted to TCP/IP CTCI linkages, and will notify the Commission via letter if there is an change in these dates.[7]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed comments it received on the proposed rule change. The text of these statements may be examined in the places specified in Item IV below. Nasdaq has prepared summaries, set forth below in Sections A, B, and C, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq's CTCI network is a point-to-point dedicated circuit connection from the premises of brokerages and service providers of Nasdaq's Trumbull Connection processing facilities. Through CTCI, firms are able to enter trade reports to Nasdaq's Automated Confirmation Transaction Service (''ACT'') and orders to Nasdaq's Small Order Execution (''SOES'') and SuperSOES systems. CTCI also processes SelectNet transaction confirmation reports.

In response to numerous requests from market participants that Nasdaq upgrade the speed and reliability of its CTCI data transmission environment, Nasdaq began the process last year of ''sunsetting'' its CTCI x.25/bisynch network in favor of a new network that provides greater capacity and a more efficient transmission protocol. The CTCI x.25/bisynch network can only transmit data up to 19.2 kilobits per second (''kb''). The new CTCI network operates over the Enterprise Wide Network II (''EWN II'') and provides connectivity over more powerful 56kb and T1 data lines. In addition, the new CTCI network uses the industry-standard TCP/IP transmission protocol, a protocol that is robust, efficient, and well known among the technical community. In order to take advantage of the new CTCI network, users are required to upgrade their current x.25/19.2kb lines to either 56kb or T1 lines.

Although the conversion process has been underway since January of this year, as of late November, 295 x.25CTCI circuits held by 60 firms remained active. Nasdaq is urging non-members that still rely upon these outmoded connections to complete their

* As reflected in SR–NASD–00–80 and SR–NASD–00–81, x.25 CTCI circuits are being replaced with TCP/IP CTCI circuits. Pursuant to SR–NASD–2001–87 and SR–NASD–2001–88, the fee for x.25 CTCI circuits, which has remained $200 per month per circuit—is increased to $1,275 per month per circuit until the date of the termination of such circuits.

[4] *See* Securities Exchange Act Release No. 43821 (Jan. 8, 2001), 66 FR 3627 (Jan. 16, 2001); Securities Exchange Act Release No. 43815 (Jan. 8, 2001), 66 FR 3625 (Jan. 16, 2001); and Securities Exchange Act Release No. 44144 (Apr. 2, 2001), 66 FR 18332 (Apr. 6, 2001).

[5] The increase will not be imposed, however, on members that use x.25 CTCI circuits solely for the purpose of accessing the Fixed Income Pricing System, which is scheduled to be replaced by a new corporate bond trade reporting and transaction dissemination facility known as TRACE in 2002. *See* Securities Exchange Act Release No. 43873 (Jan. 23, 2001), 66 FR 8131 (Jan. 29, 2001).

[6] Nasdaq has indicated that those members utilizing the remaining x.25 CTCI circuits will be unable to link to the CTCI system at the end of March. Nasdaq does not foresee any circumstances that would cause it to adjust the date of termination of the x.25 CTCI circuits at this time. January 3, 2002 telephone conversation between John Yetter, Assistant General Counsel, Nasdaq, and John Riedel, Staff Attorney, Division, Commission.

[7] On December 12, 2001, Nasdaq issued a Head Trader alert that provided notice of the fee increase and posted the alert on the NasdaqTrader.com website. At that time, Nasdaq also began making direct contacts with customers that continue to use x.25 CTCI circuits to alert them of the change, and had contacted all non-members that might be affected by SR–NASD–2001–88 within several days. *See* Amendment No. 1, *supra* note 3.

conversions as soon as possible. Nasdaq believes that charging a higher price to non-members that have failed to convert will provide them with a financial incentive to complete their conversions in a timely fashion and thereby assist Nasdaq in achieving its goal of terminating this almost obsolete network. Moreover, as more and more users convert to TCP/IP, Nasdaq's per circuit cost of continuing to offer the x.25 CTCI connections increases. Since the x.25 CTCI network is provisioned to support over 600 circuits, Nasdaq believes that it is appropriate to pass through the expense of that network to those firms that have failed to transition. The fee increase, together with continued transition support from Nasdaq staff, will allow Nasdaq to ''sunset'' the x.25 CTCI network on March 31, 2002 (or sooner, if all x.25 CTCI subscribers have transitioned prior to that date).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the Act, including Section 15A(b)(5) of the Act,[8] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq has either solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to file number SR–NASD 2001–88 and should be submitted by February 4, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1301 Filed 1–17–02; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78o–3(b)(5).

[9] 17 CFR 200.30–(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45273; File No. SR–NASD–2001–92]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend the Expiration Date of Nasdaq's Transaction Credit Pilot Program

January 14, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 17, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 7010, System Services, to extend Nasdaq's transaction credit pilot program (''Program'') for an additional six months, through June 28, 2002, for Tape A and B reports. No other substantive changes are proposed to the Program at this time. The text of the proposed rule change is available at the Association and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to extend the Program[5] for an additional six months, through June 28, 2002, to provide a transaction credit to NASD members that exceed certain levels of trading activity in exchange-listed securities. Nasdaq's InterMarket is a quotation, communication, and execution system that allows NASD members to trade stocks listed on the New York Stock

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] The transaction credit can be applied to any and all charges imposed by NASD or its non-self-regulatory organization affiliates. Any remaining balance may be paid directly to the member.

Exchange (''NYSE'') and the American Stock Exchange (''Amex'').[6] The InterMarket competes with regional exchanges like the Chicago Stock Exchange (''CHX'') and the Cincinnati Stock Exchange (''CSE'') for retail order flow in stocks listed on the NYSE and the Amex. The Association collects trade reports from broker-dealers trading these securities in the over-the-counter (''OTC'') market and provides the trade reports to the Consolidated Tape Association (''CTA'') for inclusion in the Consolidated Tape. As a participant in the CTA Plan, the NASD is entitled to a portion of the revenue that the CTA generates by selling this market data information. NASD's share of the revenues is based on trades that it reports on behalf of these broker-dealers in NYSE-listed securities (''Tape A'') and in Amex-listed securities (''Tape B'').

The Program began in 1999.[7] Under the Program, the NASD shares a portion of these tape revenues by providing a transaction credit to NASD members who exceed certain levels of OTC trading activity in NYSE and Amex securities. The Program helps InterMarket market makers and investors lower costs associated with trading listed securities. The Program also is an important tool for Nasdaq to compete with other exchanges (particularly the CSE and the CHX) that offer similar programs[8] and thereby maintain market share in listed securities.

The Program works as follows. Nasdaq calculates two separate pools of revenue from which credits can be earned: One representing 40% of the gross revenues received by the NASD from the CTA for providing trade reports in NYSE-listed securities executed in the InterMarket for dissemination by CTA (Tape A), the other representing 40% of the gross revenue received from CTA for reporting Amex trades (Tape B).

Eligibility for transaction credits is based on concurrent quarterly trading activity. For example, an InterMarket participant that enters the market for Tape A or Tape B securities during a particular quarter and prints an average of 500 daily trades of Tape A securities during the time it is in the market, or that averages 500 Tape B prints during such quarter, would be eligible to receive transaction credits based on its trades during that quarter. Only those NASD members that continue to average an appropriate daily execution level are eligible for transaction credits and thus able to receive a pro-rata portion of the appropriate pool.[9] These thresholds permit the NASD to recover appropriate administrative costs related to NASD members that do not exceed the threshold and to provide an incentive to NASD members to actively trade in these securities.

The current Program expired December 31, 2001. Because the Program has helped Nasdaq maintain market share in listed securities, Nasdaq proposes to extend the current Program for an additional six months, through June 28, 2002.

2. Statutory Basis

Nasdaq believes the proposed rule change is consistent with Section 15A(b)(6) of the Act,[10] in that the proposal is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a national market system, and, in general to protect investors and the public interest. Nasdaq also believes that the proposed rule change is consistent with Section 15A(b)(5) of the Act[11] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[12] and subparagraph (f)(2) of Rule 19b–4 thereunder,[13] because it establishes or changes a due, fee, or other charge imposed by the Association. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit wrriten data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with espect to the proposed rule change that are filed with the Commission, and all written communications relatiang to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to file number SR–NASD–2001–92 and should be submitted by February 8, 2002.

[6] Nasdaq's InterMarket formerly was referred to as Nasdaq's Third Market. *See* Securities Exchange Act Release No. 42907 (June 7, 2000) 65 FR 37445 (June 14, 2000) (SR–NASD–00–32).

[7] *See* Securities Exchange Act Release No. 41174 (March 16, 1999), 64 FR 14034 (March 23, 1999) (SR–NASD–19–13). The SEC issued notice of subsequent extensions of the Program. *See* Securities Exchange Act Release Nos. 42095 (November 3, 1999), 64 FR 61680 (November 12, 1999) (SR–NASD–99–59); 42672 (April 12, 2000), 65 FR 21225 (April 20, 2000) (SR–NASD–00–10); 42907 (June 7, 2000), 65 FR 37455 (June 14, 2000) (SR–NASD–00–32); 43831 (January 10, 2001), 66 FR 4882 (January 18, 2001) (SR–NASD–00–72); 44098 (March 23, 2000), 66 FR 17462 (March 30, 2001) (SR–NASD–2001–15); 44734 (August 22, 2001), 66 FR 4537 (August 26, 2001) (SR–NASD–2001–42); and 44734A (August 30, 2001), 66 FR 46853 (September 7, 2001) (correction).

[8] *See* Securities Exchange Act Release Nos. 38237 (February 4, 1997), 62 FR 6592 (February 12, 1997) (SR–CHX–97–01) and 39395 (December 3, 1997), 62 FR 65113 (December 10, 1997) (SR–CSE–97–12).

[9] As explained in Nasdaq's original pilot filing, the qualification thresholds were selected based on Nasdaq's belief that such numbers represent clear examples of a member's commitment to operating in the InterMarket and completing for order flow. *See* Securities Exchange Act Release No. 41174 (March 16, 1999), 64 FR 14034 (March 23, 1999) (SR–NASD–99–13). Nasdaq continues to believe that such threshold numbers represent clear examples of a member's commitment to operating in the InterMarket.

[10] 15 U.S.C. 78o–3(b)(6).

[11] 15 U.S.C. 78o–3(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1356 Filed 1–17–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45275; File No. SR–NYSE–2002–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Extending the Pilot Regarding Shareholder Approval of Stock Option Plans Through March 11, 2002

January 14, 2002.

Pursuant to section 19 (b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 7, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On January 14, 2002, the NYSE filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend, until March 11, 2002, the effectiveness of the amendments to sections 312.01, 312.03 and 312.04 of the Exchange's Listed Company Manual with respect to the definition of a ''broadly-based'' stock option plan, which were approved by the Commission on a pilot basis (the ''Pilot'') on June 4, 1999.[4] The Pilot was subsequently amended and extended on March 30, 2001[5] and was again extended on September 28, 2001.[6]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of an basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 13, 2000, the Exchange filed a proposed rule change seeking to extend the effectiveness of the Pilot until September 30, 2003.[7] Following receipt of comments from interested parties and the SEC staff, on January 19, 2001, the Exchange amended the 2000 Extension Request to shorten the three-year extension request to one year and to amend the definition of ''broadly based'' under the Exchange's rule. While the 2000 Extension Request was under consideration, the Commission extended the Pilot to provide the Commission and the Exchange with additional time to review and evaluate comment letters.[8] On March 30, 2001, the Commission approved the 2000 Extension Request, which amended and extended the Pilot, on a pilot basis until September 30, 2001.[9] The Exchange's 2001 Extension Request became effective on September 28, 2001, on a pilot basis, and extended the Pilot until January 11, 2002 to provide additional time to evaluate the issues presented by the Pilot.[10] One comment letter was received regarding the extension of the Pilot by the 2001 Extension Request.[11]

The Exchange proposes to further extend the effectiveness of the Pilot until March 11, 2002 to provide additional time to evaluate the issues presented by the Pilot, in the light of recently adopted requirements relating to disclosure of equity compensation plan information.[12]

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act,[13] which requires, among other things, than an Exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equatable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated January 14, 2002 (''Amendment No. 1''). In Amendment No. 1, the NYSE proposed to change the requested extension period for its pilot regarding shareholder approval of stock option plans from April 30, 2002, as originally proposed, to March 11, 2002. Accordingly, as amended, the NYSE's pilot would expire on March 11, 2002.

[4] Securities Exchange Act Release No. 41479, 64 FR 31667 (June 11, 1999) (notice of filing and order granting accelerated approval, on a pilot basis, to File No. SR–NYSE–98–32) (''Original Pilot Approval Order'').

[5] Securities Exchange Act Release No. 44141, 66 FR 18334 (April 6, 2001) (order granting approval, on a pilot basis, to the File No. SR–NYSE–00–32).

[6] Securities Exchange Act Release No. 44886, 66 FR 51083 (October 5, 2001) (notice of filing and immediate effectiveness of File No. SR–NYSE–2001–37) (''2001 Extension Request'').

[7] Securities Exchange Act Release No. 43111 (August 2, 2000), 65 FR 49046 (August 10, 2000) (notice of filing of File No. SR–NYSE–00–32) (''2000 Extension Request'').

[8] *See* Securities Exchange Act Release Nos. 43329 (September 22, 2000), 65 FR 58833 (October 2, 2000) (notice of filing and immediate effectiveness of File No. SR–NYSE–00–38); 43647 (November 30, 2000), 65 FR 77407 (December 11, 2000) (notice of filing and immediate effectiveness of File No. SR–NYSE–00–52); and 44018 (February 28, 2001), 66 FR 13821 (March 7, 2001) (notice of filing and immediate effectiveness of File No. SR–NYSE–2001–04).

[9] *See* note 5 *supra.*

[10] *See* note 6 *supra.*

[11] *See* letter from Sarah A.B. Teslick, Executive Director, Council of Institutional Investors (''CII'') to Jonathan G. Katz, Secretary, Office of the Secretary, Commission, dated October 16, 2001. The CII commented that the 2001 Extension Request should have been released for public comment prior to the Commission approving another extension to the Pilot and that any future proposed extensions should be released for prior public comment, that the Pilot not be extended after January 11, 2002, that the NYSE should be required to submit a dilution standard for approval which should be in place before the 2002 proxy season, and that the Commission act on the proposed disclosure standards for stock option plans. The Commission notes that the disclosure standards were approved by it on December 21, 2001. *See infra* note 12 below.

[12] Release Nos. 33–8048 and 34–45189 (December 21, 2001), 67 FR 232 (January 2, 2002).

[13] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change, as amended, (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interests, the proposed rule change, as amended, has become effective pursuant to section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6) [15] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [16] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. The Exchange seeks to have the proposed rule change, as amended, become operative on or before January 11, 2002, in order to allow the Pilot to continue in effect on an uninterrupted basis. In addition, under Rule 19b–4(f)(6)(iii), the Exchange is required to provide the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter time as designated by the Commission. The Commission waived this five-day pre-notice requirement for this proposed rule change.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change, as amended, to extend the Pilot through March 11, 2002, become operative on January 11, 2002. The Commission notes that unless the Pilot is extended, the Pilot will expire and the provisions of sections 312.01, 312.03, and 312.04 of the Exchange's Listed Company Manual that were amended in the Pilot will revert to those in effect prior to June 4, 1999. The Commission believes that such a result could lead to confusion.

The commission recognizes that the Pilot has generated many comment letters from commenters that do not support the NYSE's definition of ''broadly-based'' stock option plans under the Pilot.[18] The Commission also notes that many commenters were critical of the NYSE's existing rules on broadly-based plans prior to the adoption of the original Pilot. As noted above, if the Pilot is not extended, the rules prior to the Pilot will go into effect. The proposed rule change, as amended, merely extends the duration of the Pilot for only a short period of time and does not deal with the substantive issues presented by the Pilot itself.

Based on these reasons, the Commission believes that it is consistent with the protection of investors and the public interest that the proposed rule change, as amended, to extend the Pilot through March 11, 2002, become operative on January 11, 2002.[19] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the File No. SR–NYSE–2002–03 and should be submitted by February 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

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[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] *Id.*

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] *See* Original Pilot Approval Order, note 4 *supra*.

[19] For purposes only of accelerating the operative date of this proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45274; File No. SR–NYSE–202–04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., to Reset the Implementation Date for Exchange Rules 134, 407A, and 411, Relating to Error Accounts Procedures

January 14, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 7, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Exchange. 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 seeks to extend the Exchange-imposed implementation date for Rules 134, 407A, and 411 (relating to members' error accounts and error account procedures) from January 7, 2002 to February 4, 2002.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission recently approved amendments to Rules 134, 407A, and 411 relating to members' error accounts and error account procedures. The Exchange had intended to implement these changes on January 7, 2002.[3] However, feedback from several members and member organizations indicated that they will need additional time to implement procedures, including automatic surveillance procedures, to fully comply with the provisions of Rules 134, 407A, and 411. Therefore, the Exchange proposes to change the implementation date from January 7, 2002 to February 4, 2002.

2. Statutory Basis

The NYSE states that the basis for the proposed rule change is the requirement under section 6(b)(5) of the Act[4] that an exchange have rules that are designated to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NYSE has designated the proposed rule change as constituting a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of the NYSE rules to which it relates,[5] which renders the proposal effective upon filing with the Commission pursuant to section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(3) thereunder.[7]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether it 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office at the NYSE. All submissions should refer to File No. SR–NYSE–2002–04, and should be submitted by February 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

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[3] *See* Securities Exchange Act Release No. 44769 (September 6, 2001), 66 FR 44710 (September 13, 2001) (approval order concerning File No. SR–NYSE–99–25).

[4] 15 U.S.C. 78f(b)(5).

[5] *See* letter from Darla C. Stuckey, NYSE, to Katherine A. England, assistant director, Division of Market Regulation, Commission, dated January 9, 2002.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(3).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45254; File Nos. SR–Phlx–00–02 and SR–Phlx–00–03]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Changes by the Philadelphia Stock Exchange, Inc. Relating to Equity Trading Permits and Notice and Order Granting Accelerated Approval to Amendments No. 3 Thereto

January 9, 2002.

I. Introduction

On January 12, 2000, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Certificate of Incorporation to add a new article authorizing the Board of Governors to issue Equity Trading Permits (''ETPs'').[3] The Exchange filed amendments to the proposed rule change on May 30, 2000[4] and July 12, 2000.[5] The proposed rule change was published for comment in the **Federal Register** on September 1, 2000.[6] On December 17, 2001, the Exchange filed Amendment No. 3 to the proposal.[7]

Also on January 12, 2000, the Exchange submitted to the Commission, pursuant to Section 19(b)(1) of the Act[8] and Rule 19b–4 thereunder,[9] a proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] SR–Phlx–00–02.

[4] *See* Letter from Carla Behnfeldt, Counsel, Phlx, to Sonia Patton, Staff Attorney, Division of Market Regulation (''Division''), Commission, dated May 25, 2000.

[5] *See* Letter from Carla Behnfeldt, Counsel, Phlx, to Sonia Patton, Staff Attorney, Division, Commission, dated July 11, 2000.

[6] *See* Securities Exchange Act Release No. 43211 (August 25, 2000), 65 FR 53251.

[7] *See* Letter from Mark I. Salvacion, Director and Counsel, Phlx, to Belinda Blaine, Associate Director, Division, Commission, dated December 14, 2001 (''Amendment No. 3 to SR–Phlx–00–02''). In Amendment No. 3, the Exchange amended the Certificate of Incorporation to: (1) Provide that permit holders may serve on, or nominate candidates for the Board of Governors or Committees; and (2) clarify that permit holders are not members of the Exchange for purposes of Delaware General Corporate Law (''DGCL'') and shall have no rights or privileges conferred upon members of a nonstock corporation solely by DGCL. In Amendment No. 3, the Exchange also represented that the Board of Governors will appoint a qualified ETP holder, or associated person thereof, to the Exchange's Business Conduct Committee at the next annual appointment of Business Conduct Committee members, presently scheduled for March 2002. Lastly, the Exchange stated that it has authorized the Board of Governors to issue only 75 permits.

[8] 15 U.S.C. 78s(b)(1).

[9] 17 CFR 240.19b–4.

rule change to adopt a rule setting forth the terms and conditions of ownership of ETPs.[10] The Exchange filed amendments to the proposed rule change on May 30, 2000 [11] and July 12, 2000.[12] The proposed rule change was published for comment in the **Federal Register** on September 1, 2000.[13] On December 17, 2001, the Exchange filed Amendment No. 3 to the proposal.[14]

The Commission received two comment letters regarding the proposals.[15] This notice and order approves both proposed rule changes, as amended, and solicits comments from interested persons on Amendment No. 3 to each proposed rule change.

II. Description of the Proposal

A. SR–Phlx–00–02

The Exchange proposes to amend its Certificate of Incorporation by adding a new Article Twenty-First (''Article Twenty-First'') that authorizes the Exchange's Board of Governors (''Board'') to issue trading permits that would allow the holders of such permits to conduct business on the Exchange. Article Twenty-First also authorizes the Board to adopt rules governing, among other things, the terms, conditions, number, and transferability of permits, the qualifications that members and non-members must meet to be issued a permit, and the dues and other charges to be paid to the Exchange in connection with the permits.[16]

Article Twenty-First permits the Board to authorize the Chairman of the Board or any Board committee to exercise any powers of the Board with respect to the permits. Article Twenty-First also provides that permit holders shall be eligible to serve on, or nominate candidates for election to, the Board or Committees thereof or other Exchange Committees referred to in the By-Law or Rules of the Exchange.[17]

Article Twenty-First is intended to give the Board the flexibility to create a means, other than the purchase or lease of an Exchange membership, for qualified persons to acquire trading rights on the Exchange. The Exchange's Certificate of Incorporation provides that the purpose of the Exchange is to ''act as and to provide a securities exchange where the [Exchange's] members and other persons authorized by it can [do business].'' [18] In Article Twenty-First, the Exchange makes clear that such ''other persons'' authorized to do business at the Exchange includes holders of trading permits authorized by the Board.

B. Phlx–00–03

Phlx Rule 23 will govern the terms and conditions of ETPs, which are intended to confer access privileges to the Exchange's equity trading floor.[19] Phlx Rule 23 establishes two classes of ETPs. Regular Equity Trading Permits (''Regular ETPs'') authorize their holders to trade equity securities on any facility of the Exchange, in any capacity permitted to members, including as a specialist. Off-Floor Equity Trading Permits (''Off-Floor ETPs'') allow holders electronic and telephonic access, but not physical access, to the Exchange floor.

Phlx Rule 23(a) provides that the two classes of ETPs may be issued by the Exchange to applicants pursuant to resolution of the Board of Governors (''Board'') for such fee as may be established from time to time by the Board. The Exchange may issue a maximum of 75 ETPs.[20]

Phlx Rule 23(b) requires ETP applications to be approved by the Exchange. The application process for applicants who are not members of the Exchange would also include an admissions determination by the Exchange's Admissions Committee. ETP applicants who are members of the Exchange when they apply for an ETP would have already received a favorable admissions determination by the Exchange's Admissions Committee. With respect to ETP applicants who are not Exchange members, the admissions process would be the same as that currently required in connection with membership applicants, and the decision to grant or deny an application for admission as an ETP holder would be made by the Admissions Committee under its established procedures.[21] Phlx Rule 23(b) also requires the applicant to sign a pledge to abide by the By-Laws and rules of the Exchange and to submit to the Exchange's disciplinary jurisdiction.

Phlx Rule 23(c) provides that, except as may be otherwise set forth in the Rule or in other rules of the Exchange or effective Commission filings, an ETP holder will have the right to transact business on the floor of the Exchange to the same extent and in the same manner, and would be deemed to have the same rights and obligations, as a member of the Exchange without options privileges.[22] It also establishes

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[10] SR–Phlx–00–03.

[11] *See* Letter from Carla Behnfeldt, Counsel, Phlx, to Sonia Patton, Staff Attorney, Division, Commission, dated May 25, 2000.

[12] *See* Letter from Carla Behnfeldt, Counsel, Phlx, to Sonia Patton, Staff Attorney, Division, Commission, dated July 11, 2000.

[13] *See* Securities Exchange Act Release No. 43212 (August 25, 2000), 65 FR 53253.

[14] *See* Letter from Mark I. Salvacion, Director and Counsel, Phlx, to Belinda Blaine, Associate Director, Division, Commission, dated December 14, 2001 (''Amendment No. 3 to SR–Phlx–00–03''). In Amendment No. 3, the Exchange: (1) Amended proposed Rule 23(a) to specify that it will issue a maximum of 75 ETPs; (2) deleted a provision in proposed Rule 23(b) which would have required that ETP holders be at least the minimum age of majority as it was inconsistent with a By-Law requirement that the those applying for exchange membership by twenty-one years of age; (3) expanded the language of proposed Rule 23(c) to clarify that ETP holders are deemed to be members for purposes of eligibility requirements to serve on the Board of Governors or Exchange Committees and for the purpose of nominating candidates for the Board; (4) amended proposed Rule 23(c) to clarify that permits issued by the Exchange are not ''Regular'' or ''Convertible'' memberships of the Exchange, and are not members for purposes of DGCL and shall have no rights or privileges conferred on members of a nonstick corporation solely by DGCL; (5) amended proposed Rule 23(e) to clarify that ETP holders shall be subject certain Exchange fees and charges, but not to annual membership dues, technology fees or capital assessments; and (6) amended proposed Rule 239i) to clarify that ETP organizations will be required to post security with the Exchange, the proceeds of which may be applied by the Exchange upon termination of any ETP in the same manner as proceeds of membership transfers under Exchange By-Law 15–3.

[15] *See* letters from Matthew D. Wayne, Vanasco, Wayne & Genelly, to Jonathan G. Katz, Secretary, Commission, dated February 25, 2000 (''Wayne Letter''), and William W. Uchimoto, Executive Vice President and General Counsel, Ashton Technology, to Jonathan G. Katz, Secretary, Commission, dated September 5, 2000 (''Ashton Letter''). These letters were sent in response to both proposed rules changes.

[16] The Commission notes and the Exchange has acknowledged that any such action undertaken pursuant to Board resolution and not proposed to be set forth in the rules of the Exchange would nonetheless be filed with the Commission to the extent required pursuant to Section 19(b) of the Act and Commission rules thereunder.

[17] *See* Amendment No. 3 to SR–Phlx–00–03, *supra* note 6.

[18] Phlx Certificate of Incorporation, Article Third (emphasis added). The Exchange notes that the Commission has previously approved the issuance by the Exchange of foreign currency options participations (''FCO Participations'') pursuant to which both Exchange members and non-members may trade foreign currency options on the Exchange. *See* Securities Exchange Act Release No. 19134 (October 14, 1982), 47 FR 46949 (October 21, 1982).

[19] The Exchange has a proposal pending with the Commission to amend its schedule of dues, fees, and charges to provide that the Exchange's existing application fee and initiation fee apply to ETPs, and to impose monthly ETP fees. *See* SR–Phlx–00–04. Finally, Stock Clearing Corporation of Philadelphia (''SCCP'') has proposed a change to its certificate of incorporation and to SCCP Rule 3 pursuant to which SCCP may treat ETP holders as Phlx members for purposes of clearing services it provides. *See* Securities Exchange Act Release No. 45255 (January 9, 2002) (SR–SCCP–00–01).

[20] *See* Amendment No. 3 to SR–Phlx–00–03, *supra* note 14.

[21] Phlx Rule 901, Denial of and Conditions to Membership, sets forth certain criteria for membership decisions which would also apply to any determination to issue an ETP to an applicant who is not already a Phlx member.

[22] The Commission has in the past approved the Exchange's issuance of Foreign Currency Options

Continued

that an ETP holder will not be entitled by virtue of the ETP to vote in any election or on any amendment to the By-Laws or on any other matter, or to petition or to be counted as part of a quorum at meetings of members. ETP holders will, however, be eligible to serve on, and nominate candidates for, the Board of Governors and Exchange committees if elected or appointed and subject to existing qualification requirements for service, to the same extent as members.[23] Because an ETP confers no equity interest in Exchange assets or property, Phlx Rule 23(c) establishes clearly that an ETP will not entitle its holder to share in any distribution of the assets or funds of the Exchange in the event of any voluntary or involuntary liquidation, dissolution, or winding up of the affairs of the Exchange, or to purchase options privileges. Finally, Phlx Rule 23(c) provides that specialist members who elect to sell or lease their memberships in favor of Regular ETPs would continue to be specialists in their allocated securities.

Phlx Rule 23(d) establishes the rights of holders of Off-Floor ETPs. An Off-Floor ETP holder will be able, if accompanied by a regular member, to visit the floor of the Exchange, but will not have the privilege of transacting business on it. Consequently, an Off-Floor ETP holder will not be eligible to apply for specialist privileges. With this exception, an Off-Floor ETP holder will have the same rights as a Regular ETP holder. In particular, an Off-Floor ETP holder will be authorized, for the purpose of trading equity securities, to maintain electronic or telephonic access to (i) the floor facilities on the equities floor of the Exchange of a member or member organization or a Regular ETP holder, (ii) the Philadelphia Stock Exchange Automated Communication and Execution System (''PACE''),[24] and (iii) such other automated trading systems of the Exchange as may be made available to members of the Exchange without options privileges.

Phlx Rule 23(e) establishes the ability of the Exchange to impose fees and charges on ETP holders. An ETP holder will be subject to the same obligations and duties (including the payment of Exchange fees and charges) imposed on Exchange members, except that ETP holders will not be charged annual membership dues, technology fees, or any capital assessments that could be imposed in the future.[25] Phlx Rule 23(e) establishes that all provisions of the Exchange's Certificate of Incorporation and By-Laws, and the rules, regulations, requirements, orders, directions and decisions adopted pursuant to them which by their terms are applicable to Exchange members will also apply to ETP holders unless their application is inconsistent with the provisions of Rule 23. Likewise, all references in such documents to ''non-members'' will not be construed to apply to ETP holders. Consistent with Phlx Rule 23(e), the Exchange intends to charge a $200 application fee for every ETP application made by members and non-members. Non-member applicants for ETPs will also be required to complete the same admissions process required by the Exchange for membership applicants, and will be charged the $1,500 initiation fee upon issuance of the ETP just as members are charged this fee upon election to membership. After an ETP is issued, its holder will be subject to the same fees as Phlx members (except as otherwise noted in Phlx Rule 23(e)) in addition to a monthly ETP fee.

Phlx Rule 23(f) makes clear that, unlike a membership, an ETP may not be transferred by lease, sale, gift, involuntary transfer, or any other means or as collateral to secure any obligation, except that an ETP may be transferred within the holder's ETP organization to (i) an individual who has applied for and been approved by the Admissions Committee as an ETP holder, or (ii) an ''inactive nominee'' registered as such with the Exchange.

Phlx Rule 23(g) provides that an individual ETP holder associated with a broker-dealer will be required to qualify such broker-dealer as an ETP firm or an ETP corporation just as a member would register it as a member firm or member corporation under current Exchange rules.[26] Except to the extent otherwise set forth in Phlx rule 23 or in other Exchange rules or effective Commission filings, an ETP organization will have the same rights and obligations as a member organization of the Exchange. The organization would cease to be an ETP organization of the Exchange upon termination of the ETP pursuant to which the ETP organization is qualified.

Phlx Rule 23(g) also requires every ETP applicant whose fees are to be paid by such ETP organization to file, along with his or her ETP application, an agreement between the ETP applicant and the ETP organization (an ''ETP Use Agreement'') providing that the ETP organization may direct the transfer of the ETP to another qualified individual within the ETP organization and that the ETP holder may not object to such transfer. The ETP Use Agreement is in some respects analogous to the A–B–C Agreement provided for in Exchange Rule 930 pursuant to which a member contributes the use of a membership to the membership organization. Like the A–B–C Agreement provided for in Rule 940, the ETP Use Agreement would restrict the use of the ETP by its holder in the event of the holder's termination of his association with the ETP organization.[27]

Phlx Rule 23(h) permits the Exchange to suspend or expel an individual ETP holder on the same basis as a member. It also permits the Exchange to amend the terms of, to discontinue offering or to terminate existing ETPs of one or more classes at any time upon thirty days written notice. Similarly, Phlx Rule 23(h) requires an ETP holder to provide the Exchange thirty days written notice prior to termination of the ETP. The Exchange is required to provide notice of an ETP's termination to the membership in the same manner it provides notice of a proposed transfer of a membership. The ETP holder will remain liable for all obligations incurred as an ETP holder until these obligations are discharged, and the Exchange is authorized to draw upon any security provided pursuant to Rule 23(i), discussed below, for the payment of such obligations at any time if they remain unpaid as of the date of termination.

Participations (''FCO Participations''). Like holders of FCO Participations, ETP holders would generally be subject to Phlx's rules and By-Laws but would not be entitled to all the rights an privileges granted to Phlx members. *See* Securities Exchange Act Release No. 19134 (Oct. 14, 1982), 47 FR 46949 (Oct. 21, 1982).

[23] ETP holders will be deemed to be ''members'' and ETP organizations will be deemed to be ''member organizations'' for the purpose of eligibility to serve on the Board or Exchange Committees, and nominate candidates for the Board. However, ETP holders shall only have such rights, privileges, and obligations as are expressly set forth in the Certificate of Incorporation, Rule 23, or resolutions of the Board. References in Exchange Rules, By-Laws or the Certificate of Incorporation to ''members'' shall includes ETP holders. *See* Amendment No. 3 to SR–Phlx–00–03, *supra* note 14.

[24] PACE is the Exchange's automatic order routing and execution system on the equity trading floor. PACE accepts orders for manual and automatic execution in accordance with the provisions of Rule 229, which governs the PACE System and defines its objectives and parameters.

[25] In particular, they will not be subject by virtue of the ETP to the Exchange's $1,500 capital funding fee. *See* Securities Exchange Act Release No. 42993 (June 29, 2000), 65 FR 42415 (July 10, 2000). Fees proposed to be assessed by the Exchange with respect to ETPs are described in SR–Phlx–00–04. *See* Amendment No. 3 to SR–Phlx–00–03, *supra* note 14.

[26] Like Exchange members, an ETP holder will be required to be associated with a registered broker-dealer.

[27] The A–B–C Agreement contains additional provisions arising from the division of equitable and legal title to membership, a concept which is inapplicable to ETPs.

Phlx Rule 23(i) requires ETP organizations to provide acceptable security for payment of any claims pursuant to By-Law 15–3 upon termination of an ETP. The proceeds of the posted security may be applied by the Exchange upon termination of any ETP in the same manner as proceeds of membership transfers under By–law 15–3.[28] The security requirement may be met, at the option of the ATP organization, by providing a letter of credit or other guaranty acceptable to the Exchange, or by depositing $50,000 with the Exchange to be held in a segregated account with all other such deposits and held by the Exchange as security. The security required is the same for each ETP organization, regardless of the number of ETPs issued to its associated persons, and is unrelated to any security requirement established by SCCP.[29] The requirement does not apply to member organizations or ETP organizations that have been in good standing at the Exchange for the previous year. Consequently, ETP organizations in good standing for one year after providing such security will be entitled to its return, subject to any prior or appending claims. Finally, Phlx Rule 23(i) makes clear that at such time as no ETP holders remain associated with the ETP organization, the Exchange shall release any remaining security following payment of claims pursuant by By-Law 15–3 and upon execution by the ETP holder and ETP organization of releases satisfactory to the Board of Governors.

The Exchange expects to first undertake the ETP offering by distributing an informational circular and an ETP Application Form to be completed and returned to the Exchange together with payment of the Exchange's application fee. In addition to the ETP Application Form, applicants who are not Exchange members will be required to supply to the Admissions Committee all information required for that Committee to make an admissions determination under its established procedures, as discussed above.

III. Summary of Comments

The Commission received two comment letters in response to the proposed rule changes.[30] One commenter expressed general support for the proposal, stating that it would place the Phlx ''in a pro-competitive position with other exchanges that have reduced the cost of access to electronic trading facilities.''[31] The other commenter, however, challenged the Phlx's authority to authorize the Board to issue trading permits without a membership vote, and stated that the purpose of the proposal was to harm persons who lease seats to members wishing to trade on the Phlx Floor (''Lessors'').[32]

The commenter argued that the Phlx Certificate of Incorporation contemplates a fixed number of membership seats, possession of which gives a person or entity access and trading rights to the Phlx trading floor. Issues relating to membership seats, including different classes of members, are governed by the Exchange's By-Laws, according to the commenter. The commenter goes on to argue that the proposed ETPs are ''de facto membership seats,'' and thus should be governed by the By-Laws, a change to which requires a membership vote, not the Certificate of Incorporation. The commenter describes the addition of a new article to the Certificate of Incorporation to create the ETPs as an attempt by the Exchange to do an end-run around its By-Laws, and avoid a full membership vote on the proposal.[33]

The Exchange, however, believes that the Certificate of Incorporation already permits ETPs, and that an amendment of the Exchange's By–Laws is not required. Further, the Exchange believes that the proposed amendment to the Certificate of Incorporation authorizes ETPs in any event and supersedes any inconsistent provision in the By-Laws as a matter of basic corporate law.

The Wayne Letter also contends that the Exchange's proposal to create ETPs is part of ''a methodical plan to destroy both Lessors and the value of PHLX membership seats.'' The commenter states that ''[t]hrough the proposed trading permits, the PHLX is attempting to divert seat rental income from Lessors directly to the Exchange,'' and that it is the intention of the Board that if the proposal is approved, persons wishing to trade on the Exchange will purchase a permit rather than lease a seat. The commenter states that the Board owes a fiduciary duty to Lessors, which prohibits it from competing directly against Lessors in this manner.

The Exchange has considered this comment and stated that its business judgment the potential benefits to the Exchange of the trading permits, including the potential for increased access and enhance competition on the trading floor and the opportunity to attract additional order flow and new business, justify any possible dilution of memberships and may, in the longer term, result in higher prices for regular memberships. The Exchange believes that ETPs are in the best interests of the Exchange and its membership as a whole (including both lessee members and lessor owners), and notes that the Exchange's stated purpose in Article Third of its Certificate of Incorporation is ''[t]o act as and to provide a securities exchange where [its] members and other persons authorized by it'' can deal in securities.

IV. Discussion

After careful review, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[34] In particular, the Commission finds that the proposed rule changes further the objectives of Sections 6(b)(2), 6(b)(3), and 6(b)(5).[35]

The Commission believes that the proposed rule changes are consistent with Section 6(b)(5) of the Act[36] and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Commission finds that ETPs may help facilitate transactions by allowing more broker-dealers direct access to the Phlx market and attracting greater order flow consistent with Section 6(b)(2) of the Act.[37]

In addition, the Commission finds that the proposed rule change is consistent with Section 6(b)(3) of the Act.[38] The Commission notes that the Exchange's Board can issue no more than 75 ETPs,[39] which is not significant in relation to the number of regular members on the Exchange.[40] The Commission also notes that the Phlx is a member-controlled exchange, which includes 52 members using a

[28] *See* Amendment No. 3 to SR–Phlx–00–03, *supra* note 14.

[29] *See* SCCP Rule 4.

[30] *See supra* note 7.

[31] *See* Ashton Letter.

[32] *See* Wayne Letter.

[33] The commenter contends that, ''[t]he PHLX is well aware that if the full membership were presented with the issue of trading permits as a proposed amendment to the By-Laws, the membership would reject the proposal.'' *See* Wayne Letter.

[34] In approving this rule, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f). In addition, the Commission notes that its approval of this proposed rule change only extends to the applicable Exchange Act finding under Section 6(b). 15 U.S.C. 78f(b).

[35] 15 U.S.C. 78f(b)(2), (3) and (5).

[36] 15 U.S.C. 78f(b)(5).

[37] 15 U.S.C. 78f(b)(2).

[38] 15 U.S.C. 78f(b)(3).

[39] *See* Amendments No. 3 to SR–Phlx–00–02 and SR–Phlx–00–03, *supra* notes 7 and 14.

[40] There are 505 regular members of the Exchange. If the Phlx wanted to issue more than 75 ETPs, it would have to amend its Certificate of Incorporation and By-Laws to provide for fair representation of these ETPs.

membership on the equity floor, whose interests are represented on the Nominating and Election Commission and Business Conduct Commission, and that the Phlx has committed to appointing a qualified ETP holder, or associated person thereof, to the Exchange's Business Conduct Committee at the next annual appointment of Business Conduct Committee members.[41] Finally, the Commission notes that any disciplinary or trading rules affecting these members are subject to the rule filing process, which requires that proposed rules be submitted to the Commission for consideration and approval.

V. Amendment No. 3

A. SR–Phlx–00–02

The Commission finds good cause for approving Amendment No. 3 to SR–Phlx–00–02 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 3, the Exchange amended the Certificate of Incorporation to provide that the permit holders may serve on, or nominate candidates for the Board or Committees. The Amendment also added language to the Certificate of Incorporation which clarified that permit holders are not members of the Exchange for purposes of DGCL and shall have no rights or privileges conferred upon members of a nonstock corporation solely by DGCL. In addition to making changes to the language of the Certificate of Incorporation, the Exchange represented that the Board of Governors will appoint a qualified ETP holder, or associated person thereof, to the Exchange's Business Conduct Committee at the next annual appointment of Business Conduct Committee members, presently scheduled for March 2002, and that it has authorized the Board to issue only 75 permits.

The Commission finds that the Exchange's proposed changes and representations made in Amendment No. 3 further strengthen and clarify the proposed rule change and raise no new regulatory issues. The Commission believes that permitting ETP holders to serve on the Board or Committees, and nominate candidates for the Board, is appropriate and furthers the objectives of Section 6(b)(3) of the Act, which states that the rules of the exchange must assure a fair representation of its members in the selection of its directors and administration of its affairs.[42] These goals are also furthered by the Exchange's commitment to place an ETP holder on the Business Conduct Committee.

Therefore, the Commission finds that granting accelerated approval to Amendment No. 3 is appropriate and consistent with Section 19(b)(2) of the Act.[43]

B. SR–Phlx–00–03

The Commission finds good cause for approving Amendment No. 3 to SR–Phlx–00–03 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 3, the Exchange amended Rule 23(a) to provide that the Exchange may issue a maximum of 75 ETPs.

Amendment No. 3 also clarified in proposed Rule 23(c) that ETPs holders are deemed to be members for purposes of eligibility requirements to serve on the Board or Exchange Committees and for the purpose of nominating candidates for the Board. The Commission believes that permitting ETP holders to serve on, and nominate candidates for, the Board or Committees is appropriate and furthers the objectives of Section 6(b)(3) of the Act, which states that the rules of the exchange must assure a fair representation of its members in the selection of its directors and administration of its affairs.[44]

In addition, Amendment No. 3 added language to proposed Rule 23(c) to clarify that ETPs issued by the Exchange are not ''Regular Memberships'' or ''Convertible Memberships'' of the Exchange, and that ETP holders are not members of the Exchange for purposes of DGCL, and shall have no rights or privileges conferred upon members of a nonstock corporation solely by the DGCL. The amendment clarifies the status of ETPs and ETP holders.

Amendment No. 3 also added language to proposed Rule 23(i) to make clear that ETP organizations will be required to post security with the Exchange, the proceeds of which may be applied by the Exchange upon termination of any ETP in the same manner as proceeds of membership transfers under Exchange By-Law 15–3. Exchange By-Law 15–3 provides that the proceeds from the transfer of a membership shall be applied by the Exchange to satisfy existing claims against such member. Again, the Commission believes that this change is merely to clarify the procedure that will be followed in the event an ETP is terminated.

Finally, Amendment No. 3 makes technical non-substantive changes to the proposal to ensure internal consistency exists in the Exchange rules.

The Commission finds that the Exchange's proposed changes in Amendment No. 3 further strengthen and clarify the proposed rule change. Therefore, the Commission finds that granting accelerated approval to Amendment No. 3 is appropriate and consistent with Section 19(b)(2) of the Act.[45]

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 3, including whether the proposed amendments are 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 amendment that are filed with the Commission, and all written communications relating to the amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx.

All submissions should refer to File Nos. SR–Phlx–00–02 and SR–Phlx–00–03 and should be submitted by February 8, 2002.

[41] *See* Amendments No. 3 to SR–Phlx–00–02 and SR–Phlx–00–03, *supra* notes 7 and 14. The Act requires an Exchange to ''assure a fair representation of its members in the selection of its directors and administration of its affairs * * *.'' *See* Section 6(b)(3) of the Act, 15 U.S.C. 78f(b)(3). This requirement serves to ensure that an exchange is administered in a way that is equitable to all those who trade on the Exchange. In approving this proposed rule change, the Commission notes that the Exchange may not issue more than a significant number of ETPs in relationship to their 505 Regular Memberships. Also, the Commission Notes that the Exchange currently has 52 members using a membership on the equity floor. These members are eligible to serve on the Nominating and Election Committee and the Business Conduct Committee, and currently such a member serves on each Committee. The Exchange has also committed to appointing a qualified ETP holder to the Business Conduct Committee. Telephone conversation between Edith Hallahan, First Vice President and Deputy General Counsel, Phlx, and Florence Harmon, Senior Special Counsel, Division, Commission, on January 9, 2002.

[42] 15 U.S.C. 78f(b)(3).

[43] 15 U.S.C. 78f(b)(2).

[44] 15 U.S.C. 78f(b)(3).

[45] 15 U.S.C. 78s(b)(2).

VII. Conclusion

For all of the aforementioned reasons, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[46] that he proposed rule changes (SR–Phlx–00–02 and SR–Phlx–00–03), as amended, are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[47]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1300 Filed 1–17–02; 8:45 am]

BILLING CODE 8010–01–M

[46] 15 U.S.C. 78s(b)(2).

[47] 17 CFR 200.3–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before March 19, 2002.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Louis Cupp, New Markets Policy Analyst, Office of New Markets Venture Capital (NMVC) program, Small Business Administration, 409 3rd Street, SW., Suite 6000.

FOR FURTHER INFORMATION CONTACT: Louis Cupp, New Markets Policy Analyst, Office of New Markets Venture Capital (NMVC) program, 202–205–6510 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION: *Titles:* NMVC Program Application, Funding and Reporting.

Form No's: SBA Forms 2184, 2185, 2069, 468, 468 (short form), 468, (Schedule 9,10,11) 480 and 1031 Standard Forms (SF's are under OMB Control) 269, 270, 272, 424, 424A and 424B.

Description of Respondents: NMVC Program applicants and participants; SSBICs receiving grants under the NMVC program.

Annual Responses: 947.

Annual Burden: 11,538 hours.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02–1314 Filed 1–17–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 04/74–0285]

Delta Venture Partners I, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Delta Venture Partners I, L.P., 8000 Centerview Parkway, Suite 100, Cordova, TN 38018, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730 (2000)). Delta Venture Partners I, L.P. proposes to provide equity/debt security financing to Nextek, Inc., 201 Next Technology Drive, Madison, AL 35758. The financing is contemplated for plant expansion and working capital.

The financing is brought within the purview of Section 107.730(a)(1) of the Regulations because Nextek Investment Partners, L.P. and Nextek Investment Partners II, L.P., Associates of Delta Venture Partners I, L.P., currently jointly own greater than 10 percent of Nextek, Inc., and therefore Nextek, Inc., is considered an Associate of Delta Venture Partners I, L.P., as defined in Sec. 107.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: December 5, 2001.

Harry Haskins,

Acting Associate Administrator for Investment.

[FR Doc. 02–1313 Filed 1–17–02; 8:45 am]

BILLING CODE 8025–01–P

TENNESSEE VALLEY AUTHORITY

Guntersville Reservoir Land Management Plan, Jackson and Marshall Counties, Alabama and Marion County, TN

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Issuance of record of decision.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 to 1508) and TVA's procedures implementing the National Environmental Policy Act. TVA has updated its 1983 land management plan for 40,236 acres of TVA-managed land on Guntersville Reservoir in Alabama and Tennessee. TVA will use the plan to guide land use approvals, private water-use facility permitting, and resource management decisions. On September 19, 2001, the TVA Board of Directors decided to adopt the preferred alternative (Alternative B3, Blended Alternative) identified in the Final Environmental Impact Statement (EIS) and Land Management Plan, Guntersville Reservoir. A Notice of Availability of the Final EIS was published in the **Federal Register** on August 11, 2001. Under the adopted land plan, TVA has allocated undeveloped lands for public recreation and natural resource conservation, and has also been responsive to local requests for use of TVA lands for water access and community development. Of the 40,236 acres of TVA lands on the reservoir which are available for allocation, 37,662 acres would be allocated to resource conservation, sensitive resource management, TVA project operation, or dispersed recreation uses; 1,704 acres would be allocated for developed recreation uses such as marinas, campgrounds, parks, and boat ramps; 543 acres would be allocated for residential lake access, and 327 acres for industrial access or commercial uses.

FOR FURTHER INFORMATION CONTACT: Harold M. Draper, NEPA Specialist, Environmental Policy & Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C, Knoxville, Tennessee 37902–1499; telephone (865) 632–6889 or e-mail hmdraper@tva.gov.

SUPPLEMENTARY INFORMATION: Guntersville Reservoir is a 76-mile long reservoir completed in 1939. Although 109,671 acres were acquired for construction of the reservoir, 56,300 are covered by water. Subsequent transfers of land by TVA for economic, industrial, residential, or public recreation development have resulted in a current

balance of 40,236 acres of TVA public land above normal summer pool elevation of 595 mean sea level. TVA first announced its proposal to update its 1983 land management plan in 2000. Meetings were held to inform the public of the land allocation plan update and to solicit input on March 20, 2000 in South Pittsburgh, Tennessee; March 21, 2000 in Scottsboro Alabama; and March 23, 2000 in Guntersville, Alabama. These meetings were attended by 112 people. In addition, written comments were invited through a news release, newspaper notices, and a web sit notice. Subsequent to the scoping meetings, TVA determined that the development of an EIS would allow a better understanding of the impacts of the alternatives. TVA published a Notice of Intent to Prepare an EIS on December 20, 2000 (**Federal Register** Vol. 65, page 79912). During the scoping period, commenters expressed a desire for more environmental protection and discussed how they valued the scenic beauty and setting of the reservoir. In addition, 13 external proposals were received for use of TVA lands along the reservoir. These proposals were from local governments and adjacent residents requesting additional recreational or industrial access uses. TVA made an effort to identify parcels of land with sensitive resources and identified tracts that should be managed for protection of these resources. In addition, TVA used the proposals received to develop alternatives for public review in the draft EIS (DEIS), which was published in April 2001. A Notice of Availability (NOA) for the DEIS appeared in the **Federal Register** on May 4, 2001.

In addition to written materials, additional information on the proposals and other aspects of the DEIS was available to the public in three public meetings held in South Pittsburg, Tennessee (May 24, 2001), Scottsboro, Alabama (May 29, 2001) and Guntersville, Alabama (May 31, 2001). Approximately 550 comments were received on the DEIS. These comments primarily related to recommendations for proposed uses of TVA land. Numerous comments and extensive public discussions took place regarding the use of several of the parcels. These discussions were especially focused on parcel 26a, adjacent to the Conners Island Industrial Park; parcel 40, proposed for a Guntersville Airport expansion; parcel 200a, proposed for a South Sauty Creek commercial recreation development; and parcel 257 in the City of Guntersville, which attracted three competing proposals. In the Final EIS (FEIS), TVA developed an alternative that would fully or partially zone parcels of land to accommodate 11 of the 13 initial requests. In addition, TVA received public suggestions for changes on other parcels. After considering all comments, the Final EIS was completed and distributed to commenting agencies and the public. A NOA for the Final EIS was published in the **Federal Register** on August 11, 2001.

Alternatives Considered

TVA initially considered three alternatives, including no action, for allocation of Guntersville Reservoir lands. The action alternatives were characterized as Alternative B1, ''Balanced Development and Recreation,'' and Alternative B2, ''Balanced Development and Conservation.'' Alternative B1 accommodated use requests and allocation changes for 13 parcels, while Alternative B2 did not accommodate allocation changes requests and instead allocated these lands to conservation-oriented uses or retained the lands in their previous designation under the 1983 plan. In response to public comments on the DEIS, TVA developed a fourth alternative, designated Alternative B3, or ''Blended Alternative.'' This alternative was designed to provide zone allocations which partially accommodate the 13 requests, and make other adjustments in response to public comments.

Under *Alternative A, the No Action Alternative,* TVA would not revise the 1983 allocation plan. Proposed land use requests received from external applicants or internal TVA interests would be evaluated for consistency with the 1983 plan. Requested land uses that are consistent would be approved or denied based on a review of potential environmental impacts and other administrative considerations. If the request is not consistent with the designated land use, and TVA staff believe the proposal has merit, then the TVA Board of Directors would be asked to amend the plan and change the allocation.

The 1983 plan used 16 allocation categories to allocate 150 parcels (32,584 acres) of TVA land. Residential shoreline and other shoreline strips were not included in the allocations. In addition, the Murphy Hill coal gasification plant site and the Honeycomb Quarry Cave limestone quarry were not allocated. Many parcels in the 1983 plan were designated with multiple allocation tags, which means that they could be considered for a wide range of uses, with a wide range of resulting environmental consequences. Despite this uncertainty, TVA estimates that if the existing plan were used as a guide, 89 percent of reservoir lands would be used for resource protection or natural resource management, 19 percent would be used for industrial or other developed uses, and 13 percent would be used for recreation development. As explained in the EIS, the above figures total greater than 100 percent because certain parcels have multiple allocation tags under the 1983 plan.

Under *Alternative B1, Balanced Development and Recreation,* 80 percent of project lands would be allocated to environmental protection and natural resource management uses, 13 percent would be allocated for developed uses or industrial uses, 6 percent for recreation development, and 1 percent for residential access. Tracts would be allocated to accommodate a Guntersville Airport expansion, 9 new recreational development proposals, and 3 new commercial or industrial proposals.

Under *Alternative B2, Balanced Development and Conservation,* 82 percent of project lands would be allocated to environmental protection and natural resource management uses, 13 percent for developed uses or industrial uses, 4 percent for recreation development, and 1 percent for residential access. Zone allocations for recreational, commercial or industrial proposals, or the airport expansion under Alternative B1 would not be accommodated, and the tracts would stay in their existing allocation or be allocated to zone 4, natural resource conservation.

Alternative B3, Blended Alternative, was developed in response to public comments on the DEIS. Approximately 81 percent of project lands would be allocated to environmental protection and natural resource management uses, 14 percent for developed uses or industrial uses, 4 percent for recreation development, and 1 percent for residential access. Alternative B3 contains a mix of allocations from Alternatives B1 and B2 and attempts to address, respond to, or resolve suggestions made during public review of the DEIS. In some cases, parcel allocation revisions were made, or special commitments related to parcels have been included. In general, Alternative B3 differs from Alternative B1 in that approximately 600 acres would be retained in buffers or natural resource management zones. Adjacent human communities would be buffered from visual and other impacts of parcel development. Alternative B3 was

designated as the TVA preferred alternative in the FEIS.

The EIS considered the environmental consequences of the alternatives on a wide variety of environmental resources. Under any alternative, sensitive resources such as endangered and threatened federal and state-listed species, cultural resources, and wetlands would be protected. Adoption of Alternative B3 would balance the competing demands of development and conservation. Development activities would have the potential for adverse environmental impacts. However, through the inclusion of environmental safeguards to address water quality, visual buffers, and wetland protection, and through resource avoidance and parcel-specific protection measures, these impacts would be minimized.

Because the potential effects on historic properties cannot be fully determined prior to implementation of the land plan, TVA will use a phased identification and evaluation process as allowed under 36 CFR 800.4(b)(2) to fulfill its obligations under Section 106 of the National Historic Preservation Act. Letters from the Alabama and Tennessee State Historic Preservation Officers (SHPOs) dated September 7, 2001 and August 16, 2001, respectively, concur with this phased approach. Further, in view of the regional scope of this project, TVA has initiated efforts to prepare a Programmatic Agreement (PA) consistent with the regulations of the Advisory Council on Historic Preservation (ACHP) implementing the National Historic Preservation Act. The PA includes provisions for monitoring of reservoir shorelines. A PA for the implementation of reservoir land management plans in Alabama is being reviewed by all requisite parties. ACHP, TVA, the Alabama SHPO, the Eastern Band of Cherokee Indians, and the Chickasaw Nation are proposed signatories in the PA, and the Alabama Indian Affairs Commission is a concurring party. A PA is also under development for reservoir lands in the state of Tennessee, through coordination with the Tennessee SHPO, ACHP, and consulting parties. These measures ensure that the effects of the Guntersville Reservoir Land Management Plan on historic properties have been taken into account.

Response to Comments

Appendix E of the Final EIS contains summaries of and responses to the comments TVA received during the Draft EIS process. TVA received comments from 550 individuals and organizations on the DEIS. As indicated above, TVA believes that the open public process and discussion on a number of community proposals substantially enhanced its decision making. TVA also received comments on the FEIS from EPA, Alabama Historical Commission, and Tennessee Historical Commission. EPA appreciated that timber harvesting, an allowable activity in Zone 4, was redefined to include ''timber management to promote forest health.'' They requested that the ROD offer management options for unit plans. Further, EPA was concerned that Alternative B3 favored development proposals and was closer to Alternative B1 than the EPA-favored Alternative B2. EPA also provided specific comments on parcel allocations. EPA expressed concerns about industrial and commercial development such as the proposed Guntersville Airport expansion, industrial park, interchange development and industrial site, and also pointed out that marinas, boat ramps and campgrounds proposed to be allowed under Alternative B3 could have reservoir water quality impacts. For parcel 257, EPA expressed a preference to allocate the parcel to for zone 4 and stated that Alternative B3 would allow partial development of the tract by allowing the siting of a headquarters for United Cherokee Intertribal.

TVA appreciates the EPA comments and will emphasize water quality considerations during its land use and Section 26a decision making processes for facilities on Guntersville Reservoir. Although TVA has attempted to accommodate a number of development proposals, these are typically of limited area and are often for water access for adjacent private landowners. TVA will use site-specific reviews to incorporate additional environmental protection, including water quality protection measures, into these proposals. Typical forest management options for unit plans (zones 3 and 4) on Guntersville Reservoir are expected to include some, but not all of, the following types of activities:

- Pine thinning and prescribed burning to maintain healthy pine stands
- Salvage activities to control southern pine beetle infestations
- Creation of brush piles for wildlife habitat
- Daylighting of road shoulders and selected other areas by selective timber removal to create conditions favorable for grasses and forbs preferred by wildlife species, and to enhance aesthetics
- Planting of areas adjacent to the reservoir with appropriate species
- Treatment of invasive exotic species infestations
- Timber stand improvements to encourage oak regeneration and growth
- Harvesting mature pine stands and allow stands to regenerate
- Harvests of limited size over a period of years to create a mosaic of hardwood forest cover types and age classes
- Controlled burn implementation during late winter to increase advanced oak regeneration

All of these activities would be oriented toward maintenance and enhancement of forest health on public lands. Other public use management and wildlife management activities would be conducted to preserve and enhance forest ecosystem health and productivity. Each unit plan would be subjected to agency and public review, and site-specific environmental safeguards incorporated into the proposed management activities. With regard to Parcel 257, TVA did not zone this parcel to accommodate the United Cherokee Intertribal request for a headquarters and interpretive center. However, TVA did decide to allow use of a limited area for an annual tribal conference and ceremonial event (pow-wow).

In other agency comments, the Tennessee Historical Commission concurred that phased compliance is an appropriate strategy, and requested that TVA submit all historic property survey reports to the office for review and comment. In accordance with standard Section 106 compliance procedures, TVA will do this for all properties in Tennessee. The Alabama Historical Commission indicated that they preferred Alternative B2, but that they could agree with Alternative B3 provided that a phase II archaeological investigation be conducted for every site which is potentially eligible for the National Register of Historic Places. TVA will conduct archaeological and historic structure surveys to identify historic properties, and will submit phase II proposals to the Alabama Historical Commission for approval prior to testing for projects in Alabama. TVA also received two comments from adjoining landowners on the Final EIS that were not made on the draft EIS questioning some proposed allocation decisions. An adjoining landowner objected to a buffer zone that TVA proposed to establish between a recreational development zone (proposed for a campground) and a subdivision. The landowner felt that the buffer zone would be subject to abuse from uncontrolled camping and motorized recreation. A second

landowner requested that lands classified as Zone 4 because of their incorporation into a state wildlife management area be changed to zone 7 to allow residential access. Because the land in question has historically been used as part of the Mud Creek Wildlife Management Area and the wildlife management area easement with the state is proposed for extension, TVA plans to leave this property in zone 4, but to recognize the residential access rights for a 1.7-acre parcel. As part of any future conveyance to the state for wildlife management purposes, TVA would include both a general and specific reservation acknowledging these residential access rights.

Decision

The TVA Board decided to adopt the Guntersville Reservoir Land Management Plan as described in Alternative B3 on September 19, 2001. TVA believes that Alternative B3 responds to community development and recreational development needs on Guntersville Reservoir, but also recognizes and preserves the aesthetic and sensitive resources which make the reservoir unique. Like the other alternatives considered, Alternative B3 sets aside parcels containing sensitive resources and habitats in the Sensitive Resource Protection and Natural Resource Conservation categories. For lands where TVA proposes to consider development proposals, following site-specific review of development plans, Alternative B3 adopts commitments that would further minimize the potential for adverse impacts to the environment. These commitments are listed below, under Environmental Commitments.

Environmentally Preferable Alternative

TVA has concluded that Alternative B2, which would not grant recreational and industrial access requests on 13 parcels, is the environmentally preferable alternative. However, TVA's responsibilities for unified development of the Tennessee River system and adjoining properties encourage the use of portions of the reservoir lands to foster the economic development of the area. Local governments and a number of people commenting also support these projects. TVA believes that Alternative B3 helps to meet the multiple objectives of the Guntersville project, and would result in substantially better environmental protection than previous shoreline development practices. Further the environmental impacts of TVA's preferred alternative would be less than Alternative B1 and the No Action Alternative.

Environmental Commitments

The land plan envisioned in Alternative B3 advances TVA's commitment to resource stewardship and habitat protection through strong conservation approaches. Alternative B3 was formulated using environmentally protective measures. Some of these measures include use of a sensitive resource protection zone and incorporation of buffers between development proposals and adjoining landowners. In addition, TVA is adopting the following measures to minimize environmental impacts:

- Wetlands will be avoided on residential access properties on parcels 12, 69, and 22 and any portion of parcel 26a and 165 allocated for recreational development.
- Recreational development on parcels 143, 154a, 159 and 168 will be designed to avoid historic properties and designed to enhance their interpretation.
- Agricultural licensing on Parcels 26a, 45, 121, 124, 132, and 260 will include buffers to avoid impacts to the reservoir and wetlands.
- All land disturbing activities shall be conducted in accordance with Best Management Practices as defined by Section 208 of the Clean Water Act and implementing regulations to control erosion and sedimentation. Forest management activities will be conducted in accordance with practices prescribed for forestry. Best Management Practices for agriculture, including maintenance of vegetative buffers, will be included in agricultural licenses.
- Visual and water quality enhancement buffers, between 50 feet and 100 feet wide, will be provided to screen timber harvest areas from public thoroughfares and shorelines and to minimize the potential for sediments or other nonpoint source pollutants to enter Guntersville Reservoir.
- Controlled burns will be conducted in accordance with the open burning regulations of the appropriate state.
- On parcel 2, TVA will place special emphasis on visual analysis during consideration of any management activities.

With the implementation of the above environmental protection measures, TVA has determined that adverse environmental impacts of future development proposals on the reservoir would be substantially reduced. These protective measures represent all of the practicable measures to avoid or minimize environmental harm that are associated with this alternative.

As TVA implements the Guntersville Reservoir Land Management Plan, the agency will continue to work with all affected interests to promote environmentally sound stewardship of public lands.

Dated: October 29, 2001.

Kathryn J. Jackson,

Executive Vice President, River System Operations and Environment.

[FR Doc. 02–1166 Filed 1–17–02; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Jefferson and Clearfield Counties, Pennsylvania

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 Jefferson and Clearfield Counties, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: David W. Cough, P.E., Director of Operations, Federal Highway Administration, Pennsylvania Division , 228 Walnut Street, Room 536, Harrisburg, Pennsylvania 17101–1720, (717) 221–3411 or Mark S. Rozich, P.E., Project Manager, Pennsylvania Department of Transportation, District 10–0, Route 286 South, P.O. Box 429, Indiana, Pennsylvania 15701, (724) 357–2852.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation (PENNDOT), will prepare an Environmental Impact Statement (EIS) for a transportation improvement within the study area of U.S. Route 219 (eastern terminus), S.R. 0830 (western terminus), Interstate 80 (southern terminus), and the DuBois-Jefferson County Airport (northern terminus). The project will include the development of a reasonable range of alternatives that meet the project need and supporting environmental documentation and analysis to recommend a preferred alternative for implementation. A complete public involvement program is part of the project.

The purpose of the transportation improvement is to improve access to the DuBois-Jefferson County Airport and the associated Keystone Opportunity Zone (KOZ) and Foreign Trade Zone (FTZ). Based upon a needs analysis completed

in 2001, transportation improvements are needed to support the regional economic development goals planned for the area, encourage the regional intermodal needs of the area by providing safe and efficient access to the airport, and maintain consistency with the region's transportation goals and objectives as defined by the North Central Pennsylvania Regional Planning and Development Commission.

Alternatives that will be considered include: The no-build; upgrade of existing roadways within the study area; and new roadway alignment with a new interchange on Interstate 80. These alternatives will be the basis for a recommendation of alternatives to be carried forward for detailed environmental and engineering studies in the EIS. Incorporated into and studied with the various alternatives will be design variations of grade and alignment.

Public meetings have been and will continue to be held throughout the development of the EIS for the general public and agencies. A Project Mailing List, a Project Newsletter and a Project Web Site will established to inform the public of project milestones.

Periodic meetings are scheduled with the state and federal environmental agencies through an Agency Coordination Meetings (ACM) to present project as well as receive comments and concerns from the agencies on the development of the project alternatives, the assessment of impacts and the identification of mitigations measures. 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 the project.

To ensure 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 and questions concerning this proposed action and the EIS should be directed to the FHWA or PENNDOT at the addresses provided above.

(Catalogue of Federal Domestic Assistance Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program)

James A. Cheatham,

FHWA Division Administrator, Harrisburg, Pennsylvania.

[FR Doc. 02–1285 Filed 1–17–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34151]

Beaufort & Morehead Railway, Inc.—Acquisition and Operation Exemption—North Carolina Ports Railway Commission d/b/a Beaufort & Morehead Railway

Beaufort & Morehead Railway, Inc. (BMRI), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire by lease, pursuant to an agreement with its owner the North Carolina Ports Railway Commission d/b/a Beaufort & Morehead Railway (NCPRC), all of NCPRC's railroad line extending from the connection with the Norfolk Southern Railway Company (Atlantic & East Carolina Railway) at milepost 0.0 in Morehead City to milepost 0.87 at Gallants Channel near Morehead City, a distance of .87 miles in Carteret County, NC, serving the intermediate stations of Marsh Island, Radio Island and Beaufort Team Track, together with all of the NCPRC's yard and interchange tracks.[1] BMRI will be the operator of the line. BMRI certifies that its projected annual revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier, and that its projected annual revenues will not exceed $5 million.

The transaction was scheduled to be consummated on December 28, 2001.

If this notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34151, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Fritz R. Kahn, P.C., 1920 N Street, N.W., 8th Floor, Washington, DC 20036–1601.

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Decided: January 11, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–1276 Filed 1–17–02; 8:45 am]

BILLING CODE 4915–00–P

[1] *See North Carolina Ports Railway Commission d/b/a Beaufort & Morehead Railway—Acquisition and Operation Exemption—Beaufort & Morehead Railway, Inc.,* STB Finance Docket No. 33826 (STB served Dec. 2, 1999).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34125]

South Dakota Railroad Authority—Acquisition Exemption—The Burlington Northern and Santa Fe Railway Company

South Dakota Railroad Authority (SDRA), noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to acquire approximately 49.48 miles of rail line located in Brown and Marshall Counties, SD, owned by The Burlington Northern and Santa Fe Railway Company (BNSF). The line to be acquired is located between milepost 115.08 near Aberdeen, SD, and milepost 65.60 near Kidder, SD, at the South Dakota/North Dakota border. SDRA will also acquire limited operating rights to conduct rail freight service only, for the sole purpose of interchanging freight cars and equipment, over BNSF's rail line at or near Aberdeen, SD, between milepost 115.08 and milepost 118.6 of BNSF's Geneseo subdivision, and between milepost 706.1 and milepost 707.1 of BNSF's main line, for the sole purpose of SDRA or its designee interchanging rail cars and equipment at BNSF's Aberdeen Yard.[1] SDRA certifies that its projected annual revenues will not exceed those that would qualify it as a Class III carrier.

SDRA reports that an agreement for the transaction was reached and the transaction was consummated on June 15, 2001. The effective date of the exemption was December 27, 2001 (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34125 must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Bruce E.

[1] SDRA states that an operator on the track being acquired has not yet been determined.

Lindholm, Program Manager, Office of Air, Rail and Transit, 700 East Broadway Avenue, Pierre, SD 57501.

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Decided: January 11, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–1387 Filed 1–17–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34144]

Georgia Southwestern Railroad, Inc.—Sale and Lease Exemption Within a Corporate Family Transaction—South Carolina Central Railroad, Inc.

Georgia Southwestern Railroad Inc. (GSWR) and South Carolina Central Railroad, Inc. (SCCR), both Class III rail carriers, have jointly filed a notice of exemption under 49 CFR 1180.2(d)(3).[1] The exemption transaction involves what GSWR describes as a corporate family transaction whereby GSWR will sell to SCCR, and SCCR will lease back to GSWR, 101.27 miles of rail lines (the Lines), located in Georgia: (1) Between milepost SLB 0.38 near Columbus and milepost SLB 23 near Cusseta; (2) between Valuation Station 41+60 and Valuation Station 107+35 near Columbus; (3) between Valuation Station 0+00 and Valuation Station 41+61 near Columbus; (4) between milepost SLC 91.68 near Bainbridge and milepost SLC 160.0 near Cuthbert; and (5) between milepost 63.55 near Dawson and milepost 72.88 near Sasser. In addition, GSWR will acquire the operating rights of SCCR for 13.62 miles of rail line between milepost 86.5 at Albany and milepost 72.88 at Sasser.[2] The 13.62-mile line was converted to a trail, in accordance with an interim trail use arrangement, on October 16, 1997.

The transaction was scheduled to be consummated on or shortly after December 28, 2001, the effective date of the exemption.

This transaction is within a corporate family of the type specifically exempted from prior approval under 49 CFR 1180.2(d)(3). The parties stated that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside of the corporation family.

The purpose of the transaction is to simplify the arrangements for the operation of the Lines. SCCR will own the Lines and GSWR will operate the Lines. The proposed transaction will improve the financial viability of GSWR and SCCR and they will benefit from the purchase price and reduced operating costs, while still providing rail service.

This transaction is related to a simultaneously filed notice of exemption in STB Finance Docket No. 34057, *State of Georgia Department of Transportation—Acquisition Exemption—South Carolina Central Railroad, Inc.,* wherein the Georgia Department of Transportation (GDOT)[3] is acquiring certain railroad assets of SCCR, including the above-noted 101.27 miles of railroad lines, but not including the right to conduct common carrier freight operations over the Lines.[4]

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under section 11324 and 11325 that involve Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34144, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Gary A. Laakso, Vice President Regulatory Counsel, RailAmerica, Inc., 5300 Broken Sound Boulevard NW., Second Floor, Boca Raton, FL 33487; and Louis E. Gitomer, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

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Decided: January 11, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–1404 Filed 1–17–02; 8:45 am]

BILLING CODE 4915–00–P

[1] GWSR and SCCR are subsidiaries of RailAmerica, Inc., a noncarrier.

[2] *See Georgia Great Southern Division, South Carolina Central Railroad Co., Inc.—Abandonment and Discontinuance Exemption—Between Albany and Dawson, in Terrell, Lee and Dougherty Counties, GA,* Docket No. AB–389 (Sub-No. 1X) (STB served Aug. 16, 1996).

[3] GDOT simultaneously filed a motion to dismiss the notice of exemption on jurisdictional grounds. That motion will be addressed by the Board in a separate decision.

[4] Concurrently with the closing of the transaction between SCCR and GSWR, SCCR will sell the Lines to GDOT, and GDOT will acquire only the physical assets. GDOT will not hold or perform common carrier service. GSWR will provide common carrier service and SCCR will retain a permanent easement to provide residual common carrier service if GSWR or an assignee of GSWR is unable to provide service over the Lines.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34057]

State of Georgia, Department of Transportation—Acquisition Exemption—South Carolina Central Railroad, Inc.

State of Georgia, Department of Transportation (GDOT), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31[1] to acquire from the South Carolina Central Railroad, Inc. (SCCR), a Class III rail carrier, but not to operate, 101.27 miles of rail lines (the Lines) located in Georgia: (1) Between milepost SLB 0.38 near Columbus and milepost SLB 23 near Cusseta; (2) between Valuation Station 41+60 and Valuation Station 107+35 near Columbus; (3) between Valuation Station 0+00 and Valuation Station 41+61 near Columbus; (4) between milepost SLC 91.68 near Bainbridge, and milepost SLC 160.0 near Cuthbert; and (5) between milepost 63.55 near Dawson and milepost 72.88 near Sasser.

GDOT, SCCR, and RailAmerica, Inc., the parent company of SCCR, have entered into an agreement whereby GDOT will acquire only the physical assets in the Lines, but not the right to conduct common carrier freight operations over the Lines. SCCR and its affiliate, Georgia Southwestern Railroad, Inc. (GSWR) have entered into a separate agreement for GSWR to sell the Lines to SCCR, and for SCCR to lease the Lines back to GSWR. That related transaction is the subject of a simultaneously filed notice of exemption in STB Finance Docket No. 34144, *Georgia Southwestern Railroad, Inc.—Sale and Lease Exemption Within*

[1] GDOT simultaneously filed a motion to dismiss the notice of exemption on jurisdictional grounds. That motion will be addressed by the Board in a separate decision.

a Corporate Family Transaction—South Carolina Central Railroad, Inc., wherein GSWR seeks to sell the Lines to SCCR and SCCR will lease the lines back to GSWR to conduct common carrier freight operations over the Lines. Concurrent with the closing of that corporate family transaction, it is expected that SCCR will sell the Lines to GDOT as described in this transaction, and SCCR will retain a permanent easement to retain the residual common carrier freight obligations over the Lines in the event that GSWR or future assignees are unable to provide common carrier service.

The transaction was scheduled to be consummated on December 28, 2001, the effective date of the exemption (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34057, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Hal Wilson, State of Georgia, Department of Transportation, Office of Intermodal Programs, 276 Memorial Drive, SW., Atlanta, GA 30303.

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Decided: January 11, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–1388 Filed 1–17–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, section 10(a)(2), that a meeting will be held at the U.S. Treasury Department, 15th and Pennsylvania Avenue, NW., Washington, DC on January 29, 2002, of the following debt management advisory committee:

The Bond Market Association Treasury Borrowing Advisory Committee

The agenda for the meeting provides for a technical background briefing by Treasury staff, followed by a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues, and a working session. Following the working session, the Committee will present a written report of its recommendations.

The background briefing by Treasury staff will be held at 9 a.m. Eastern time and will be open to the public. The remaining sessions and the committee's reporting session will be closed to the public, pursuant to 5 U.S.C. App. 2, section 10(d) and Public Law 103–202, section 202(c)(1)(B) (31 U.S.C. section 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of departments by 5 U.S.C. App. 2, 10(d) and vested in me by Treasury Department Order No. 101–05, that the closed portions of the meeting are concerned with discussions of the issues presented to the Committee by the Secretary and recommendations of the Committee to the Secretary, pursuant to Public Law 103–202, 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 5526(c)(3)(B). In addition, the closed portions of the meeting are concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, section 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the advisory committee, premature disclosure of the committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

The Office of Financial Markets is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552b. The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Paul Malvey, Director, Office of Market Finance at 202–622–2630.

Dated: January 14, 2002.

Brian C. Roseboro,

Assistant Secretary, Financial Markets.

[FR Doc. 02–1307 Filed 1–17–02; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0047]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed by the agency when a purchaser assumes a veteran's home in release of liability cases.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 19, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0047'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each

collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Financial Statement, VA Form 26–6807.

OMB Control Number: 2900–0047.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–6807 is used to determine an applicant's or obligor's creditworthiness. The major use of the form occurs in release of liability and substitution of entitlement cases. VA may release original veteran obligors from personal liability arising from the original guaranty of their home loans, or the making of a direct loan, provided purchaser/assumers meet the necessary requirements, among which is qualifying from a credit standpoint.

The form also can be used to determine a borrower's financial condition in connection with efforts to reinstate a seriously defaulted guaranteed, insured, or portfolio loan. It is also used to determine the eligibility of homeowners for aid under the Homeowners Assistance Program, which provides assistance by reducing losses incident to the disposal of homes when military installations at which the homeowners were employed or serving are ordered closed in whole or in part.

Affected Public: Individuals or households.

Estimated Annual Burden: 30,000 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: On Occasion.

Estimated Number of Respondents: 40,000.

Dated: January 8, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–1406 Filed 1–17–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0404]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 19, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0404.''

SUPPLEMENTARY INFORMATION: *Title:* Veteran's Application for Increased Compensation Based on Unemployability, VA Form 21–8940.

OMB Control Number: 2900–0404.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–8940 is used by veterans to file a claim for increased VA disability compensation based on unemployability. VA uses the information to determine a veteran's entitlement to unemployability benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 6, 2001, at page 35698.

Affected Public: Individuals or households.

Estimated Annual Burden: 18,000 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 24,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0404'' in any correspondence.

Dated: January 8, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–1407 Filed 1–17–02; 8:45 am]

BILLING CODE 8320–01–P

Notices

Federal Register
Vol. 67, No. 13
Friday, January 18, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV02–981–1 NC]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for Almonds Grown in California, Marketing Order 981.

DATES: Comments on this notice must be received by March 19, 2002.

ADDITIONAL INFORMATION OR COMMENTS: Contact Valerie L. Emmer-Scott, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Tel: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *moab.docketclerk@usda.gov.*

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

SUPPLEMENTARY INFORMATION:

Title: Almonds Grown in California, Marketing Order 981.

OMB Number: 0581–0071.

Expiration Date of Approval: August 31, 2002.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be resolved individually. Order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674), marketing order programs are established if favored in referendum among producers. The handling of the commodity is regulated. The Department of Agriculture (USDA) is authorized to oversee the order's operations and issue regulations recommended by a committee of representatives from each commodity industry. The Almond Board of California (Board) is responsible for locally administering the program.

The information collection requirements in this request are essential to carry out the intent of the AMAA, to provide the respondents the type of service they request, and to administer the California almond marketing order program (7 CFR part 981), which has been operating since 1950.

The California almond marketing order authorizes the issuance of quality and volume control regulations, as well as inspection requirements. Regulatory provisions apply to almonds shipped within and outside of the production area, except those specifically exempt. The order also has authority for production and marketing research and development projects, including paid advertising. Handlers who advertise may receive credit for their advertising expenses according to specific requirements.

The order, and rules and regulations issued thereunder, require handlers and growers to submit certain information. Much of this information is compiled by the Board in aggregate and provided to the industry to assist in marketing decisions.

The Board has developed forms as a means for persons to file required information with the Board relating to almond supplies, shipments, dispositions, and other information needed to effectively carry out the purpose of the AMAA and order. As shipments of California almonds are normally year-round, these forms are utilized accordingly. A USDA form is used to allow growers to vote on amendments or continuance of the marketing order. In addition, almond growers and handlers who are nominated by their peers to serve as representatives on the Board must file nomination forms with the USDA.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarter's staff, and authorized employees of the Board. Authorized Board employees and the industry are the primary users of the information and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.33 hours per response.

Respondents: California almond growers, handlers and accepted users of inedible almonds.

Estimated Number of Respondents: 7,150.

Estimated Number of Responses per Respondent: 1.04.

Estimated Total Annual Burden on Respondents: 2,445 hours.

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

Comments should reference OMB No. 0581–0071 and the California Almond Marketing Order No. 981, and be mailed to Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Tel: (202) 720–2491, Fax: (202) 720–8938; Fax:

(202) 720–8938; or e-mail: *moab.docketclerk@usda.gov.* All comments received will be available for public inspection during regular business hours at the same address.

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

Dated: January 14, 2002.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 02–1289 Filed 1–17–02; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–113–1]

Notice of Request for Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: New information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to initiate a new information collection activity for self-certification medical statements.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by March 19, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–113–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–113–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 01–113–1'' on the subject line.

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

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

FOR FURTHER INFORMATION CONTACT: For information on self-certification medical statements, contact Ms. Linda Lane, Personnel Management Specialist, Human Resources Division, MRPBS, room 1724, South Building, 14th Street and Independence Avenue SW., Washington, DC 20250; (202) 720–3519. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Self-Certification Medical Statement.

OMB Number: 0579–XXXX.

Type of Request: Approval of a new information collection.

Abstract: The Marketing and Regulatory Programs (MRP) agencies of the U.S. Department of Agriculture facilitate the domestic and international marketing of U.S. agricultural products and protect the health of domestic animal and plant resources. The MRP agencies are the Agricultural Marketing Service (AMS), the Animal and Plant Health Inspection Service (APHIS), and the Grain Inspection, Packers and Stockyards Administration (GIPSA). Resource management and administrative services, including human resource management, for the three MRP agencies are provided by the MRP Business Services unit of APHIS, which is the lead agency in providing administrative support for MRP.

In accordance with 5 CFR part 339, Federal agencies are authorized to obtain medical information from applicants for and employees in positions that have approved medical standards. Medical standards may be established for positions for which the duties are arduous or hazardous or require a certain level of health status or fitness.

Certain positions in MRP agencies have medical standards. An example of such a position is the agricultural commodity grader position in AMS. Each year, AMS hires a number of agricultural commodity graders. These employees work under dusty conditions, around moving machinery and slippery surfaces, and in areas with high noise levels. They have direct contact with meat and dairy products, fresh and processed fruits and vegetables, and poultry products intended for human consumption or cotton and tobacco products intended for human use. Medical standards have also been established for positions in APHIS that involve contact with wild animals.

The MRP agencies require a self-certification statement from applicants for these positions regarding their fitness for the positions. The MRP agencies need this information to determine whether the applicants can perform the duties of the positions. Inability to collect this information would adversely affect the MRP agencies' ability to recruit and hire qualified individuals and carry out their missions.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.1666 hours per response.

Respondents: Applicants to MRP positions with approved medical standards.

Estimated annual number of respondents: 300.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 300.

Estimated total annual burden on respondents: 50 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual

number of responses multiplied by the reporting burden per response.)

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

Done in Washington, DC, this 14th day of January 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–1340 Filed 1–17–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Request for Extension of Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Commodity Credit Corporation (CCC) to request an extension of an approved information collection to support the Tobacco Importer Assessments. This extension does not involve any revisions to the program rules.

DATES: Submit comments about this notice on or before March 19, 2002.

ADDRESSES: Mail or hand-deliver public comments regarding this notice to Director, Tobacco and Peanuts Division, FSA, USDA, 1400 Independence Avenue, SW, Room 5750–S, STOP 0514, Washington, DC 20250–0514. Comments may be sent by facsimile to (202) 720–0549. Comments may be sent by e-mail to: *tob_comments@wdc.fsa.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Ann Wortham, Tobacco and Peanuts Division, (202) 720–2715.

SUPPLEMENTARY INFORMATION:

Title: Importer Assessments.

OMB Control Number: 0560–0148.

Expiration Date: December 31, 2001.

Type of Request: Extension of a Currently Approved Information Collection.

Abstract: The information collected under OMB Control Number 0560–0148 constitutes all of the information required by CCC to effectively administer the statutory provisions for assessments on imported tobacco. Information collected from importers of unmanufactured tobacco is necessary to determine the amounts of assessments due and that the assessments are paid in a timely manner. The Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, amended sections 106, 106A, and 106B, of the Agricultural Act of 1949, to require the payment of importer no-net-cost (INNC) assessments on imported unmanufactured tobacco. INNC assessments apply only to burley and flue-cured tobacco. Information is collected on form CCC–100, Importer Enter and Assessment Worksheet. The data reported thereon includes the importer's name and address, the importer's number, and the tobacco's entry number, Harmonized Tariff Schedule (HTS) number, as well as the quantity of tobacco, and amounts of assessments remitted.

Estimate of Burden: Public reporting burden for this collection of information is estimated at 45 minutes per response.

Respondents: Importers of unmanufactured tobacco for consumption in the United States, who may be individuals, small businesses, or large tobacco leaf dealers and cigarette manufacturers.

Estimated Number of Respondents: 40.

Estimated Number of Responses Per Respondent: 18.

Estimated Total Annual Burden on Respondents: 540 hours.

Request for Comment: Comment on the above notice is sought. Topics for comment may include, but need not be limited to: (a) Whether the collection of information is necessary for the proper performance of the functions of CCC, including whether the information will have practical utility; (b) the accuracy of CCC's estimate of burden including the validity of the methodology and assumptions used; (c) enhancing the quality, utility, and clarity of the information collected; and (d) minimizing the burden of the collection of information on respondents, including the use of appropriate automated electronic, mechanical, or other forms of informational technology.

Comments should be sent the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Director, Tobacco and Peanuts Division, at the addresses listed above. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Signed at Washington, DC, on December 31, 2001.

James R. Little,

Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–1359 Filed 1–17–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

North Mt. Baker-Snoqualmie Resource Advisory Committee; Meetings

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The North Mt. Baker-Snoqualmie Resource Advisory Committee (RAC) will meet twice during the month of February 2002. The first meeting is scheduled for Wednesday, February 6, 2002, at the Skagit County Hearing Room B, 700 South 2nd St., in Mt. Vernon, WA 98273. The second meeting is scheduled for Thursday, February 21, 2002, at the Whatcom County Courthouse, Multipurpose Room, 311 Grand Ave., in Bellingham, WA 98225.

The February 6 meeting will begin at 9:30 a.m. and continue until about 3:30 p.m. Agenda items to be covered include: (1) Background on the Secure Rural Schools and Community Self-Determination Act of 2000, (2) Organization of the North Mt. Baker-Snoqualmie Resource Advisory Committee, and (3) Future program of work for the North Mt. Baker-Snoqualmie Resource Advisory Committee.

The February 21, 2002 meeting will begin at 9:30 a.m. and continue until about 3:30 p.m. The topics to be covered at the meeting include the process for reviewing and recommending projects and beginning the review of project proposals for Title II funding provided by the Secure Rural Schools and Community Self-Determination Act of 2000.

All North Mt. Baker-Snoqualmie Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

The North Mt. Baker-Snoqualmie Resource Advisory Committee advises Whatcom and Skagit Counties on projects, reviews project proposals, and makes recommendations to the Forest Supervisor for projects to be funded by Title II dollars. The North Mt. Baker-Snoqualmie Resource Advisory Committee was established to carry out the requirements of the Secure Rural

Schools and Community Self-Determination Act of 2000.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Jon Vanderheyden, Designated Federal Official, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 810 Stated Route 20, Sedro Woolley, Washington 98284 (360–856–5700, Extension 201).

Dated: January 11, 2002.

Jon Vanderheyden,

Designated Federal Official.

[FR Doc. 02–1310 Filed 1–17–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Siuslaw Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siuslaw Resource Advisory Committee (RAC) will meet on February 7 and 8, 2002. The meeting will begin at 9 a.m. in the Siuslaw Valley Fire & Rescue Station, 2625 Highway 101 N., Florence, OR. Draft agenda items include: Assigning Priorities to Title II Projects; and Public Forum. The meeting is expected to adjourn at 4 p.m. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Linda Stanley, Community Development Specialist, Siuslaw National Forest, 541/750–7210 or write to Forest Supervisor, Siuslaw National Forest, PO Box 1148, Corvallis, OR 97339.

Dated: January 11, 2002.

Gloria D. Brown,

Forest Supervisor.

[FR Doc. 02–1311 Filed 1–17–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Pellaphalia Creek Watershed, Leake County, MS

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Pellaphalia Creek Watershed, Leake County, Mississippi.

FOR FURTHER INFORMATION CONTACT: Homer L. Wilkes, State Conservationist, Natural Resources Conservation Service, Suite 1321, A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, Telephone: 601–965–5205.

SUPPLEMENTARY INFORMATION: The environmental assessment of this Federal assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Homer L. Wilkes, State Conservationist had determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a watershed plan to reduce flood damage to the disadvantaged residents of a rural Leake County community in the Pellaphalia Creek Watershed. The planned works of improvement consists of installing one Class I Dike (levee) and elevating one residence above the 100-year elevation.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Homer L. Wilkes. No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: January 11, 2002.

Homer L. Wilkes,

State Conservationist.

[FR Doc. 02–1288 Filed 1–17–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Maximum Dollar Amount on Awards Under the Rural Economic Development Loan and Grant Program for Fiscal Year 2002

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service hereby announces the maximum dollar amount on loan and grant awards under the Rural Economic Development Loan and Grant (REDLG) program for fiscal year (FY) 2002. The maximum dollar award on zero-interest loans for FY 2002 is $450,000. The maximum dollar award on grants for FY 2002 is $200,000. The maximum loan and grant awards stated in this notice are effective for loans and grants made during the fiscal year beginning October 1, 2001, and ending September 30, 2002. REDLG loans and grants are available to Rural Utilities Service electric and telephone utilities to assist in developing rural areas from an economic standpoint.

FOR FURTHER INFORMATION CONTACT: Patricia Wing, Loan Specialist, Rural Business-Cooperative Service, USDA, STOP 3225, Room 6870, 1400 Independence Avenue, SW., Washington, DC 20250. Telephone: (202) 720–9558. FAX: (202) 720–6561.

SUPPLEMENTARY INFORMATION: The maximum loan and grant awards are determined in accordance with 7 CFR 1703.28. The maximum loan and grant awards are calculated as 3.0 percent of the projected program levels, rounded to the nearest $10,000; however, as specified in 7 CFR 1703.28(b), regardless of the projected total amount that will be available, the maximum size may not be lower than $200,000. The projected program level during FY 2002 for zero-interest loans is $14.966 million and the projected program level for grants is $4 million. Applying the specified 3.0 percent to the program level for loans, rounded to the nearest $10,000, results in the maximum loan award of $450,000. Applying the specified 3.0 percent to the program level for grants results in an amount lower than $200,000. Therefore, the maximum grant award for FY 2002 will be $200,000.

Dated: December 7, 2001.

John Rosso,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 02–1286 Filed 1–17–02; 8:45 am]

BILLING CODE 3410–XY–U

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

Determination of the 2001 Fiscal Year Interest Rates on Rural Telephone Bank Loans

AGENCY: Rural Telephone Bank, USDA.

ACTION: Notice of 2001 fiscal year interest rates determination.

SUMMARY: In accordance with 7 CFR 1610.10, the Rural Telephone Bank (Bank) fiscal year 2001 cost of money rates have been established as follows: 5.95% and 5.17% for advances from the liquidating account and financing account, respectively (fiscal year is the period beginning October 1 and ending September 30).

Except for loans approved from October 1, 1987, through December 21, 1987, where borrowers elected to remain at interest rates set at loan approval, all loan advances made during fiscal year 2001 under Bank loans approved in fiscal years 1988 through 1991 shall bear interest at the rate of 5.95% (the liquidating account rate). All loan advances made during fiscal year 2001 under Bank loans approved during or after fiscal year 1992 shall bear interest at the rate of 5.17% (the financing account rate).

The calculation of the Bank's cost of money rates for fiscal year 2001 for the liquidating account and the financing account are provided in Tables 1 and 2. Since the calculated rates are greater than the minimum rate (5.00%) allowed under 7 U.S.C. 948(b)(3)(A), the cost of money rates for the liquidating account and financing account are set at 5.95% and 5.17%, respectively. The methodology required to calculate the cost of money rates is established in 7 CFR 1610.10(c).

FOR FURTHER INFORMATION CONTACT: Jonathan P. Claffey, Deputy Assistant Administrator, Telecommunications Program, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1590, South Building, Washington, DC 20250, telephone number (202) 720–9556.

SUPPLEMENTARY INFORMATION: The Federal Credit Reform Act of 1990 (''Credit Reform'') (2 U.S.C. 661a, *et seq.*) implemented a system to reform the budgetary accounting and management of Federal credit programs. Bank loans approved on or after October 1, 1991, are accounted for in a different manner than Bank loans approved prior to fiscal year 1992. As a result, the Bank must calculate two cost of money rates: (1) The cost of money rate for advances made from the liquidating account (advances made during fiscal year 2001 on loans approved prior to fiscal year 1992) and (2) the cost of money rate for advances made during fiscal year 2001 on loans approved on or after October 1, 1991 (otherwise referred to as loans from the financing account).

The cost of money rate methodology is the same for both accounts. It develops a weighted average rate for the Bank's cost of money considering total fiscal year loan advances; the excess of fiscal year loan advances over amounts received in the fiscal year from the issuance of Class A, B, and C stocks, debentures and other obligations; and the costs to the Bank of obtaining funds from these sources.

During fiscal year 2001, the Bank was authorized to pay the following dividends: the dividend on Class A stock was 2.00% as established in amended section 406(c) of the Rural Electrification Act (RE Act); no dividends were payable on Class B stock as specified in 7 CFR 1610.10(c); and the dividend on Class C stock was established by the Bank at 5.45%.

Sources and Costs of Funds—Liquidating Account

In accordance with Section 406(a) of the RE Act, the Bank did not issue Class A stock in fiscal year 2001. Advances for the purchase of Class B stock and cash purchases for Class B stock were $256,497. Since there were no rescissions of loan funds advanced for Class B stock, the amount received by the Bank from the issuance of Class B stock, per 7 CFR 1610.10(c), was $256,497. The amount received by the Bank in fiscal year 2001 from the issuance of Class C stock was $3,368.

The Bank did not issue debentures or any other obligations related to the liquidating account in fiscal year 2001. Consequently, no cost was incurred related to the issuance of debentures subject to 7 U.S.C. 948(b)(3)(D).

The excess of fiscal year 2001 loan advances from the liquidating account over amounts received from issuance of stocks, debentures, and other obligations amounted to $6,378,242. The cost associated with this excess is the historical cost of money rate as defined in 7 U.S.C. 948(b)(3)(D)(v). The calculation of the Bank's historical cost of money rate for advances from the liquidating account is also provided in Table 1. The methodology required to perform this calculation is described in 7 CFR 1610.10(c). The cost for money rates for fiscal years 1974 through 1987 are defined in section 408(b) of the RE Act, as amended by Public Law 100–203, and are listed in 7 CFR 1610.10(c) and Table 1 herein.

Sources and Costs of Funds—Financing Account

In accordance with Section 406(a) of the RE Act, the Bank did not issue Class A stock in fiscal year 2001. Advances for the purchase of Class B stock and cash purchases for Class B stock were $2,638,376. Since there were no rescissions of loan funds advanced for Class B stock, the amount received by the Bank from the issuance of Class B stock, per 7 CFR 1610.10(c), was $2,638,376. The Bank did not receive any amounts in fiscal year 2001 from the issuance of Class C stock.

During fiscal year 2001, issuance of debentures or any other obligations related to the financing account were $63,500,000 at an interest rate of 5.426%. However, only $52,767,520 is attributable to advances made with borrowed funds. Advances totaling $2,638,376 were made through collections associated with Class B stock purchases and $8,094,104 will be carried forward and used for loan transactions in fiscal year 2002. Therefore, there is no excess of funds for fiscal year 2001.

Since there was no excess of fiscal year 2001 loan advances from the financing account over amounts received from issuance of stocks, debentures, and other obligations, no cost was incurred related to advances from the financing account. However, the Bank's cost of money rate for advances from the financing account is provided in Table 2. The methodology required to perform this calculation is described in 7 CFR 1610.10(c).

Dated: December 21, 2001.

Hilda Gay Legg,

Governor, Rural Telephone Bank.

BILLING CODE 3410–15–P

TABLE 1

Rural Telephone Bank Cost of Money Rate - Liquidating Account

FY 2001 Source of Bank Funds	(a) Amount	(b) Cost	(c) (a)x(b)	(c) / Advances
Issuance of Class A Stock	$ -	2.00%	$ -	0.0000%
Issuance of Class B Stock	$ 256,497	0.00%	$ -	0.0000%
Issuance of Class C Stock	$ 3,368	5.45%	$ 184	0.0028%
Issuance of Debentures and Other Obligations	$ -	0.00%	$ -	0.0000%
Excess of Total Advances Over Issuances	$ 6,378,242	6.19%	$ 394,813	5.9477%
Total FY 2001 Advances	$ 6,638,107	CALCULATED COST OF MONEY RATE =		5.95%
		MINIMUM RATE ALLOWABLE =		5.00%

Fiscal Year	(a) Cost of Money	(b) Advances	(c) (a)x(b)	(c) / Total Advances
FY 1974	5.01%	$ 111,022,574	$ 5,562,231	0.232%
FY 1975	5.85%	$ 130,663,197	$ 7,643,797	0.319%
FY 1976	5.33%	$ 99,915,066	$ 5,325,473	0.222%
FY 1977	5.00%	$ 80,907,425	$ 4,045,371	0.169%
FY 1978	5.87%	$ 142,297,190	$ 8,352,845	0.349%
FY 1979	5.93%	$ 130,540,067	$ 7,741,026	0.323%
FY 1980	8.10%	$ 199,944,235	$ 16,195,483	0.676%
FY 1981	9.46%	$ 148,599,372	$ 14,057,501	0.587%
FY 1982	8.39%	$ 112,232,127	$ 9,416,275	0.393%
FY 1983	6.99%	$ 93,402,836	$ 6,528,858	0.272%
FY 1984	6.55%	$ 90,450,549	$ 5,924,511	0.247%
FY 1985	5.00%	$ 72,583,394	$ 3,629,170	0.151%
FY 1986	5.00%	$ 71,582,383	$ 3,579,119	0.149%
FY 1987	5.00%	$ 51,974,938	$ 2,598,747	0.108%
FY 1988	5.00%	$ 119,488,367	$ 5,974,418	0.249%
FY 1989	5.00%	$ 97,046,947	$ 4,852,347	0.203%
FY 1990	5.00%	$ 107,694,991	$ 5,384,750	0.225%
FY 1991	5.43%	$ 163,143,075	$ 8,858,669	0.370%
FY 1992	6.14%	$ 84,940,822	$ 5,215,366	0.218%
FY 1993	6.05%	$ 84,605,366	$ 5,118,625	0.214%
FY 1994	6.15%	$ 54,530,897	$ 3,353,650	0.140%
FY 1995	6.04%	$ 35,967,133	$ 2,172,415	0.091%
FY 1996	6.05%	$ 30,965,187	$ 1,873,394	0.078%
FY 1997	5.98%	$ 32,602,587	$ 1,949,635	0.081%
FY 1998	5.96%	$ 20,673,798	$ 1,232,158	0.051%
FY 1999	6.01%	$ 17,796,518	$ 1,069,571	0.045%
FY 2000	6.01%	$ 10,436,622	$ 627,241	0.026%
	TOTAL ADVANCES	$ 2,396,007,663	COST OF MONEY	6.19%

TABLE 2

Rural Telephone Bank Cost of Money Rate - Financing Account

FY 2001 Source of Bank Funds	(a) Amount	(b) Cost	(c) (a)x(b)	(c) / Advances
Issuance of Class A Stock	$ -	2.000%	$ -	0.0000%
Issuance of Class B Stock	$ 2,638,376	0.000%	$ -	0.0000%
Issuance of Class C Stock	$ -	5.450%	$ -	0.0000%
Issuance of Debentures and Other Obligations*	$ 52,767,520	5.426%	$ 2,863,166	5.1676%
Excess of Total Advances Over Issuances	$ -	6.260%	$ -	0.0000%
Total FY 2001 Advances	$ 55,405,896	CALCULATED COST OF MONEY RATE =		5.17%
		MINIMUM RATE ALLOWABLE =		5.00%

* RTB borrowed $63,500,000 from the financing account in FY2001, the remaining funds will be be used for loan transactions in FY2002.

Rural Telephone Bank Historical Cost of Money Rate - Financing Account

Fiscal Year	(a) Cost of Money	(b) Advances	(c) (a)x(b)	(c) / Total Advances
FY 1992	7.38%	$ 4,056,250	$ 299,351	0.098%
FY 1993	6.35%	$ 23,839,200	$ 1,513,789	0.496%
FY 1994	6.40%	$ 56,838,902	$ 3,637,690	1.191%
FY 1995	6.88%	$ 37,161,517	$ 2,556,712	0.837%
FY 1996	6.42%	$ 44,536,621	$ 2,859,251	0.936%
FY 1997	6.54%	$ 34,368,726	$ 2,247,715	0.736%
FY 1998	5.71%	$ 34,446,458	$ 1,966,893	0.644%
FY 1999	5.54%	$ 38,685,732	$ 2,143,190	0.702%
FY 2000	6.05%	$ 31,401,867	$ 1,899,813	0.622%
	TOTAL ADVANCES	$ 305,335,273	COST OF MONEY	6.26%

[FR Doc. 02–1362 Filed 1–17–02; 8:45 am]
BILLING CODE 3410–15–C

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Municipal Interest Rates for the First Quarter of 2002

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of municipal interest rates on advances from insured electric loans for the first quarter of 2002.

SUMMARY: The Rural Utilities Service hereby announces the interest rates for advances on municipal rate loans with interest rate terms beginning during the first calendar quarter of 2002.

DATES: These interest rates are effective for interest rate terms that commence during the period beginning January 1, 2002, and ending March 31, 2002.

FOR FURTHER INFORMATION CONTACT: Gail P. Salgado, Management Analyst, Office of the Assistant Administrator, Electric Program, Rural Utilities Service, U.S. Department of Agriculture, Room 4024–S, Stop 1560, 1400 Independence Avenue, SW., Washington, DC 20250–1560. Telephone: 202–205–3660. FAX: 202–690–0717. e-mail: *GSalgado@rus.usda.gov.*

SUPPLEMENTARY INFORMATION: The Rural Utilities Service (RUS) hereby announces the interest rates on advances made during the first calendar quarter of 2002 for municipal rate electric loans. RUS regulations at § 1714.4 state that each advance of funds on a municipal rate loan shall bear interest at a single rate for each interest rate term. Pursuant to § 1714.5, the interest rates on these advances are based on indexes published in the ''Bond Buyer'' for the four weeks prior to the fourth Friday of the last month before the beginning of the quarter. The rate for interest rate terms of 20 years or longer is the average of the 20 year rates published in the Bond Buyer in the four weeks specified in § 1714.5(d). The rate for terms of less than 20 years is the average of the rates published in the Bond Buyer for the same four weeks in the table of ''Municipal Market Data—General Obligation Yields'' or the successor to this table. No interest rate may exceed the interest rate for Water and Waste Disposal loans.

The table of Municipal Market Data includes only rates for securities maturing in 2002 and at 5 year intervals thereafter. The rates published by RUS reflect the average rates for the years shown in the Municipal Market Data table. Rates for interest rate terms ending in intervening years are a linear interpolation based on the average of the rates published in the Bond Buyer. All rates are adjusted to the nearest one eighth of one percent (0.125 percent) as required under § 1714.5(a). The market interest rate on Water and Waste Disposal loans for this quarter is 5.125 percent.

In accordance with § 1714.5, the interest rates are established as shown in the following table for all interest rate terms that begin at any time during the first calendar quarter of 2002.

Interest rate term ends in (year)	RUS rate (0.000 percent)
2023 or later	5.125
2022	5.125
2021	5.000
2020	5.000
2019	4.875
2018	4.875
2017	4.875
2016	4.750
2015	4.625
2014	4.500
2013	4.375
2012	4.250
2011	4.125
2010	3.875
2009	3.750
2008	3.625
2007	3.500
2006	3.125
2005	2.625
2004	2.250
2003	1.875

Dated: December 21, 2001.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 02–1363 Filed 1–17–02; 8:45 am]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition and Deletion

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

ACTION: Proposed addition to and deletion from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a service previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 19, 2002.

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

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

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

Addition

If the Committee approves the proposed addition, the entities of the Federal Government identified in the notice for each service will be required to procure the service 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 service to the Government.

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

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information. The following service is proposed for addition to Procurement List for production by the nonprofit agencies listed:

Service: Fulfillment Services, Military Sealift Command, Milwaukee, Wisconsin.

NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin.

Government Agency: Military Sealift Command.

Deletion

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.

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

3. There are no known regulatory alternatives which would accomplish

the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for deletion from the Procurement List.

The following service is proposed for deletion from the Procurement List:

Service: Janitorial/Custodial, VA Greater Los Angeles Regional Healthcare System, Consolidated Mail Outpatient Pharmacy, 11301 Wilshire Boulevard, Building 222, Los Angeles, California.

G. John Heyer,

General Counsel.

[FR Doc. 02–1368 Filed 1–17–02; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

[I.D. 011502A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Gear-Marking Requirements in Antarctic Fisheries.

Form Number(s): None.

OMB Approval Number: 0648–0367.

Type of Request: Regular submission.

Burden Hours: 10.

Number of Respondents: 1.

Average Hours Per Response: 5 minutes to mark a buoy/float; 2 minutes to mark or tag a trap/pot; and 2 minutes to sew a tag on trawl nets.

Needs and Uses: Vessels participating in Antarctic fisheries must mark the vessel's fishing gear with the official vessel identification number, Federal permit or tag number, or some other specified form of identification. The information is used for enforcement purposes. The authority for this requirement comes from the Magnuson-Stevens Fishery Management and Conservation Act and the Antarctic Marine Living Resources Convention Act of 1984.

Affected Public: Business and other for-profit organizations.

Frequency: Third party disclosure.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1392 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 011502B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Foreign Fishing Gear Identification Requirements.

Form Number(s): None.

OMB Approval Number: 0648–0354.

Type of Request: Regular submission.

Burden Hours: 1.

Number of Respondents: 1.

Average Hours Per Response: 75 minutes.

Needs and Uses: Under provisions of Section 204 of the Magnuson-Stevens Fishery Management and Conservation Act, foreign fishing vessels may be authorized to conduct fishing activities in U.S. waters. Vessels so authorized that deploy gear which is not physically and continuously attached to the vessel are required to mark such gear in a prescribed manner to allow enforcement personnel to monitor fishing activities and ensure that a vessel harvests only from its own gear and that its gear is not illegally placed.

Affected Public: Business or other for-profit organizations.

Frequency: Third party disclosure.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1393 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 011502C]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Foreign Fishing Vessel Permit Applications.

Form Number(s): None.

OMB Approval Number: 0648–0089.

Type of Request: Regular submission.

Burden Hours: 25.

Number of Respondents: 25.

Average Hours Per Response: 90 minutes for an application for directed fishing; 2 hours for an application for a joint venture; and 45 minutes for an application for transshipment.

Needs and Uses: Section 204 of the Magnuson-Stevens Fishery Conservation and Management Act provides for the issuance of fishing permits to foreign vessels. Persons wanting permits must submit application material needed by NOAA to evaluate and act on the request.

Affected Public: Business and other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1394 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 01502D]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: High Seas Fishing Vessel Identification Requirements.

Form Number(s): None.

OMB Approval Number: 0648–0348.

Type of Request: Regular submission.

Burden Hours: 37.

Number of Respondents: 50.

Average Hours Per Response: 45 minutes.

Needs and Uses: Vessels licensed under the High Sea Fishing Compliance Act are required to mark their vessels in three places with their official number or international radio call sign. This identification is necessary for enforcement purposes.

Affected Public: Business and other for-profit organizations.

Frequency: Third party disclosure.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1395 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 011502E]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Prohibited Species Donation Program.

Form Number(s): None.

OMB Approval Number: 0648–0316.

Type of Request: Regular submission.

Burden Hours: 733.

Number of Respondents: 76.

Average Hours Per Response: 40 hours for an authorized distributor application and list of participants; 12 minutes for a distributor to retain product tracking information; and 6 minutes for a processor to retain product tracking information.

Needs and Uses: A prohibited species donation (PSD) program for salmon and halibut was approved by the North Pacific Fishery Management Council and implemented by the National Marine Fisheries Service (NMFS). This program has effectively reduced regulatory discard of salmon and halibut by allowing fish that would otherwise be discarded to be donated to needy individuals through tax-exempt organizations. Vessels and processing plants participating in the donation program voluntarily retain and process salmon and halibut bycatch.

An authorized, tax-exempt, distributor, chosen by NMFS is responsible for monitoring the retention and processing of fish donated by vessels and processors. The authorized distributor also coordinates the processing, storage, transportation, and distribution of salmon and halibut. The PSD program requires a collection-of-information so that NMFS can monitor the authorized distributors' ability to effectively supervise program participants and ensure that donated fish are properly processed, stored, and distributed.

Affected Public: Not-for-profit institutions, business or other for-profit organizations.

Frequency: Every three years for permit, on occasion, and recordkeeping.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1396 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 011502F]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Individual Fishing Quotas for Pacific Halibut and Sablefish in the Alaska Fisheries.

Form Number(s): None.

OMB Approval Number: 0648–0272.

Type of Request: Regular submission.

Burden Hours: 13,249.

Number of Respondents: 6,700.

Average Hours Per Response: 30 minutes for an application for a landing card; 30 minutes for an application for a registered buyer permit; 1 hour for an application for quota share; 4 hours for a letter of appeal; 30 minutes for a beneficiary designation; 2 hours for identification of ownership interest; 30 minutes for an annual update on status of corporation or partnership quota share; 2 hours for an application for a transfer eligibility certificate; 2 hours for

an application for transfer of quota share; 30 minutes for an application for replacement of certificates, permits, or cards; 30 minutes for a request for a transaction terminal; 6 minutes for a request for an administrative waiver; 12 minutes for a prior notice of landing; 12 minutes for a landing report; 12 minutes for a vessel clearance; 6 minutes for a departure report; 12 minutes for a transshipment authorization; 18 minutes for a shipment report; and 6 minutes for a dockside sales receipt.

Needs and Uses: The National Marine Fisheries Service collects information for the continued management of the Individual Fishing Quota (IFQ) Program for fixed-gear Pacific halibut and sablefish fisheries off Alaska as well as the Western Alaska Community Development Quota (CDQ) Program halibut fishery. The IFQ program allocates annual total catch limits for the halibut and sablefish fisheries among individual fishermen. The CDQ halibut program allocates annual total catch limits for the halibut fishery among individual CDQ fishermen. Fishermen are assigned Quota Shares (QS) for the fisheries, and then annually receive an IFQ and/or CDQ. Applications and reporting are required to manage and track the program.

Affected Public: Individuals or households, business or other for-profit organizations.

Frequency: Recordkeeping, on occasion, annual.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1397 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 011502G]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Pacific Albacore Logbook.

Form Number(s): NOAA Form 88–197.

OMB Approval Number: 0648–0223.

Type of Request: Regular submission.

Burden Hours: 400.

Number of Respondents: 400.

Average Hours Per Response: 1.

Needs and Uses: Fishermen participating in the Pacific albacore tuna fishery are asked to voluntarily complete and submit logbooks documenting their catch and effort on fishing trips. Persons possessing High Seas Fishing Compliance Act permits are required to submit such logbooks. The information obtained is used by the agency to assess the status of albacore stocks and to monitor the fishery.

Affected Public: Business and other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1398 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011502J]

Submission for OMB Review; Comment Request

SUPPLEMENTARY INFORMATION: The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Foreign Fishing Vessel Identification Requirements.

Form Number(s): None.

OMB Approval Number: 0648-0356.

Type of Request: Regular submission.

Burden Hours: 7.

Number of Respondents: 10.

Average Hours Per Response: 45 minutes.

Needs and Uses: Under provisions of Section 204 of the Magnuson-Stevens Fishery Management and Conservation Act, foreign fishing vessels may be authorized to conduct fishing activities in U.S. waters. Vessels so authorized are required to display vessel identification to make it possible for enforcement personnel to monitor fishing, at-sea processing, and other related activities, to ascertain whether a vessel's observed activities are in accordance with those authorized for that vessel.

Affected Public: Business and other for-profit organizations.

Frequency: Third party disclosure.

Respondent's Obligation: Mandatory

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1401 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011502H]

Submission for OMB Review; Comment Request

SUPPLEMENTARY INFORMATION: The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: High Sea Fishing Permit Application Information.

Form Number(s): None.

OMB Approval Number: 0648–0304.

Type of Request: Regular submission.

Burden Hours: 100.

Number of Respondents: 200.

Average Hours Per Response: 30 minutes.

Needs and Uses: United States vessels that fish on the high seas are required to possess a permit issued under the High Seas Fishing Compliance Act. Applicants must submit information to identify their vessels and intended fishing areas. The application information is used to process applications and maintain a register of U.S. vessels authorized to fish on the high seas.

Affected Public: Business and other for-profit organizations.

Frequency: Every 5 years.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1402 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011502I]

Submission for OMB Review; Comment Request

SUPPLEMENTARY INFORMATION: The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northwest Region Vessel Identification Requirements.

Form Number(s): None.

OMB Approval Number: 0648–0355.

Type of Request: Regular submission.

Burden Hours: 1,488.

Number of Respondents: 1,984.

Average Hours Per Response: 45 minutes (15 minutes per location).

Needs and Uses: Federally-permitted vessels in the Pacific Coast Groundfish Fishery are required to identify their vessels by displaying their official number in three locations. The number is used by NOAA, the U.S. Coast Guard, and other agencies for fishery enforcement activities.

Affected Public: Business or other for-profit organizations.

Frequency: Third party disclosure.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 10, 2002

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1403 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Office of Export Trading Company Affairs; Export Trading Companies Contact Facilitation Service

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(C)(2)(A)).

DATES: Written comments must be submitted on or before March 19, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th & Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *MClayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Mary Michael, Office of Export Trading Company Affairs; Service Industries, Tourism and Finance; Room 1104; 14th St. & Constitution Ave, NW., Washington, DC 20230; phone: (202) 482–5131; and fax: (202) 482–1790.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Contact Facilitation Service (CFS) is a U.S. Department of Commerce database, designed to put U.S. producers together with export service providers. Many U.S. firms have never exported because of a fear of the risks involved in exporting and a lack of knowledge of the international marketplace. New-to-export firms need the assistance of export service firms offering export trade services. One of the purposes of the Export Trading Company (ETC) Act of 1982 is to increase United States exports of goods and services by encouraging more efficient provision of export trade services to U.S. producers and suppliers. Section 104 of the Act directs Commerce to provide a service to facilitate contact between producers of exportable goods and services and firms offering export trade services.

The International Trade Administration (ITA) maintains the CFS database of U.S. manufacturers, export

trading and management companies, wholesalers/distributors, and international service firms. The CFS is designed to help promote exports and enable U.S. producers to locate export service providers. Export Service firms registered in the CFS database are listed in annual print editions of the *U.S. Trade Assistance Directory,* distributed throughout the United States. U.S. producers of goods and services registered in the CFS database are listed in the annual print editions of the *U.S. Department of Commerce Exporters' Yellow Pages ™,* distributed worldwide. These directories also are accessible online at *www.myexports.com.* The print and electronic directories are produced and made available through ITA's ''MyExports ™'' program. Without the information collected by the form, the CFS database and the resulting directories would be unreliable and ineffective, because users of this kind of data need current information about the listed companies.

II. Method of Collection

Form ITA–4094P is sent by request to U.S. firms.

III. Data

OMB Number: 0625–0120.
Form Number: ITA–4094P.
Type of Review: Regular Submission.
Affected Public: Business or other for-profit; not-for-profit institutions and State, local or Tribal Government.
Estimated Number of Respondents: 9,500.
Estimated Time Per Response: 30 minutes.
Estimated Total Annual Burden Hours: 4,750.
Estimated Total Annual Costs: $95,500 ($10,000 government and $85,500 respondents).

IV. Request for Comments

Comments are invited (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 15, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–1360 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–812]

Furfuryl Alcohol From Thailand: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: January 18, 2002.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Tisha Loeper-Viti at (202) 482–0650 or (202) 482–7425, Office of AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order/finding for which a review is requested, and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Background

On August 20, 2001, the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on furfuryl alcohol from Thailand, covering the period July 1, 2000 through June 30, 2001 (66 FR 43570). The preliminary results are currently due no later than April 2, 2002.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit for the reasons stated in our memorandum from Gary Taverman to Bernard Carreau, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than July 31, 2002. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: January 14, 2002.

Bernard Carreau,

Deputy Assistant Secretary for AD/CVD Enforcement II.

[FR Doc. 02–1390 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an amended Export Trade Certificate of Review, Application No. 90–4A005.

SUMMARY: The Department of Commerce has issued an amended Export Trade Certificate of Review to the California Kiwifruit Commission (''CKC'') and California Kiwifruit Exporters Association (''CKEA'') on January 14, 2002. The original Certificate was issued on August 10, 1990 (55 FR 33740, August 17, 1990) and previously amended on November 27, 1990 (55 FR 50204, December 5, 1990); January 29, 1991 (56 FR 4601, February 5, 1991); and February 24, 1992 (57 FR 6712, February 27, 1992).

FOR FURTHER INFORMATION CONTACT: Vanessa M. Bachman, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number), or by e-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing

Title III are found at 15 CFR part 325 (2000).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

CKC's and CKEA's Export Trade Certificate of Review has been amended to:

1. Add each of the following companies as a new ''Member'' of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)): Stellar Distributing, Fresno, California; George Brothers, Sultana, California; Trinity Fruit Sales Co., Clovis, California; Sun Pacific Marketing Coop., Los Angeles, California; and Regatta Tropicals, Arroyo Grande, California;

2. Delete the following companies as ''Members'' of the Certificate: Alkop Farms, Inc., Chico, California; Bartell Marketing, Inc., Fresno, California; Blue Anchor, Inc., Sacramento, California; Coast to Coast Produce Co., San Luis Obispo, California; Nash De Camp Company, Visalia, California; and Richland Sales Co., McFarland, California; and

3. Change the listing of the company names for the current Members: Kings Canyon Fruit Sales Corp. to the new listing Kings Canyon/Corrin Sales Corp.; Venida Packing Inc. to the new listing Venida Packing Co.; and Wil-Ker-Son Kiwifruit Ranch to the new listing WKS/Wil-Ker-Son Ranch.

The effective date of the amended certificate is October 15, 2001. A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Dated: January 14, 2002.

Vanessa M. Bachman,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 02–1294 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 01–00005.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to Vinex International, Inc. (''VINEX''). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Vanessa Bachman, Acting Director Office of Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number), or by e-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2000). The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the Certificate in the **Federal Register**. Under Section 305 (a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. Products

All products.

2. Services

All services.

3. Technology Rights

Technology rights, including, but not limited to, patents, trademarks, copyrights, and trade secrets that relate to Products and Services.

4. Export Trade Facilitation Services (as They Relate to the Export of Products, Services, and Technology Rights)

Export Trade Facilitation Services, including, but not limited to, professional services and assistance relating to: Government relations; state and federal export programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping and export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation services; and the formation of shippers' associations.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

VINEX may:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;
2. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Markets and distribute such information to clients;
3. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products, Services, and/or Technology Rights in Export Markets;
4. Enter into exclusive and/or non-exclusive agreements with distributors and/or sales representatives in Export Markets;
5. Allocate export sales or divide Export Markets among Suppliers for the sale and/or licensing of Products, Services, and/or Technology Rights;
6. Allocate export orders among Suppliers;
7. Establish the price of Products, Services, and/or Technology Rights for sale and/or licensing in Export Markets;
8. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights;
9. Enter into contracts for shipping; and
10. Exchange information on a one-to-one basis with individual Suppliers regarding inventories and near-term production schedules for the purpose of determining the availability of products for export and coordinating export with distributors.

Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operation, VINEX will not intentionally disclose, directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.

2. VINEX will comply with requests made by the Secretary of Commerce on behalf of the Secretary of Commerce or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities, and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of Section 303(a) of the Act.

Definitions

1. ''Supplier'' means a person who produces, provides, or sells Products, Services and/or Technology Rights.

Protection Provided by the Certificate

This Certificate protects VINEX and its employees acting on its behalf from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Dated: January 14, 2002.

Vanessa M. Bachman,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 02–1295 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Allocation of Tariff Rate Quotas on the Import of Certain Worsted Wool Fabrics for Calendar Year 2002

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Notice of allocation of 2002 worsted wool fabric tariff rate quota.

FOR FURTHER INFORMATION CONTACT: Sergio Botero, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4058.

The Department of Commerce (Department) has determined the allocation for calendar year 2002 of imports of certain worsted wool fabrics under tariff rate quotas established by Title V of the Trade and Development Act of 2000. The companies that are being provided an allocation are listed below.

Background

Title V of the Trade and Development Act of 2000 (The Act) creates two tariff rate quotas, providing for temporary reductions in the import duties on two categories of worsted wool fabrics suitable for use in making suits, suit-type jackets, or trousers. For worsted wool fabric with average fiber diameters greater than 18.5 microns (Harmonized Tariff Schedule of the United States (HTS) heading 9902.51.11), the reduction in duty is limited to 2,500,000 square meters per year. For worsted wool fabric with average fiber diameters of 18.5 microns or less (HTS heading 9902.51.12), the reduction is limited to 1,500,000 square meters per year. The Act requires the President to ensure that such fabrics are fairly allocated to persons (including firms, corporations, or other legal entities) who cut and sew men's and boys' worsted wool suits and suit-like jackets and trousers in the United States and who apply for an allocation based on the amount of such suits cut and sewn during the prior calendar year. Presidential Proclamation 7383, of December 1, 2000, authorized the Secretary of Commerce to allocate the quantity of worsted wool fabric imports under the tariff rate quotas. On January 22, 2001 the Department published regulations establishing procedures for applying for, and determining, such allocations. 66 FR 6459, 15 CFR 335.

On September 7, 2001, the Department published a notice soliciting applications for an allocation of the 2002 tariff rate quotas with a closing date of October 9, 2001. The Department received timely applications for the HTS 9902.51.11 tariff rate quota from 17 firms. The Department received timely applications for the HTS 9902.51.12 tariff rate quota from 16 firms All applicants were determined eligible for an allocation.

Most applicants submitted data on a business confidential basis. As allocations to firms were determined on the basis of this data, the Department considers individual firm allocations to be business confidential.

Three companies' 2002 tariff rate quota allocations were reduced for HTS 9902.51.11. These companies failed to import 95 percent of their 2001 tariff rate quota allocations of this fabric. The total amount of the reduction was 11,036 square meters, which will be allocated to the non-penalized 2002 license holders at a later date this year. One company's 2002 tariff rate quota allocation was reduced for HTS 9902.51.12. This company failed to import 95 percent of its 2001 tariff rate quota allocation of this fabric. The amount of the reduction was 4,903 square meters, which will be allocated to the non-penalized 2002 license holders at a later date this year. The Department determined the appropriate allocation reduction in accordance with CFR 335.

Firms That Received Allocations

1. HTS 9902.51.11, fabrics, of worsted wool, with average fiber diameter greater than 18.5 micron, certified by the importer as suitable for use in making suits, suit-type jackets, or trousers (provided for in subheading 5112.11.60 and 5112.19.95)

Amount allocated: 2,488,964 square meters; 11,036 square meters to be allocated at later date this year.

Companies Receiving Allocation:

Alperin Inc.—Scranton, PA
American Fashion, Inc.—Chula Vista, CA
Bowdon Manufacturing Co., Inc—Bowdon, GA
Calvin Clothing Company, Inc.—Scranton, PA
CK Apparel Corp.—New York, NY
Concorde Apparel Company, L.L.C.—Scranton, PA
Corbin Ltd.—Ashland, KY
Hardwick Clothes Inc.—Cleveland, TN
Hartmarx Corporation—Chicago, IL
Hartz & Company, Inc.—Frederick, MD
Hugo Boss Cleveland, Inc—Cleveland, TN
JA Apparel Corp.—New York, NY
John H. Daniel Co.—Knoxville, TN
Pincus Bros, Inc.—Philadelphia, PA
Sewell Clothing Company, Inc.—Bremen, GA
Southwick Clothing L.L.C.—Lawrence, MA
The Tom James Co.—Franklin, TN

2. HTS 9902.51.12, fabrics, of worsted wool, with average fiber diameter of 18.5 micron or less, all the foregoing certified by the importer as suitable for use in making suits, suit-type jackets, or trousers (provided for in subheading 5112.11.30 and 5112.19.60)

Amount allocated: 1,495,097 square meters; 4903 square meters to be allocated at later date this year.

Companies Receiving Allocation:

American Fashion, Inc.—Chula Vista, CA
Brooks Brothers—New York, NY
Corbin Ltd.—Ashland, KY
Dormeuil Personal Tailoring—New York, NY
Hardwick Clothes Inc.—Cleveland, TN
Hartmarx Corporation—Chicago, IL
Hartz & Company, Inc.—Frederick, MD
Hugo Boss Cleveland, Inc.—Cleveland, TN
JA Apparel Corp.—New York, NY
John H. Daniel Co.—Knoxville, TN
Martin Greenfield—Brooklyn, NY
Pincus Bros, Inc.—Philadelphia, PA
Saint Laurie—New York, NY
Sewell Clothing Company, Inc.—Bremen, GA
Southwick Clothing L.L.C.—Lawrence, MA
The Tom James Co.—Franklin, TN

Dated: January 16, 2002.

D. Michael Hutchinson,

Acting Assistant Secretary for Textiles, Apparel and Consumer Goods Industries for Import Administration.

[FR Doc. 02–1491 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011402E]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Capacity Committee Report in February, 2002. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Tuesday, February 5, 2002, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION: The committee will discuss and possibly recommend actions to implement the guidance provided by the Council at the January 2002 Council meeting regarding the possible inclusion of capacity reduction proposals in Amendment 13 to the Multispecies Fishery Management Plan (FMP). They will also refine the list of capacity reduction proposals to be forwarded to the Groundfish Plan Development Team for further analyses and to the Council for consideration. The Council has directed the Committee to make recommendations on revising and combining these proposals for possible inclusion in Amendment 13 to the Multispecies FMP.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. 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 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 Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: January 15, 2002.

Richard W. Surdi,

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

[FR Doc. 02–1399 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011402D]

North Pacific Research Executive Board

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

ACTION: Notice of Executive Board Meeting, closed to the public.

SUMMARY: The North Pacific Research Board was created by Congress for the purpose of carrying out marine research activities in the waters off Alaska. The Executive Board will meet in closed session to discuss personnel and administrative issues.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

DATES: The meeting will be held on February 4, 2002.

ADDRESSES: The meeting will be held at 441 W. 5th Avenue, Suite 500, Anchorage, AK.

FOR FURTHER INFORMATION CONTACT: Clarence Pautzke: 907–271–2809.

SUPPLEMENTARY INFORMATION: Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified 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 Clarence Pautzke at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: January 15, 2002.

Richard W. Surdi,

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

[FR Doc. 02–1400 Filed 1–17–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

National Imagery and Mapping Agency; Privacy Act of 1974; System of Records

AGENCY: National Imagery and Mapping Agency, DoD.

ACTION: Notice to Amend and Delete Systems of Records.

SUMMARY: The National Imagery and Mapping Agency (NIMA) is amending a system of records notice and deleting one from its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

In addition, NIMA is revising its Preamble to its Privacy Act systems of records to reflect its current name.

DATES: This proposed action will be effective without further notice on February 19, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Comments should be sent to the National Imagery and Mapping Agency, Office of General Counsel, 4600 Sangamore Avenue, Bethesda, MD 20816–5003.

FOR FURTHER INFORMATION CONTACT: Ms. Christine May on (301) 227–4142.

SUPPLEMENTARY INFORMATION: The National Imagery and Mapping Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 14, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

National Imagery and Mapping Agency

How Systems of Records Are Arranged

Imagery and Mapping Agency records are grouped by subject series. Each series has records about a specific activity or function to which a subject title and number is given. Systems or records are grouped in the same way. For example, a system of records on personnel security clearances may be found in Personnel Security Files—B0504–01 and one about military personnel assignments may be found in Military Services Administrative Record Files—B0614–02. These numbers are part of the system identification. The letter B means National Imagery and Mapping Agency. The first four digits (0504 and 0614) show that the records pertain to Personnel Security and Military Personnel respectively, and the last two are a further breakdown of the series. Other systems of records which differ from these examples but have similar documents may also be found in the same series.

How To Use the Index Guide

The systems of records maintained by the National Imagery and Mapping Agency are contained within the subject series that are listed below. This list identifies each series in the order in which it appears in this issuance. Use the list to identify subject areas of interest. Having done so, use the series number (for example 0504 for Personnel Security) to locate the systems of records grouping in which you are interested.

Subject series	System identification series
Inspection	0210
Historical	0228
Finance and Accounting	0302
Civilian Personnel Pay and Accounting	0303
General Legal	0401
Claims Investigating and Processing Documents	0402
Informational Services	0408
Information Security	0502
Guard Protective Services	0503
Personnel Security	0504
Military Personnel Files	0614
Safety Management Program	0615
Medical and Health Program	0901
Individual Procurement Transactions	1202
General Supply Accounting	1205
Self Service Supply	1206
Maintenance	1208
Personnel Travel and Transportation	1211

Requesting Records

Records are retrieved by name or by some other personal identifier. It is therefore especially important for expeditious service when requesting a record that particular attention be provided to the Notification and/or Access Procedures of the particular record system involved so as to furnish the required personal identifiers, or any other pertinent personal information as may be required to locate and retrieve the record.

Blanket Routine Uses

Certain 'blanket routine uses' of the records have been established that are applicable to every record system maintained within the Department of Defense unless specifically stated otherwise within a particular record system. These additional blanket routine uses of the records are published below only once in the interest of simplicity, economy and to avoid redundancy.

Law Enforcement Routine Use

In the event that a system of records maintained by this component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

Disclosure When Requesting Information Routine Use

A record from a system of records maintained by this component may be disclosed as a routine use to a Federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the

letting of a contract, or the issuance of a license, grant or other benefit.

Disclosure of Requested Information Routine Use

A record from a system of records maintained by this component may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

Congressional Inquiries Routine Use

Disclosure from a system of records maintained by this component may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

Private Relief Legislation Routine Use

Relevant information contained in all systems of records of the Department of Defense published on or before August 22, 1975, may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

Disclosures Required By International Agreements Routine Use

A record from a system of records maintained by this component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities in order to comply with requirements imposed by, or to claim rights conferred in, international agreements and arrangements including those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel.

Disclosure to State and Local Taxing Authorities Routine Use

Any information normally contained in IRS Form W–2 which is maintained in a record from a system of records maintained by this component may be disclosed to state and local taxing authorities with which the Secretary of the Treasury has entered into agreements pursuant to Title 5, U.S. Code, Sections 5516, 5517, 5520, and only to those state and local taxing authorities for which an employee or military member is or was subject to tax regardless of whether tax is or was withheld. This routine use is in accordance with Treasury Fiscal Requirements Manual Bulletin Number 76–07.

Disclosure to the Office of Personnel Management Routine Use

A record from a system of records subject to the Privacy Act and maintained by this component may be disclosed to the Office of Personnel Management concerning information on pay and leave, benefits, retirement deductions, and any other information necessary for the Office of Personnel Management to carry out its legally authorized Government-wide personnel management functions and studies.

Disclosure to the Department of Justice for Litigation Routine Use

A record from a system of records maintained by this component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

Disclosure to Military Banking Facilities Overseas Routine Use

Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged, or retired from the Armed Forces, information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual, the U.S. Government will be liable for the losses the facility may incur.

Disclosure of Information to the General Services Administration Routine Use

A record from a system of records maintained by this component may be disclosed as a routine use to the General Services Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

Disclosure of Information to the National Archives and Records Administration Routine Use

A record from a system of records maintained by this component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

Disclosure to the Merit Systems Protection Board Routine Use

A record from a system of records maintained by this component may be disclosed as a routine use to the Merit Systems Protection Board, including the Office of the Special Counsel for the purpose of litigation, including administrative proceedings, appeals, special studies of the civil service and other merit systems, review of OPM or component rules and regulations, investigation of alleged or possible prohibited personnel practices; including administrative proceedings involving any individual subject of a DoD investigation, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

Counterintelligence Purposes Routine Use

A record from a system of records maintained by this component may be disclosed as a routine use outside the DoD or the U.S. Government for the purpose of counterintelligence activities authorized by U.S. Law or Executive Order or for the purpose of enforcing laws which protect the national security of the United States.

Deletions

B0303–01

SYSTEM NAME:

Individual Pay Record Files (February 22, 1993, 58 FR 10189).

Reason: These records are now covered under the Defense Finance and Accounting Service Privacy Act notice T7335, Defense Civilian Pay System (DCPS) (May 19, 2000, 65 FR 31888).

Amendment

B1211–03

SYSTEM NAME:

Passport Files (February 22, 1993, 58 FR 10189).

Changes:

* * * * *

SYSTEM NAME:

Add 'and Visa' to entry.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Passports and documentation relating to passports and visas for NIMA personnel, including their dependents. Included are passports, requests and receipts for passports, transmittal letters, control cards, and related documents.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'Information is collected to obtain and safe keep official passports until needed for travel and to obtain necessary visas from appropriate Embassies; to notify individuals to reapply when passports expire and to return passports to the Department of State upon departure of the individual from NIMA.'

* * * * *

STORAGE:

Delete entry and replace with 'Paper records in locked cabinets. Electronic records are maintained with restricted access requiring user name and password authorization to access network.'

* * * * *

B1211–03

SYSTEM NAME:

Passport and Visa Files.

SYSTEM LOCATION:

National Imagery and Mapping Agency, Financial Management Office, ATTN: Passport Agent, J–06, 3200 South Second Street, St. Louis, MO 63118–3399.

National Imagery and Mapping Agency Financial Management Office, ATTN: Passport Agent, P–3, 12310 Sunrise Valley Drive, Reston, VA 22091–3414.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: INDIVIDUALS TRAVELING OVERSEAS ON OFFICIAL GOVERNMENT ORDERS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Passports and documentation relating to passports and visas for National Imagery and Mapping Agency personnel, including their dependents. Included are passports, requests and receipts for passports, transmittal letters, control cards, and related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental regulations and NIMA Instruction 5410.1, Travel Management.

PURPOSE(S):

Information is collected to obtain and safe keep official passports until needed for travel and to obtain necessary visas from appropriate Embassies; to notify individuals to reapply when passports expire and to return passports to the Department of State upon departure of the individual from NIMA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of DMA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in locked cabinets. Electronic records are maintained with restricted access requiring user name and password authorization to access network.

RETRIEVABILITY:

By name of individual.

SAFEGUARDS:

Records are maintained in a secured area/locked file cabinets with access limited to authorized personnel whose duties require access. Access to electronic record is limited to restricted access requiring user name and password authorization to access network.

RETENTION AND DISPOSAL:

Passport documentation only held in active office until separation or transfer of individual. Passport and all documentation are destroyed by active office upon separation. Letter of passport destruction is sent to State Department.

SYSTEM MANAGER(S) AND ADDRESS:

National Imagery and Mapping Agency, Financial Management, ATTN: Passport Agent, P–3, 12310 Sunrise Valley Drive, Reston, VA 22091–3414. National Imagery and Mapping Agency, Financial Management Office, ATTN: Passport Agent, J–06, 3200 South Second Street, St. Louis, MO 63118–3399.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to National Imagery and Mapping Agency, 4600 Sangamore Road, GC (D10), Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to National Imagery and Mapping Agency, 4600 Sangamore Road, GC (D10), Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, current address and telephone number.

CONTESTING RECORD PROCEDURES:

NIMA's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in NIMA Instruction 5500.7R1; 32 CFR part 320; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Requests and receipt for passports and visas.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–1333 Filed 1–17–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Air Force is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on February 19, 2002, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, Office of the Chief Information Officer, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of

records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 14, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AF PC N

SYSTEM NAME:

Unit Assigned Personnel Information (October 16, 1997, 62 FR 53826).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Add to entry 'folders containing documentation used for deployment management and processing (Personnel Readiness Folders).'

* * * * *

PURPOSE(S):

Add to end of entry 'deployment management'.

* * * * *

RETENTION AND DISPOSAL:

Add to entry 'Return Personnel Readiness Folder to unit upon completion of deployment, or give to individual upon PCS, separation or discharge (Exception: return passports per DoD Instruction 1000–21.R).'

* * * * *

F036 AF PC N

SYSTEM NAME:

Unit Assigned Personnel Information.

SYSTEM LOCATION:

Headquarters, U.S. Air Force; major command headquarters; all Air Force installations and units, and headquarters of combatant commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military personnel, and Air Force Reserve and Air National Guard personnel. Air Force civilian employees may be included when records are created which are identical to those on military members. Army, Navy, Air Force and Marine Corps active duty military and civilian personnel assigned to headquarters of combatant commands for which Air Force is Executive Agent.

CATEGORIES OF RECORDS IN THE SYSTEM:

File copies of separation actions, newcomers briefing letters, line of duty determinations, assignment actions, retirement actions, in and out processing checklists, promotion orders, credit union authorization, disciplinary actions, favorable/unfavorable communications, record of counseling, appointment notification letters, duty status changes, applications for off duty employment, applications and allocations for school training, professional military and civilian education data, private weapons storage records, locator information including names of dependents, home address, phone number, training and experience data, special recognition nominations, other personnel documents, records of training, and folders containing documentation used for deployment management and processing (Personnel Readiness Folders).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 36–2608, Military Personnel Records System; and E.O. 9397 (SSN).

PURPOSE(S):

Provides information to unit commanders/supervisors for required actions related to personnel administration and counseling, promotion, training, separation, retirement, reenlistment, medical examination, testing, assignment, sponsor program, duty rosters, off duty activities, and deployment management.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, notebooks/binders, and card files and in computers and computer output products.

RETRIEVABILITY:

Retrieved by name and Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Retained in office files until superseded, no longer needed, separation or reassignment of individual on permanent change of assignment (PCA) or permanent change of station (PCS). On intercommand reassignment PCA or PCS the file is given to individual or destroyed. On intracommand reassignment PCA or PCS the file is given to individual, forwarded to gaining commander, or destroyed. Return Personnel Readiness Folder to unit upon completion of deployment, or give to individual upon PCS, separation or discharge (Exception: return passports per DoD Instruction 1000–21.R). Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

The Master Personnel Records (DPSAM), Commander, Headquarters Air Force Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to or visit the system manager or to agency officials at location of assignment. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the system manager or to agency officials at location of assignment. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and

appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from the individual concerned, financial institutions, educational institution employees, medical institutions, police and investigating officers, bureau of motor vehicles, witnesses, reports prepared on behalf of the agency, standard Air Force forms, personnel management actions, extracts from the Personnel Data System (PDS) and records of personal actions submitted to or originated within the organization.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–1332 Filed 1–17–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of The Army

Notice of Availability of the Environmental Assessment (EA)/ Finding of No Significant Impact (FNSI) for the Programmatic Treatment of Capehart and Wherry Era Housing

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: This announces the availability of the EA/FNSI for the Programmatic Treatment of Capehart and Wherry Era Housing under 36 CFR 800.14(e). The Army intends to sign the FNSI unless public comments identify significant impacts or issues that have not been considered. The Department of the Army (Army) is pursing a programmatic approach to compliance under Section 106 of the National Historic Preservation Act for its Capehart and Wherry Era Housing (1949–1962). The Army is facing a significant challenge that has direct implications for soldiers' quality of life as this housing represents 54% of the Army's total family housing stock and 70% of it is considered inadequate (defined as requiring a major repair, component upgrade, component replacement or total upgrade by the Army Family Housing Master Plan 2000). As such, the Army anticipates that all of this housing will be subject to rehabilitation, maintenance and repair, demolition and replacement, transfer, sale or lease in the next 10 years.

Development of the EA was preceded by coordination with the Advisory Council on Historic Preservation (ACHP), the National Conference of State Historic Preservation Officers (NCSHPO), and the National Trust for Historic Preservation (NTHP). In addition, the process of gathering public input and coordinating comment on this program was initiated by The Army at a symposium to seek the comments and suggestions of experts on the proposed treatment to these properties. The EA gives full consideration of request and implementation of Program Comments in accordance with 36 CFR 800.14(e) as the proposed action, and two reasonable alternatives to the proposed action.

DATES: Submit comments on or before February 19, 2002.

ADDRESSES: To obtain copies of the EA and FNSI, contact U.S. Army Environmental Center, ATTN: SFIM–AEC–PA (Bob DiMichele), Aberdeen Proving Ground, MD 21010–5401.

FOR FURTHER INFORMATION CONTACT: Mr. Lee Foster at (703) 693–0675.

SUPPLEMENTARY INFORMATION: The EA considered, evaluated and assessed alternatives: (i) The no action alternative (continued project-by-project review under 36 CFR Part 800); (ii) the Programmatic Agreement Alternative; and (iii) the proposed action alternative, request and implement Program Comments in accordance with 36 CFR 800.14(e). Consideration of the alternatives analyzed in the EA leads to The Army's decision to request and implement Program Comments. The no action alternative would allow a continued ad hoc approach to compliance with Section 106 and management of historic properties. With the anticipated growth in The Army's historic properties inventory, continued review of undertakings on a case-by-case basis will likely remain inefficient and lead to increased program costs. This could have adverse impacts on the ability of The Army to provide suitable housing for military families. The Programmatic Agreement (PA) Alternative better meets the stated purpose and need since it would provide a programmatic basis for Section 106 compliance. The PA approach, however, would require development of several separate compliance agreements. This approach would not be as comprehensive in scope and would not assure predictability as management actions are carried out. Like the no action alternative, the PA alternative could result in adverse impacts to The Army's ability to provide suitable housing to military families. The proposed action more squarely meets the stated purpose and need for action and provides the necessary balance between preservation and the need to expeditiously provide suitable housing to military families. While the proposed action has the potential to adversely impact historic properties, those impacts are not likely to be significant. The Army will ensure that effects on historic properties are considered and addressed up front through programmatic treatment.

Dated: January 15, 2002.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health) OASA(I&E).

[FR Doc. 02–1405 Filed 1–17–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 19, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type

of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 14, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: The National Evaluation of Smaller Learning Communities.

Frequency: Annually.

Affected Public: Individuals or household; Businesses or other for-profit; Federal Government; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,377.

Burden Hours: 3,123.

Abstract: The National Evaluation of Smaller Learning Communities is a study to assess the implementation and estimate the impact of creating smaller learning communities in high schools. The study will address how schools are implementing smaller learning communities (e.g., variety of strategies, approaches, and models; characteristics and needs of the population served; intensity, variety and quality of services); whether smaller learning communities improve student outcomes; and whether program implementation and outcomes vary by types of strategies and approaches and by types of schools.

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 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–1303 Filed 1–17–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board; Education.

ACTION: Notice of quarterly meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Educational Research Policy and Priorities Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the public of their opportunity to attend. Individuals 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 Mary Grace Lucier at (202) 219–2253 no later than January 22. 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.

DATES: February 1, 2002.

TIME: 8:30 a.m. to 3 p.m.

LOCATION: Room 1505 C, Health Science Center, University of Texas-Houston, 7000 Fannin, Houston, TX 77030.

FOR FURTHER INFORMATION CONTACT: Mary Grace Lucier, Designated Federal Official, National Educational Research Policy and Priorities Board, 80 F St., NW., Washington, DC 20208–7564. Telephone: (202) 219–2253; fax: (202) 219–1528; e-mail: Mary.Grace.Lucier@ed.gov. Main telephone for Board office: (202) 208–0692.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office.

The agenda for February 1 will review how Federally-funded research informs the Texas Reading Initiative, after which Board committees will discuss their work plans for the remainder of the year. A final agenda will be available from the Board's office on January 22, and will be posted on the Board's Web site, *http://www.ed.gov/offices/OERI/NERPPB/.*

Records are kept of all Board proceedings and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, 80 F St., NW., Washington, DC 20208–7564.

Dated: January 8, 2002.

Rafael Valdivieso,

Executive Director.

[FR Doc. 02–1309 Filed 1–17–02; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

[Docket No. EA–256]

Application To Export Electric Energy; Lighthouse Energy Trading Company, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Lighthouse Energy Trading Company, Inc. (Lighthouse) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before February 19, 2002.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Rosalind Carter (Program Office) 202–586–7983 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On December 27, 2001, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from Lighthouse to transmit electric energy from the United States to Canada. Lighthouse is a corporation formed under South Dakota Law with

its principal place of business in Zimmerman, Minnesota. Lighthouse is a privately owned corporation and is not a subsidiary or affiliate of any other corporation. Lighthouse operates as a marketer and a broker of electric power at wholesale and arranges services in related areas such as fuel supplies and transmission services. Lighthouse does not own or control any electric power generation or transmission facilities and does not have a franchised service area.

Lighthouse will purchase the power to be exported from electric utilities and federal power marketing agencies within the United States and arrange for the delivery of electric energy to Canada over the existing international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizen Utilities, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by Lighthouse, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the Lighthouse application to export electric energy to Canada should be clearly marked with Docket EA–256. Additional copies are to be filed directly with Rollie M. Hill, Lighthouse Energy Trading company, Inc., P.O. Box 81, Zimmerman, MN 55398.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy homepage at http://www.fe.de.gov. Upon reaching the Fossil Energy homepage, select ''Regulatory'' Programs,'' then ''Electricity Regulation,'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on January 14, 2002.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 02–1328 Filed 1–17–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice Extending the Public Comment Period for the Proposed Kentucky Pioneer Integrated Gasification Combined Cycle Demonstration Project Draft Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice of comment period extension.

SUMMARY: The Department of Energy (DOE) announces the extension of the public comment period to January 25, 2002, for the Proposed Kentucky Pioneer Integrated Gasification Combined Cycle (IGCC) Demonstration Project Draft Environmental Impact Statement (Draft EIS), DOE/EIS–0318. On November 16, 2001, the Environmental Protection Agency issued a Notice of Availability (66 FR 57716) of the Proposed Kentucky Pioneer IGCC Project Draft EIS which began a planned 45-day public comment period. Subsequently, on November 27, 2001, DOE published its own Notice of Availability (66 FR 59237) of the Draft EIS and announced public hearings that were held on December 10, 2001, in Lexington, Kentucky and December 11, 2001, in Trapp, Kentucky. The original comment period was to expire on January 4, 2002. However, in response to public comments and to ensure that the public has ample opportunity to provide comments, DOE is extending the public comment period by 21 days.

DATES: DOE's public comment period on the proposed Kentucky Pioneer IGCC Demonstration Project Draft EIS is extended from January 4, 2002 to January 25, 2002. Comments should be submitted by January 25, 2002 to ensure consideration (see **ADDRESSES** section for more details). DOE will consider comments submitted after January 25, 2002, to the extent practicable.

ADDRESSES: Comments may be submitted by U.S. mail, fax, telephone, or electronic mail to: Mr. Roy Spears, NEPA Document Manager, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 880, Morgantown, WV 26507–0880; Telephone: 304–285–5460; Fax: 304–285–4403 leave message at 1–800–276–9851; *rspear@netl.doe.gov.*

Requests for copies of the Kentucky Pioneer IGCC Demonstration Project Draft EIS or other information regarding this environmental analysis should also be addressed to Mr. Spears at the address above.

FOR FURTHER INFORMATION CONTACT: For further information on the proposed project or the Draft EIS, please contact Mr. Spears as directed above. For general information on DOE's NEPA process, please contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. Ms. Borgstrom may be contacted by calling 202–586–4600 or by leaving a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: Prior to publication of this **Federal Register** Notice, notices were published in the local newspapers of Winchester and Lexington, Kentucky, to notify members of the local community about the extension of the comment period. Additionally, direct notifications have been made by electronic mail and U.S. mail to individuals who participated in the public meetings in Lexington and Trapp, Kentucky and to those individuals, parties, and Federal, state, and local government agencies that are listed on the project mailing list.

Issued in Washington, DC, this 14th day of January, 2002.

Richard D. Furiga,

Acting Principal Deputy Assistant Secretary for Fossil Energy.

[FR Doc. 02–1329 Filed 1–18–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2672–002]

Idaho Power Company; Notice of Filing

January 11, 2002.

Take notice that on January 7, 2002, Idaho Power Company amended its filing of the Generator Interconnection and Operating Agreement between Idaho Power Company and Emmett Power Company, under its open access transmission tariff in the above-captioned proceeding.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-filing'' link.

Comment Date: January 28, 2002.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1291 Filed 1–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–3032–002]

Virginia Electric and Power Company; Notice of Filing

January 11, 2002.

Take notice that on January 7, 2002, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Generator Interconnection and Operating Agreement (Interconnection Agreement) with Tenaska Virginia Partners, L.P. (Tenaska) that complies with the Commission's December 6, 2001 Order in Docket Nos. ER01–3032–000 and ER01–3032–001.

Dominion Virginia Power respectfully requests that the Commission accept this filing to make the Interconnection Agreement effective as of November 9, 2001, the same date the Commission made the Interconnection Agreement effective in its December 6th Order. Copies of the filing were served upon Tenaska and the Virginia State Corporation Commission.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-filing'' link.

Comment Date: January 28, 2002.

C.B. Spencer,

Acting Secretary.

[FR Doc. 02–1292 Filed 1–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–47–000]

Wisconsin Public Power Inc., Complainant v. Wisconsin Power & Light Co., Respondents; Notice of Complaint

January 14, 2002.

Take notice that on January 11, 2002, Wisconsin Public Power Inc. (WPPI) filed a Complaint against Wisconsin Power & Light Company (WPL) alleging violations of WPL's Rate Schedule PR–1, WPL's Rate Schedule W/W–3, and the Commission's Fuel Adjustment Clause Regulations, 18 CFR 35.14.

WPL has been served with a copy of the Complaint

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before January 31, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before January 31, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1290 Filed 1–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–3141–003, et al.]

American Electric Power Service Corporation, et al.; Electric Rate and Corporate Regulation Filings

January 14, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. American Electric Power Service Corporation

[Docket No. ER01–3141–003]

Take notice that on January 8, 2002, the American Electric Power Service Corporation (AEPSC), tendered for filing First Revised Firm Point-to-Point Transmission (PTP) Service Agreements for Exelon Generation Company, LLC for long-term PTP reservations. Both of these agreements are pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Second Revised Volume No. 6.

AEPSC requests an effective date of September 1, 2001.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: January 29, 2002.

2. Llano Estacado Wind, LP

[Docket No. ER02–73–002]

Take notice that on January 8, 2002, Llano Estacado Wind, LP (Llana Estacado Wind) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Change in Status informing the Commission of a change in status as a result of a change in its upstream corporate ownership.

Comment Date: January 29, 2002.

3. Virginia Electric and Power Company

[Docket No. ER02–92–002]

Take notice that on January 10, 2002, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing an executed Generator Interconnection and Operating Agreement (Interconnection Agreement) with CPV Cunningham Creek LLC. (CPV) that complies with the Commission's December 11, 2001 letter order in Docket No. ER02–92–000.

Dominion Virginia Power respectfully requests that the Commission accept this filing to make the Interconnection Agreement effective as of December 11, 2001, the same date the Commission made the Interconnection Agreement effective in its December 11, 2001 letter order.

Copies of the filing were served upon CPV and the Virginia State Corporation Commission.

Comment Date: January 31, 2002.

4. Rainy River Energy Corporation—Taconite Harbor

[Docket No. ER02–124–001]

Take notice that on January 9, 2002, Rainy River Energy Corporation—Taconite Harbor (RRTH) filed an amendment to its October 18, 2001, Market Based Rate Application in compliance with a December 13, 2001, Letter Order requiring the submission of a supply margin assessment market power study and the addition of certain language conditioning the market-based rate authority contained in RRTH's proposed rate schedule.

RRTH requests that the rate schedule become effective January 28, 2002.

Comment Date: January 30, 2002.

5. Bluegrass Generation Company, L.L.C.

[Docket No. ER02–506–001]

Take notice that on January 9, 2002, Bluegrass Generation Company, L.L.C. tendered for filing pursuant to Rule 205, 18 CFR 385.205, a supplement to its petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Tariff No. 1, originally submitted on December 7, 2001.

Comment Date: January 30, 2002.

6. CP&L Holdings, Inc., et al.

[Docket No. ER02–745–000]

Take notice that on January 9, 2002, Carolina Power & Light Company (CP&L) tendered for filing with the Federal Energy Regulatory Commission (Commission) a revised service agreement with Cinergy Services, Inc. under CP&L's FERC Electric Tariff, Fourth Revised Volume No. 4 in compliance with the Commission's July 12, 2000 order issued in Docket Nos. EC00–55–000 and ER00–1520–000, *et al.*

CP&L respectfully requests that the Commission allow the revised service agreement to become effective as of December 15, 2001.

Copies of the filing were served upon the Commission's official service list in the above-mentioned dockets, the North Carolina Utilities Commission, the South Carolina Public Service Commission, and the Florida Public Service Commission.

Comment Date: January 30, 2002.

7. PacifiCorp

[Docket No. ER02–746–000]

Take notice that on January 10, 2002, PacifiCorp tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation of Rate Schedule F.E.R.C. No. 419

Comment Date: January 31, 2002.

8. PacifiCorp

[Docket No. ER02–747–000]

Take notice that on January 10, 2002, PacifiCorp tendered for filing with the Federal Energy Regulatory Commission (Commission), a Notice of Cancellation of Rate Schedule F.E.R.C. No. 5 under PacifiCorp's FERC Electric Tariff, Volume No. 12 for the Long Term Power Sales Agreement between Public Utility District No. 1 of Okanogan County and PacifiCorp.

Comment Date: January 31, 2002.

9. PacifiCorp

[Docket No. ER02–748–000]

Take notice that on January 10, 2002, PacifiCorp tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation of Rate Schedule F.E.R.C. No. 429 for the Long Term Power Sales Agreement between Pacific Northwest Generation Company and PacifiCorp.

Comment Date: January 31, 2002.

10. PPL Electric Utilities Corporation

[Docket No. ER02–749–000]

Take notice that on January 10, 2002, PPL Electric Utilities Corporation filed a notice of termination of the Power Supply Agreement between it and Allegheny Electric Cooperative Inc. for service to Tri-County Electric Cooperative, Inc. designated as Service Agreement No. 120 under FERC Electric Tariff, First Revised Volume No. 5. PPL Electric also filed a notice of termination of the Power Supply Agreement between it and Allegheny Electric Cooperative, Inc. for service to Sullivan County Rural Electric Cooperative Inc. designated as Service Agreement No. 121 under FERC Electric Tariff, First Revised Volume No. 5.

PPL Electric Utilities Corporation requests a February 1, 2002 termination date for both power supply agreements.

PPL Electric Utilities Corporation has served a copy of the notice of termination on Allegheny Electric Cooperative, Inc.

Comment Date: January 31, 2002.

11. PPL Electric Utilities Corporation

[Docket No. ER02–750–000]

Take notice that on January 10, 2002, PPL Electric Utilities Corporation filed a notice of termination of the Power Supply Agreement between it and Citizens' Electric Company of Lewisburg designated as Service Agreement No. 76 under FERC Electric Tariff, First Revised Volume No. 5.

PPL Electric Utilities Corporation requests a January 31, 2002 termination date for the Agreement.

PPL Electric Utilities Corporation has served a copy of the notice of termination on Citizens' Electric Company of Lewisburg.

Comment Date: January 31, 2002.

12. Mid-Continent Area Power Pool

[Docket No. ER02–751–000]

Take notice that on January 10, 2002, the Mid-Continent Area Power Pool (MAPP), on behalf of its public utility members, tendered for filing Firm and Non-Firm Point-To-Point service agreements under MAPP Schedule F with Entergy-Koch Trading, LP to reflect a corporate name change from Axia Energy, LP to Entergy-Koch Trading, LP.

Comment Date: January 31, 2002.

13. P Chrisman Iribe, Thomas B. King, John R. Cooper, John C. Barpoulis, David N. Bassett, Mark V. Carney, F. Joseph Feyder, J.W. Maitland Horner, William E. Quinn, Sanford L. Hartman, Nancy A. Manning, J. Tracy Mey, Dena Chapin Nolte, Thomas E. Legro, Morris Meltzer, Suzanne Rich, Kent L. Ficket

[Docket Nos. ID–3131–011, ID–3616–001, ID–3132–010, ID–3447–002, ID–3134–008, ID–3429–005, ID–3448–004, ID–3276–004, ID–3449–004, ID–3275–005, ID–3425–005, ID–3619–001, ID–3618–001, ID–3689–000, ID–3690–000, ID–3278–003, and ID–3691–000]

Take notice that on December 27, 2001, the above named individuals filed with the Federal Energy Regulatory Commission (Commission) an application for authority to hold interlocking positions in Mountain View Power, LLC; Mountain View Power II, LLC; Attala Generating Company, LLC; and Plains End, LLC all with their principal place of business at 7500 Old Georgetown Road, Bethesda, Maryland 20814.

Comment Date: February 7, 2002.

14. American Transmission Company LLC

[Docket No. ER02–752–000]

Take notice that on January 10, 2002, American Transmission Company LLC (ATCLLC) tendered for filing Firm and Non-Firm Point-to-Point Service Agreements for Midwest Power LLC.

ATCLLC requests an effective date of January 14, 2002.

Comment Date: January 31, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1429 Filed 1–17–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2517–012]

Allegheny Energy Supply Company, LLC; Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

January 14, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Minor License.

b. *Project No.:* 2517–012.

c. *Date Filed:* December 17, 2001.

d. *Applicant:* Allegheny Energy Supply Company, LLC.

e. *Name of Project:* Dam No. 5 Hydro Station.

f. *Location:* On the Potomac River, near the Town of Hedgesville, in Berkeley County, West Virginia. The project dam and reservoir are owned by the United States and operated by the National Park Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Charles L. Simons, Allegheny Energy Supply Company, LLC, 4350 Northern Pike, Monroeville, PA 15146, (412) 858–1675.

i. *FERC Contact:* Peter Leitzke, (202) 219–2803 or *peter.leitzke@ferc.fed.us.*

j. *Deadline for filing additional study requests:* February 15, 2002.

All documents (original and eight copies) should be filed with: Linwood A. Watson, Jr., Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (http://www.ferc.gov) under the ''e-Filing'' link.

k. This application is not ready for environmental analysis at this time.

l. The existing Dam No. 5 Hydro Station Project consists of: (1) A 100-foot-long, 80-foot-wide headrace; (2) a brick and concrete powerhouse containing two generating units with a total installed capacity of 1,210 kilowatts; (3) a 250-foot-long, 90-foot-wide tailrace; (4) a substation; and (5) appurtenant facilities. The applicant estimates that the total average annual generation would be 5,945 megawatthours. All generated power is sold to Allegheny Power for use in the existing electric grid system serving West Virginia and Maryland.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at http://www.ferc.gov using the ''RIMS'' link—select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. With this notice, we are initiating consultation with the Maryland State Historic Preservation Officer and the West Virginia State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

o. Procedural schedule and final amendments: The application will be processed according to the following milestones, some of which may be combined to expedite processing:

Notice of application has been accepted for filing
Notice of NEPA Scoping
Notice of application is ready for environmental analysis
Notice of the availability of the draft NEPA document
Notice of the availability of the final NEPA document
Order issuing the Commission's decision on the application

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 02–1293 Filed 1–17–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6625–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated May 18, 2001 (66 FR 27647).

Draft EISs ERP No. D–AFS–J65354–MT Rating EC2 Game Range Project, Ecosystem Health and Productivity Improvements, Fuel Loading Reduction and Game Winter Range Condition Improvements and Maintenance, Lolo National Forest, Plain/Thompson Falls Ranger District, Thompson River to Squaw Creek, Thompson Falls, MT.

Summary: EPA expressed environmental concerns regarding the need for improved discussion of how environmental commitments are provided for during implementation under the stewardship contracting program. EPA also believes additional information should be provided to: support stated minimal watershed impacts; the identification of Alternative 2 as the environmentally preferred alternative; and describe fuel loads and wildfire risks within the Ashley Creek watershed and Thompson Fall's public water supply watershed.

ERP No. D–FHW–G40167–LA Rating LO

Louisiana 1 Improvements Project, Golden Meadow to Port Fourchon Highway Construction, Funding, US Army COE Section 10 and 404, NPDES and Coast Guard Bridge Permits Issuance, Lafoufche Parish, LA.

Summary: EPA has a lack of objections to the selection of the preferred alternative. However to strengthen the NEPA document, EPA suggests that additional information on secondary development and potential wetland losses be discussed in the FEIS.

ERP No. DS–AFS–K65307–CA

Rating EC2 Herger-Feinstein Quincy Library Group Forest Act Pilot Project, Proposal to Analyze Options for Maintaining Defensible Fuel Profile Zones (DFPZs), Lassen, Plumas and Tahoe National Forests, Shasta, Lassen, Tehama, Yuba, Plumas and Battle Counties, CA.

Summary: EPA expressed environmental concerns regarding the limited scope of the analysis, and continuing concerns regarding water quality, habitat fragmentation and noxious weed proliferation associated with the construction of defensible fuel profile zones (DFPZs). EPA suggested a broader scope for the analysis and document formatting changes.

ERP No. D1–AFS–L65120–OR

Rating EC2 Lemolo Watershed Projects, Objectives for Management of Areas 5 and 10 and Matrix Lands, Umpqua National Forest, Diamond Lake Ranger District, Douglas County, OR.

Summary: EPA expressed environmental concerns related to listed species, silvicultural practices, logging roads and access issues. and interagency coordination. EPA requested that the Purpose and Need statement be consistent with the North West Forest Plan.

Final EISs

ERP No. F–FAA–E51047–NC

Piedmont Triad International Airport, Construction and Operation, Runway 5L/23R and New Overnight Express Air Cargo Sorting and Distribution Facility and Associated Developments, Funding, NPDES and US Army COE Section 404 Permit Issuance, City of Greensboro, Guilford County, NC.

Summary: EPA continues to express environmental concern regarding noise mitigation measures. EPA recommended that the FAA extend its proposed residential land acquisitions to include those homes which would be located in the DNL 65 dBA contour and would experience a DNL 1.5 dBA or greater increase.

ERP No. F–FHW–G40146–NM

New Mexico Highway 126 (NM–126)/ Cuba-La Cueva Road (also Known as Forest Highway 12 (FH–12)) Improvement, southeast of Fenton Lake to east of Cuba at Senorito Divide, Sandoval and Rio Arriba Counties, NM.

Summary: EPA has no further comments to offer on the Final EIS or the selected alternative.

ERP No. F–FHW–H40397–MO

Interstate 70 Corridor Improvements, Kansas City to St. Louis, Funding, US Army COE Section 404 and 10 and US Coast Guard Section 9 Permits Issuance, several counties, MO.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FS–FTA–L40210–WA

Central Link Light Transit Project (Sound Transit) Construction and Operation, Additional Information concerning Consideration of the Tukwila Freeway Route Alternative, Funding and US Army COE Section 10 and 404 Permits Issuance, Cities of Seattle, Sea Tac and Tukwila, King County, WA.

Summary: EPA had a lack of objections to the FEIS.

Dated: January 15, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–1343 Filed 1–17–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6625–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *www.epa.gov/oeca/ofa.*

Weekly receipt of Environmental Impact Statements Filed January 07, 2002 Through January 11, 2002 Pursuant to 40 CFR 1506.9.

EIS No. 020010, FINAL EIS, AFS, NY, Finger Lake National Forest, Oil and Gas Leasing, Exploration and Development, Approval and Authorization, Hector Ranger District, Seneca and Schuyler Counties, NY, Wait Period Ends: February 19, 2002, Contact: Martha Twarkins (607) 546–4470.

EIS No. 020011, FINAL EIS, AFS, MT, North Elkhorns Vegetation Project, Elkhorn Wildlife Management Unit, Implementation, Strawberry Butte Area, Helena National Forest, Jefferson County, MT, Wait Period Ends: February 19, 2002, Contact: Jodie Canfield (406) 266–3425.

EIS No. 020012, DRAFT EIS, AFS, AK, Otter Lake Timber Sale(s) Project, Implementation, Plan to Harvest and Sell Timber, Hoonah Ranger District, Tongass National Forest, AK, Comment Period Ends: March 04, 2002, Contact: Stan McCoy (907) 790–7431.

EIS No. 020013, DRAFT EIS, COE, FL, Lake Tohopekaliga Extreme Drawdown and Habitat Enhancement Project, Fish and Wildlife Habitat Improvements, Construction, Operation and Maintenance, Osceola County, FL, Comment Period Ends: March 04, 2002, Contact: Liz Manners (904) 232–3923.

EIS No. 020014, FINAL SUPPLEMENT, BLM, MT, Zortman and Landusky Mines Reclamation Plan, Modifications and Mine Life Extensions, Updated Information to Analyze Additional Reclamation Alternatives, Mine Operations Approval, Mine Reclamation and US Army COE Section 404 Permits Issuance, Little Rocky Mountains, Phillip County, MT, Wait Period Ends: February 19, 2002, Contact: Scott Haight (406) 538–1930.

EIS No. 020015, FINAL EIS, AFS/BLM, UT, CO, Flat Canyon Federal Coal Lease Tract (UTU–77114), Application for Leasing, Manti-La Sal National Forest, Ferron-Price Ranger District, Sanpete and Emery Counties, UT, Wait Period Ends: February 19, 2002, Contact: Carter Reed (AFS) (435) 637–2817. US Department of Agriculture's Forest (FS) and US Department of the Interior's Bureau of Land Management (BLM) are Joint Lead Agencies for the above project. The contact person for BLM is Stan Perks (801) 539–4038.

EIS No. 020016, FINAL EIS, AFS, FL, Ocklawaha River Restoration Project, Continued Occupation of Florida National Forest Lands, Portions of Kirkpatrick Dam, Rodman Reservoir and Eureka Lock and Dam in Conjunction with Partial Restoration of the Ocklawaha River, Operation and Maintenance, Special Use Permit Issuance and Implementation, Marion and Putnam Counties, FL, Wait Period Ends: February 19, 2002, Contact: George Hemingway (850) 942–9364.

EIS No. 020017, DRAFT EIS, BLM, WY, Powder River Basin Oil and Gas Project, To Extract, Transport, and Sell Oil and Natural Gas Resource, Application of Permit to Drill (APD), Special Use Permit and Right-of-Way Grant, Campbell, Converse, Johnson and Sheridan Counties, WY, Comment Period Ends: April 18, 2002, Contact: Paul Beels (307) 684–1100. This document is available on the Internet *at: http://fs.fed.us/r4/payette/main.html*

EIS No. 020018, DRAFT EIS, NOA, WA, CA, OR, US West Coast Fisheries for Highly Migratory Species Fishery Management Plan (FMP), Approval and Implementation, Ocean Waters off the States of Washington, Oregon and California a portion of the Exclusive Economic Zone (EEZ), WA, OR and CA, Comment Period Ends: March 04, 2002, Contact: Rod McInnis (562) 980–4000.

EIS No. 020019, FINAL EIS, NRC, UT, Skull Valley Band of Goshute Indians Reservation Project, Construction and Operation of Independent Spent Fuel Storage Installation and Related Transportation Facilities, Permits and Approvals, Tooele County, UT, Wait Period Ends: February 19, 2002, Contact: Chester Poslusny, Jr (301) 415–1341.

EIS No. 020020, FINAL SUPPLEMENT, FTA, CA, Los Angeles Eastside Corridor Transit Improvements, Light Rail Transit (LRT) Selected Build Alternative Options A and B, Los Angeles Central Business District to just east of Atlantic Boulevard, Funding, NPDES and US Army COE Section 404 Permits, Los Angeles County, CA, Wait Period Ends: February 19, 2002, Contact: Erv Poka (213) 202–3952.

EIS No. 020021, FINAL EIS, COE, PA, Dents Run Watershed Ecosystem Restoration, Construction and Operation of Six Acid Mine Drainage Abatement Projects, Implementation, Benezette Township, Susquehana River Basin, Elk County, PA, Wait Period Ends: February 19, 2002, Contact: Greg Nielson (410) 962–6782.

Dated: January 15, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–1344 Filed 1–17–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7129–8]

Designation and Support for Local Resource Centers To Assist Public Entities Develop Environmental Management Systems (EMS)

AGENCY: Environmental Protection Agency.

ACTION: Notice; announcement of a program to assist not-for-profit organizations that wish to work with public entities that wish to adopt environmental management systems (EMS); request for applications.

SUMMARY: The Environmental Protection Agency (EPA) announces its intention to select and provide technical assistance for up to five existing not-for-profit organizations in order to increase their capacity to assist public entities wishing to adopt environmental management systems (EMS). The assistance provided to these organizations will include helping with developing business plans, providing relevant EMS materials to facilitate each organization's existing EMS assistance activities, train-the-trainer work sessions on ways to address the needs of public agencies, and other marketing services. Each organization selected will also gain increased visibility, attention, and recognition of the key role they can play in meeting the growing needs of public agencies wishing to adopt EMSs.

This program is a continuation of two highly successful projects led by U.S. EPA to directly support various public agencies as they develop EMSs. The program is designed to build on these efforts by increasing the capacity of existing EMS service providers to meet the needs of public agencies. This project is being led by EPA's Office of Water, in conjunction with EPA's Office of Air and Radiation and Office of Compliance.

DATES: Letters of Application from interested organizations should be submitted no later than March 15, 2002.

ADDRESSES: Letters of Application should be submitted to James Horne, U.S. Environmental Protection Agency, Office of Wastewater Management, 1200 Pennsylvania Avenue, NW, Washington, DC, Mail Code 4201M, (202) 564–0571 *and* Craig Ruberti, Global Environment and Technology Foundation, 7010 Little River Turnpike, Suite 460, Annandale, Virginia, 22003.

FOR FURTHER INFORMATION CONTACT: James Horne at (202) 564–0571.

SUPPLEMENTARY INFORMATION:

I. Background

Public entities manage complex large-scale problems of operating and maintaining physical plants; power, wastewater, water, and roadway systems; and managing solid and hazardous waste. As the front line implementers of environmental programs, they are responsible for the health and safety of hundreds millions of citizens. Faced with shrinking resources and aging infrastructure, public entities must manage their operations in a more efficient manner, at lower cost, and with less environmental impact. Environmental management systems (EMS) are an important emerging tool to help public entities do this.

EMSs follow Shewart and Deming's ''*plan, do, check, and act*'' systems methodology and can be implemented by organizations of all sizes and types. They provide a set of problem identification and problem-solving tools that can be implemented in an organization in many different ways, depending on its activities and needs. Based on the organization's core values, business goals, and environmental commitments, employees examine their environmental footprint and the procedures they use to manage environmental issues. They incorporate strong operational controls and environmental responsibilities into existing job descriptions and work instructions. They set measurable objectives and targets, monitor, measure, and evaluate progress, ''find and fix'' environmental problems as they occur, and provide top management with a feedback loop to assess progress and make appropriate changes to the management system. The various elements of the EMS work together to provide opportunities to continually improve management of environmental impacts both in regulated areas and in areas that are not regulated (*e.g.*, odor, water or electricity use, and growth management).

Key elements of the EMS include:

- An environmental policy statement endorsed and actively promoted by senior management;
- A planning process that identifies the organization's environmental impacts and integrates their management into the organization's regular business and operations decisions;
- An organizational structure that places environmental responsibilities directly with employees in operational functions that deal with significant environmental impacts;
- An implementation process that stresses training, communication, operational controls, and reaching measurable goals—all oriented toward reducing risks of significant environmental impacts and continually improving environmental management;
- Measurement and auditing procedures that focus on ''finding and fixing'' problems and reducing the chances of their recurring;
- Periodic top management review of the EMS to ensure continual improvement.

Since 1996, the most commonly used framework for an EMS is the ISO 14001 Environmental Management Standard developed by the International Organization for Standardization (ISO). The ISO was established in 1947 with the mission of developing voluntary technical standards to promote international trade in goods and services.

For the last several years the U. S. Environmental Protection Agency (US EPA) has been promoting the adoption of Environmental Management Systems (EMS) to help public entities, particularly local governments, improve their environmental performance beyond compliance, prevent pollution, promote greater environmental stewardship across the workforce, and improve their overall efficiency.

The US EPA's Office of Water has played a critical leadership role in bringing EMS capacity to local governments. This leadership has continued and expanded to include other headquarters and regional offices. Since 1997, in partnership with the Global Environment & Technology Foundation (GETF), the US EPA has established two EMS initiatives to help local governments test the applicability and benefits of an EMS on environmental performance, compliance, pollution prevention, and stakeholder involvement in government operations. In all, 23 local governments have participated in developing and implementing their own EMSs through these two initiatives.

Using a four-phased implementation strategy over a two-year period, each participating public entity has received EMS training, coaching, and technical assistance, as well as EMS implementation materials and toolkits specially designed for the public sector. Five intensive week long training sessions, individual bi-weekly phone consultations, and on-site visits provided additional implementation guidance. Monthly ''all-hands'' calls allowed participants to share their experiences and keys to success and engage in shared problem solving opportunities. Information and data were collected about the benefits, barriers, and keys to success and resource requirements of EMS implementation in a variety of public sector organizations. Participants experienced convincing environmental and economic benefits over the first two-year project period in the following areas, as evidenced by the statements below:

- *Environmental Compliance and Performance:* ''With regard to environmental compliance, we have a better understanding of our legal requirements. We have better-trained employees whose competence in their work areas is critical to the environment. We expect that our EMS will increase our ability to stay in compliance.''—Tim Hall, Superintendent, Massachusetts Corrections Institute, Norfolk, MA.
- *Recycling:* ''Building on the momentum generated early on in the program, we moved forward with a recycling program for lab waste that has diverted 18,000 lbs of waste from the landfill in a three-month period.—Oscar Pancorbo, Director, Wall Experiment Station Laboratory, Massachusetts Department of Environmental Protection, Lawrence, MA.
- *Water Conservation:* ''In our efforts to conserve potable water use in our operations we realized we have 1 million gallons of rainwater available in our sedimentation basin per large storm event. By using this water for dust control and soil compaction we estimate conserving about 800,000 gallons of potable water and $1,500 in water fees on an annual basis.—Mark zu Hone, EMS Project Manager, Department of Environmental Services, Refuse Disposal Division, City of San Diego, CA.
- *Efficient Regulatory Tracking:* ''Implementing an EMS enables us to embark on a huge project we always knew we needed to do but could never find the time for—to consciously

identify all our regulatory requirements and formally designate responsibility for compliance and updates. We always felt we had a handle on this, but our procedure to identify our legal requirements now relieves worries that we might have missed something.—Pam Badger, Special Waste Supervisor, King County Solid Waste Division, Seattle, WA.

• *Resource Conservation:* ''In light of this summer's expected electricity shortages and water rationing we have set objectives and targets that will focus on resource conservation for both our bus and rail maintenance operations. Through these conservation initiatives we plan to save about 10% of our budgeted utilities which could result in $85,000—$90,000.''—Kevin Considine, Environmental Engineer, Tri-County Metropolitan Transportation District of Oregon, Portland, OR.

• *Operational Efficiency:* ''Using the process flow diagrams (PFDs) from the aspects investigation phase of the EMS, the Safety Committee has begun preparation of job hazard analyses (JHA) for approximately 200 work activities at the Bureau. It is estimated that the use of the PFDs will save approximately 300 hours of JHA development time—amounting to approximately $5,000 in savings.''—Fred Murphy, Special Programs Manager, New Hampshire Department of Transportation, Concord, NH.

• *Air Quality:* ''The Port has been significantly involved in the development and implementation of the Houston One-Hour Ozone State Implementation Plan (SIP). To fulfill our role in this effort we have set a target to reduce our NO_X emissions by 320 tons per year, which goes well beyond EPA's cost effectiveness guidelines. The PHA has been testing innovative technologies to reduce emissions and has committed to implementing these technologies through our EMS efforts to achieve this goal.''—Laura Fiffick, Environmental Affairs Manager, Port of Houston Authority, Houston, TX.

More information about these two projects can be found at www.getf.org/projects/muni.cfm.

II. The National Public Entity EMS Resource Center—The Peer Center

The two EMS initiatives described above have helped to demonstrate the relevance of EMSs in the public sector and established a solid basis for expanding EMS adoption for public agencies, especially local governments. The strong enthusiasm and tangible environmental results with EMS through these initiatives suggest substantial long-term benefits from EMS implementation and ensure the parallel development of sustainable management practices in both the private and public sectors. Public entity EMS implementation has sparked interest from government leaders around the world. To take advantage of this momentum US EPA and GETF have launched the National Public Entity Environmental Management System Resource Center—the National PEER Center.

The National PEER Center is a virtual and live clearinghouse of information and people whose mission is to promote the adoption of EMSs in public entities, particularly local governments.

The PEER Center's goals are three-fold:

• To promote the understanding and adoption of EMSs by public entities

• To facilitate peer-to-peer exchange of information and experiences and build awareness of EMSs as a tool to improve environmental performance

• To build regional EMS competence and technical assistance capacity through the creation of Local Resource Centers.

The National PEER Center Web site is currently in place (*www.peercenter.net*) and links users to a national database of key resources such as sample EMS documentation, local and state EMS programs in place, EMS service providers, detailed descriptions of the EMS implementation phases, trainers, mentors and course providers, as well as training materials, web links, contact information, and case studies. The PEER Center serves to demystify the elements of environmental management systems and programs. It will deliver field-tested EMS tools, training, mentoring, and problem solving strategies on-line to help public entities systematically manage both their regulated and non-regulated environmental impacts.

III. Local Resource Centers

Critical to the effectiveness and success of the PEER Center will be the establishment of Local Resource Centers (LRCs) to advance the use of EMS in public entities. Building on individual EMS skills and competencies, and leveraging the successes and skills of the other LRCs and the National PEER Center, each LRC will serve as a high-quality EMS resource center for the public entities in their area, facilitating information transfer, providing training, and government-to-government mentoring in order to maximize public entities' time and resource investment in EMS implementation. The joint efforts of the National PEER Center and the LRCs will reach many more public entities, particularly municipalities and increase the ability of existing EMS service providers to advance the use of EMSs by agencies in their areas.

Although no direct financial assistance will be provided, the PEER Center staff will act as the initial support mechanism for the Local Resource Centers, providing business-planning assistance, field-tested training techniques and materials, implementation strategies, and assistance with outreach plans and marketing materials. In areas where Local Resource Centers do not exist, the PEER Center staff will work with other local entities in that area that have implemented EMSs and help provide information to agencies interested in learning more about EMSs and possibly developing them for their operations.

Information transfer between the PEER Center, the LRCs, and various public entities implementing EMSs will ensure access to the most current tools, keys to success, and lessons learned.

Activities that the LRCs selected under this program will be expected to undertake include, but are not limited to:

• Leveraging their existing EMS expertise to provide training, technical assistance, tools and materials that will facilitate EMS implementation in the public sector;

• Maintaining a database of local/regional EMS service providers, public entities who have implemented EMS, including but not limited to those that are ISO 14001 certified;

• Using their data, information, resources and key contacts to encourage EMS information transfer and facilitate government-to-government mentoring;

• Leading regular and frequent outreach activities to increase awareness and understanding of EMS applicability among public entities in their local/regional area;

• Collecting data and information and preparing case studies about EMS implementation in public entities and assisting in the dissemination of this information across public organizations;

• Facilitating information transfer between the PEER Center and other Local Resource Centers to ensure access to the most current data, information, tools, keys to success, and lessons learned; and

• Facilitating EMS workshops and conferences in their local/regional area

If at all possible, EPA intends to select existing not-for-profit organizations that are already providing some degree of EMS services in their respective areas. The Local Resource Centers will offer a menu of EMS services including—EMS training, technical expertise, field-tested tools, information, speakers/mentors,

workshops and conferences, outreach, and EMS implementation assistance.

IV. Benefits of Becoming a Local Resource Center

Each Local Resource Center will receive, at no cost, extensive start-up support, a full catalogue of EMS implementation tools from the Global Environment & Technology Foundation (GETF) and materials that have already been field-tested and used in the public sector, including:

- Assistance in developing a business plan, and business development materials.
- An extensive suite of field-tested, high-quality and successful materials for public entities: training techniques, implementation strategies, document samples, outreach and presentation toolkits.
- Regular train-the-trainer work sessions on EMS implementation in public sector organizations with other LRCs and national partners.
- An extensive database of national mentors and experts with hands-on experience to assist in local/regional EMS outreach and implementation.
- Support services and mentoring from existing public entities that are implementing an EMS.
- Assistance with marketing services and opportunities.
- National attention, visibility, and partnership opportunities from the PEER Center and its partners and stakeholders.

In addition to the assistance provided by the National Peer Center as described above, each Local Resource Center will be authorized to use the National PEER Center Logo endorsing their selection to provide high quality EMS services to public entities as part of an EPA sponsored competitive process.

V. Criteria for Selecting the Local Resource Centers

Up to five organizations will be selected to serve as Local EMS Resource Centers (LRCs) based on the following criteria:

Business Experience:

- Well-established delivery mechanism and client base for providing EMS services.
- An excellent reputation for providing high-quality services.
- Good training/facilitation capacity and experience.
- Ability to market services and sustain a business model.
- A not-for-profit organization.

EMS Expertise:

- Excellent first hand experience, knowledge and understanding of EMS development and implementation, using the basic Plan-Do-Check-Act approach.
- Documented success in providing EMS services, but not necessarily to public entities.

Capacity:

- Strong Web literacy and functionality.
- Adequate staffing for providing range of services: marketing, training, outreach, information transfer, mentoring, speaking.
- Willingness to proactively seek out and mobilize other EMS partners in the region.
- Potential to bring partners who can leverage resources.

Organizational Commitment:

- Organizational commitment and top management support.
- Organizational resources for start up activities.
- Willingness to share data and information with other LRCs and PEER Center.

Interested organizations are invited to submit letters of application no later than March 15, 2002. Please address each of the following issues in your correspondence:

1. Briefly describe your organization's background and structure, including number of years in operation, current staffing levels and management structure. Briefly outline the range of services you provide, the typical recipients of these services and how you currently advertise/market your services. Please submit samples of communication and outreach materials you currently use. Please describe how your top management will participate in your LRC activities.

2. What types of EMS training sessions and/ or workshops do you currently develop and facilitate? Who in your organization provides/supports the training function?

3. Briefly describe your first-hand experience with EMS implementation, training, and mentoring. Please describe your sense of the demand by public entities for EMS services in your area. What type of EMS services do you currently provide and in what sector? Who in your organization provides EMS services and briefly outline their qualifications and experience in directly assisting organizations to develop and implement an EMS? How will your organization accommodate the demand on its resources for additional EMS work? Please provide contact information for two organizations as references for your EMS services.

4. Please describe your organization's Web and computer literacy and functionality.

5. To what local/regional/national organizations does your organization belong? Please describe the leadership functions that any of your employees have provided. How might your organization conduct outreach with these organizations about EMS benefit for public entities?

6.Why does your organization want to become a Local Resource Center?

US EPA and the National PEER Center will solicit applicants for Local Resource Centers through March 15, 2002 using this **Federal Register** Notice and other communication and outreach vehicles.

Each applying organization will receive a PEER Center information packet following receipt of their application. Materials will include:

- Additional details and information about the National PEER Center and the Local Resource Centers.
- A Memorandum of Understanding that each selectee will sign with Global Environment & Technology Foundation (GETF), and that outlines the relationship and obligations of the PEER Center and the Local Resource Centers.
- The selection criteria used in the interview process.
- Information about the two US EPA EMS programs for public entities.

Following the receipt of these letters, PEER Center staff will schedule interviews with each applicant's management and appropriate staff at a mutually convenient time from March 17–April 12, 2002. Results of these evaluations will be presented to an EPA selection committee who will name the Local Resource Centers no later than May 3, 2002. At that time, PEER Center staff will begin work with each Local Resource Center to develop business plans, materials, processes, marketing strategies, information transfer, data collection, etc.

Organizations who are interested in becoming Local Resource Centers are invited to submit letters of application no later than March 15, 2002, as described above to:

Jim Horne, Office of Wastewater Management, U.S. Environmental Protection Agency (EPA), 1200 Pennsylvania Avenue, NW Mail Code 4201M, Washington, DC 20460, Phone: (202) 564–0571, FAX: (202) 501–2338, e-mail: *horne.james@epa.gov*

and

Craig Ruberti, Global Environment and Technology Foundation (GETF), 7010 Little River Turnpike, Suite 460, Annandale, Virginia 22003, Phone: (703) 750–6401, FAX: (703–750–6506 e-mail: *cruberti@getf.org*

Dated: January 11, 2002.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 02–1346 Filed 1–17–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7131–4]

EPA Science Advisory Board; Notification of a Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that a Subcommittee of the US EPA Science Advisory Board (SAB) (the Surface Impoundments Study Subcommittee of the SAB's Environmental Engineering Committee) will conduct a public teleconference meeting on February 1, 2002 from 12 pm to 2 pm. The meeting will be coordinated through a conference call connection in Room 6450C in the USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC 20004. The public is encouraged to attend the meeting in the conference room noted above, however, the public may also attend through a telephonic link if lines are available. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Mary Winston at (202) 564–4538, or via e-mail at *winston.mary@epa.gov*. Important Notice: Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

Purpose of the Meeting—The primary purpose of this meeting will be to finalize and approve the Subcommittee's report on its review of Industrial Surface Impoundments in the United States for the Office of Solid Waste as announced in **Federal Register** notices 66 FR 30917–30920 June 8, 2001 and 66 FR 9671–49672 September 28, 2001. Final approval of this report will be accomplished during a public review meeting of the US EPA Science Advisory Board (SAB) at a later date (to be announced in the FR).

Availability of Review Materials: The availability of Industrial Surface Impoundments in the United States was announced previously in the FRs cited above. The January draft of Subcommittee report will be available in mid-January. Those wishing a copy of the draft report should contact the DFO, preferably by email (see contact information in following paragraph) on or about January 14.

For Further Information—Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (3 minutes or less) must contact Ms. Kathleen White, Designated Federal Officer, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone (202) 564–4559; FAX (202) 501–0582; or via e-mail at *white.kathleen@epa.gov.* Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Ms. White no later than noon Eastern Time on Tuesday January 29, 2002.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. Oral Comments: In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY2000 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Ms. White at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: January 16, 2002.

A. Robert Flaak,

Acting Staff Director, EPA Science Advisory Board.

[FR Doc. 02–1481 Filed 1–17–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7130–5]

Office of Research and Development 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 11–12, 2002. On Monday, February 11, the Meeting will begin at 1 p.m., and will recess at 5 p.m. On Tuesday, February 12, the Meeting will reconvene at 9 a.m. and will adjourn at approximately 4 p.m. All times noted are Eastern Time.

ADDRESSES: The Meeting will be held at the Madison Hotel, 1177 15th Street, NW., Washington, DC 20005, (202) 862–1600.

SUPPLEMENTARY INFORMATION: Agenda items will include, but not be limited to: Discussion of BOSC Sub-Committee draft reports of ORD Labs/Centers site visits, Ad-hoc Subcommittee on Communications Progress Report, and discussion of BOSC 2002 activities.

Anyone desiring a draft agenda may fax their request to Shirley R. Hamilton at (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, U.S. Environmental Protection Agency, Board of Scientific Counselors, 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, (8701R), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–6853.

Dated: January 14, 2002.

Peter W. Preuss,

Director, National Center for Environmental Research.

[FR Doc. 02–1347 Filed 1–17–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7129–9]

Intent To Grant an Exclusive Patent License

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to grant an exclusive patent license.

SUMMARY: Pursuant to 35 U.S.C. 207 and 37 CFR part 404, EPA hereby gives notice of its intent to grant an exclusive, royalty-bearing revocable license to practice the invention described and claimed in the patent application listed below, all U.S. patents issuing therefrom, and all reexamined and reissued patents granted in the United States in connection with such patent application to Corus Consulting Inc., Pittsburgh, Pennsylvania. The patent application is:

U.S. Patent Application No. 08/440,965, entitled ''Hydrogel Alginate Compositions,'' filed May 15, 1995, and claiming priority from U.S. Patent Application 07/857,046, entitled ''Use of Immobilized Film Bioreactor,'' filed March 25, 1992.

The invention was announced as being available for licensing in the April 26, 1995 issue of the **Federal Register** (60 FR 20490), citing another application in the series, U.S. Patent Application 08/084,985, entitled ''Use of Immobilized Film Bioreactor,'' filed July 2, 1993.

EPA has authority under 37 CFR 404.7(a)(1) to proceed without a notice of availability when expeditious granting of the license will best serve the interest of the Federal government and the public. Under that authority, EPA has decided not to issue a notice of availability because an earlier application in the family of inventions was announced as available for licensing and because the only applicant, Corus Consulting, has filed an application for an exclusive license under 37 CFR 404.8 and is prepared to enter into an exclusive license agreement.

The proposed exclusive license will contain appropriate terms, limitations and conditions to be negotiated in accordance with the limitations and conditions of 35 U.S.C. 209 and 37 CFR 404.5 and 404.7 of the U.S. Government patent licensing regulations.

EPA will negotiate the final terms and conditions and grant the exclusive license, unless within 30 days from the date of this Notice, EPA receives, at the address below, written objections to the grant, together with supporting documentation. The documentation from objecting parties having an interest in practicing the above patent application should include an application for exclusive or nonexclusive license with the information set forth in 37 CFR 404.8. The EPA Patent Counsel and other EPA officials will review all written responses and then make recommendations on a final decision to the Director of the National Risk Management Research Laboratory, who has been delegated the authority to issue patent licenses under EPA Delegation 1–55.

DATES: Comments to this notice must be received by EPA at the address listed below by February 19, 2002.

FOR FURTHER INFORMATION CONTACT: Alan Ehrlich, Patent Counsel, Office of General Counsel (Mail Code 2377A), U.S. Environmental Protection Agency, Washington, DC 20460, telephone (202) 564–5457.

Dated: January 11, 2002.

Robert A. Friedrich,

Acting Associate General Counsel.

[FR Doc. 02–1350 Filed 1–17–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7130–1]

Intent To Assign an Invention

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to assign an invention.

SUMMARY: Pursuant to 35 U.S.C. 202(e)(1) and 207 and 37 CFR part 404, EPA hereby gives notice of its intent to assign ownership of the invention described and claimed in the patent application listed below, all U.S. patents issuing therefrom, all corresponding patents granted and issued throughout the world, and all reexamined and reissued patents granted in connection with such patent application to the University of Southern California, Los Angeles, California. The patent application is:

U.S. Patent Application No. 09/992,544, entitled ''A Technology for Continuous Measurement of Coarse Particle Mass Concentration,'' filed November 13, 2001.

Title 35 U.S.C. 202(e)(1) requires that assignment of rights to an invention be made in accordance with the provisions of chapter 18 of 35 U.S.C. Accordingly, EPA is required to follow the procedures set out in 37 CFR part 404, Licensing of Government Owned Inventions, which implement chapter 18, in order to issue the assignment. Normally, 37 CFR 404.7(a)(1) requires an agency to issue both a notice of availability of an invention for exclusive licensing or assignment, as well as a notice of intent to grant the exclusive license or issue the assignment. However, EPA has authority under 37 CFR 404.7(a)(1) to proceed without a notice of availability when expeditious transfer of rights will best serve the interest of the Federal government and the public. Under that authority, EPA has decided not to issue a notice of availability of this invention for licensing or assignment. The University of Southern California is co-owner by assignment from its employee inventor of an undivided interest in the invention. It is unlikely that any other party would be willing to take a license or assignment from EPA on a patent application or patent encumbered by co-ownership. Furthermore, the University of Southern California has identified a potential licensee of the University who is requesting an exclusive license of the University. The University cannot grant an exclusive license until it has obtained the exclusive license or assignment of EPA's co-ownership.

Accordingly, EPA is relying on its authority under 37 CFR 404.7(a)(1) to proceed without such notice of availability.

The proposed assignment will contain appropriate terms, limitations and conditions in accordance with the limitations and conditions of 35 U.S.C. 202(c)(4), 203 and 204, and where applicable to assignments, the limitations and conditions of 37 CFR 404.5 and 404.7 of the U.S. Government patent licensing regulations.

EPA will negotiate the final terms and conditions and execute the assignment, unless within 30 days from the date of this Notice, EPA receives, at the address below, written objections to the grant, together with supporting documentation. The documentation from objecting parties having an interest in practicing the above patent application should include an application for assignment or for an exclusive or nonexclusive license with the information set forth in 37 CFR 404.8. EPA's Grants Administration Division, the Director of the National Risk Management Research Laboratory, and other EPA officials will review all written responses and then make a recommendation to the EPA Patent Counsel who has been delegated the authority to transfer and assign patent rights on behalf of EPA.

DATES: Comments to this notice must be received by EPA at the address listed below by February 19, 2002.

FOR FURTHER INFORMATION CONTACT: Laura Scalise, Patent Attorney, Office of General Counsel (Mail Code 2377A), U.S. Environmental Protection Agency, Washington, DC 20460, telephone (202) 564–8303.

Dated: January 11, 2002.

Robert A. Friedrich,

Acting Associate General Counsel.

[FR Doc. 02–1348 Filed 1–17–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7130–2]

Benfield Industries Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: Under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), the United States Environmental Protection Agency (''EPA'') proposes to enter into a Prospective Purchaser Agreement (''PPA'') regarding the Benfield Industries Superfund Site in Waynesville, Haywood County, North Carolina. EPA proposes to enter into the PPA with the party who purchases the property pursuant to a judgment sale conducted by the Haywood County Sheriff (the ''Purchaser''). The PPA obligates the Purchaser to cooperate with any response actions EPA may take on the property, to grant EPA access for any such response actions, and to comply with specified institutional controls. Further, the PPA provides the Purchaser with a covenant not to sue from the United States for Existing Contamination on the property. The covenant is conditioned upon the Purchaser's fulfilling its obligations under the PPA. EPA will consider comments on the proposed PPA for thirty (30) days.

EPA may withdraw from or modify the proposed PPA should such comments disclose facts or considerations which indicate the proposed PPA is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, 404/562–8887.

Written comments may be submitted to Ms. Batchelor at the above address within 30 days of the date of publication.

Dated: December 21, 2001.

Anita L. Davis,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 02–1349 Filed 1–17–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

January 10, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 19, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley or Leslie Smith, Federal Communications Commission, Room 1–C804 or Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to *jboley@fcc.gov* or *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0798.

Title: FCC Application for Wireless Telecommunications Bureau Radio Service Authorization.

Form No.: FCC Form 601.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, state, local or tribal governments.

Number of Respondents: 241,335.

Estimated Time Per Response: 1.25 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Total Annual Burden: 211,169 hours.

Total Annual Cost: $48,267,100.

Needs and Uses: The FCC Form 601 is used as the general application (long form) for market-based licensing and site-by-site licensing in the Wireless Telecommunications Radio Services. The purpose of this revision is to make the necessary form changes for the

Reallocation and Service Rules for the 698–746 MHz spectrum band (television channels 52–59). We are seeking Office of Management and Budget (OMB) approval in order to have the form changes in place for the auction scheduled for June 2002. The information is used by the Commission to determine whether the applicant is legally, technically, and financially qualified to be licensed.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 02–1334 Filed 1–17–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority; Comments Requested

January 11, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments March 19, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, 445 12th Street, SW, Room 1–C804, Washington, DC 20554 or via internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley at 202–418–0214 or via internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0997.

Title: 47 CFR Section 52.15(k), Numbering Utilization and Compliance Audit Program.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or Other for Profit.

Number of Respondents: 25.

Estimated Time Per Response: 33 hours per response (avg).

Total Annual Burden: 825 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion reporting requirement.

Needs and Uses: The state of the nation's numbering resources has a direct effect on the growth of competition in the telecommunications industry. The nation's numbering resources are depleting rapidly. Under the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Congress granted the Federal Communications Commission (FCC) exclusive jurisdiction over the United States' portion of the North American Numbering Plan (NANP). Consistent with this authority, the FCC adopted an audit requirement to preserve numbering resources. The purpose of the audits is to monitor telecommunications carriers' compliance with FCC rules and to verify the accuracy and validity of the numbering data submitted to the FCC. The audits will also allow the FCC to identify inefficiencies in the manner in which carriers use numbers, including excessive use of certain categories of numbers (e.g., administrative, aging, or intermediate numbers). By ensuring compliance with FCC rules and providing in-depth information, these audits will help preserve the nation's numbering resources. The FCC staff developed a standardized audit program consisting of audit procedures and guidelines, an internal control questionnaire, and a corresponding data request, for the independent auditor to follow in conducting audits. The independent auditor would conduct audits using these tools. The audit procedures generally require the audited carrier to respond to requests for information from the independent auditor. The independent auditor will report its audit findings to the FCC. The FCC will use the audit results to determine whether the audited carriers are complying with the FCC's rules, and whether the audited carriers' numbering data submitted to the FCC , e.g., FCC Form 502, is accurate and valid.

OMB Control No.: 3060–0814.

Title: Section 54.301, Local Switching Support and Local Switching Support Data Collection Form and Instructions.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or Other for Profit.

Number of Respondents: 197.

Estimated Time Per Response: 19.42 hours per response (avg).

Total Annual Burden: 3,787 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion and annual reporting requirement.

Needs and Uses: Pursuant to 47 CFR 54.301, each incumbent local exchange carrier that is not a member of the NECA common line tariff, that has been designated an eligible telecommunications carriers, and that serves a study area with 50,000 fewer access lines shall, for each study area, provide the Administrator with the projected total unseparated dollar amount assigned to each account in section 54.301(b). Average schedule companies are required to file information pursuant to 47 CFR section 54.301(f). Both respondents must provide true-up data. The data is necessary to calculate certain revenue requirement.

OMB Control No.: 3060–0169.

Title: Reports and Records of Communications Common Carriers and Affiliates—Sections 43.51 and 43.53.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or Other for Profit.

Number of Respondents: 374.

Estimated Time Per Response: 16.12 hours per response (avg).

Total Annual Burden: 6,029 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion and annual reporting requirement.

Needs and Uses: Sections 211 and 215 of the Communications Act of 1934, as amended, require that the FCC examine the transactions of any common carriers

relating to the activities of that carrier which may affect the charges and/or services rendered under the Act. Sections 43.51 and 43.53 require common carriers to submit reports so that the FCC can monitor various activities of these carriers to determine the impact on the just and reasonable rates required by the Communications Act of 1934, as amended.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 02–1335 Filed 1–17–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

January 10, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 19, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0799.

Title: FCC Ownership Disclosure Information for the Wireless Telecommunications Services.

Form No.: FCC Form 602.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit; individuals or households; not-for-profit institutions; and State, Local or Tribal Government.

Number of Respondents: 3,000.

Estimated Time Per Response: 1 hour (average).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 3,000 hours.

Total Annual Cost: $450,000.

Needs and Uses: FCC Form 602 is comprised of a main form containing administrative information and Schedule A used to collect ownership data pertaining to the applicant for the proposed authorization. Filers will use multiple copies of Schedule A as needed to list each direct and indirect owner and associated information. The form was designed for use by auctionable services and all Wireless Telecommunications Services.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 02–1337 Filed 1–17–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

January 9, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 19, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0920.

Title: Application for Construction Permit for a Low Power FM Broadcast Station.

Form No.: FCC Form 318.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions.

Number of Respondents: 2,283.

Estimated Time Per Response: 0.75 to 6 hours per response (avg.).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 6,315 hours.

Total Annual Cost: N/A.

Needs and Uses: FCC Form 318 is required to apply for a construction permit for a new LPFM station or to make changes in the existing facilities of such a station. The data is used by Commission staff to determine whether an applicant meets basic statutory and regulatory requirements to become a Commission licensee. It is also used to ensure that the public interest would be served by grant of the application. This extension is being requested to obtain the full three-year OMB approval.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 02–1338 Filed 1–17–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

January 11, 2002.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0665.

Expiration Date: 12/31/2004.

Title: Section 64.707—Public Dissemination of Information by Providers of Operator Services.

Form No.: N/A .

Respondents: Business or other for-profit.

Estimated Annual Burden: 436 respondents; 4 hour per response (avg.); 1744 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Third Party Disclosure.

Description: 47 CFR 64.707 requires that operator services providers (OSPs), regularly publish and make available at no cost upon request from consumers written materials that describe any changes in operator services and choices available to consumers. 47 U.S.C. 226(d)(4)(B) required adoption of this rule. This requirement was a response to a widespread failure of operator service providers to provide information necessary for informed consumer choice in the marketplace. OSPs have provided this information primarily to consumers in the form of a written report that will be regularly updated at the OSP's discretion. Consumers will use this information to increase their knowledge of the choices available to them in the operator service marketplace. Obligation to respond: Mandatory

OMB Control No.: 3060–0853.

Expiration Date: 01/31/2005.

Title: Receipt of Service Confirmation Form, Adjustment of Funding Commitment, and Certification by Administrative Authority to Billed Entity of Compliance with Children's Internet Protection.

Form No.: FCC Forms 500, 486 and 479.

Respondents: Business or other for-profit; Not-for-profit institutions.

Estimated Annual Burden: 40,000 respondents; 1.87 hour per response (avg.); 75,000 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Recordkeeping; Third Party Disclosure.

Description: Section 1721 and related sections of the Children's Internet Protection Act (CIPA) provide that in order to be eligible under section 254 of the Communications Act of 1934, as amended (the Act), to receive discounted Internet access, Internet services, and internal connection services, schools and libraries that have computers with Internet access must have in place certain Internet safety policies. FCC Forms 486, 479 and 500 are used to implement the requirements of CIPA and 47 U.S.C. section 254.

(a) FCC Form 486, Receipt of Service Confirmation Form. Schools and libraries and consortia of such entities, apply to the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) for discounts on telecommunications services, Internet access and internal connections, through the use of FCC Forms 470 and 471. Both Forms 470 and 471 contain certifications that guarantee that eligible entities are ordering services for eligible purposes. The applicant must also certify that it has developed a technology plan that has been approved by an authorized entity. The technology plan should demonstrate that the applicant will be able to deploy any necessary hardware, software, and wiring, and to undertake any necessary teacher training required to use effectively the services ordered pursuant to the section 254(h) discount. 47 CFR 54.504(b)(2). FCC Form 486, which is filed after the applicant has received a Funding Commitment Decision Letter, serves several purposes: it authorizes the payment of invoices from service providers for the services indicated on the applicant's Form 471 and also indicates the approval of technology plans as required and it indicates the state of compliance with CIPA. All schools and libraries receiving Internet access and internal connection services supported by the schools and libraries support mechanism must certify that they are enforcing a policy of Internet safety and enforcing the operation of a technology prevention measure pursuant to CIPA. The purpose of this information is to ensure that schools and libraries that are eligible to receive discounted Internet access, Internet services, and internal connections have in place certain Internet safety policies. (*Number of respondents:* 30,000; *hours per response:* 1.5 hours; *total annual burden:* 45,000 hours).

(b) FCC Form 479, Certification by Administrative Authority to Billed Entity of Compliance with Children's Internet Protection Act. All members of a consortium must submit signed certifications to the Billed Entity of each consortium in language consistent with the FCC Form 486. FCC Form 479 provides notification to a Billed Entity by of the status of the Administrative Authority's compliance for the purposes of CIPA. The billed entity will then certify on its FCC Form 486 that it has collected duly completed and signed Forms 479 from administrative authorities that the billed entity represents. (*Number of respondents:* 10,000; *hours per response:* 1.5 hours; *total annual burden:* 15,000 hours).

(c) FCC Form 500, Adjustment to Funding Commitment and Modification to Receipt of Service Confirmation Form. Schools and libraries and consortia of such entities which have received funding commitments from the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) for discounts on telecommunications services, Internet access and internal connections, must have a mechanism by which they can adjust that funding commitment or provide updated information to SLD. The Form 500, which is filed after the applicant has received a Funding Commitment Decision Letter serves the following four purposes: to adjust the Funding Year Service Start Date reported on a previously filed Form 486 for the then-current Funding Year; to adjust the Contract Expiration Date listed on a Form 471 application for the then-current Funding Year; to cancel irrevocably and totally a Funding Request Number (FRN); and/or to reduce irrevocably the amount of a Funding Request Number (FRN). (*Number of respondents:* 10,000; *hours per response:* 1.5 hours; *total annual burden:* 15,000 hours). All schools and libraries receiving Internet access and internal connection services supported by the schools and libraries support mechanism must certify that they are enforcing a policy of Internet safety and enforcing the operation of a technology prevention measure. The purpose of this

information is to ensure that schools and libraries that are eligible to receive discounted Internet access, Internet services, and internal connections have in place certain Internet safety policies. The schools and libraries will certify using FCC Form 486. Respondents who received a Funding Commitment Decision Letter indicating services eligible for universal service discounts must file FCC Form 486 in order to start the payment process. FCC Form 486 informs the Administrator when the Billed Entity and/or the eligible entities that it represents is receiving, is scheduled to receive, or has received service in the relevant Funding Year from the named service providers. The FCC Form 486 is filed: to authorize the payment of invoices from the service provider; to indicate approval of technology plans; and to indicate the state of compliance with CIPA. The information is to ensure that services are actually being provided and that a billing relationship exists between the service provider and the applicant. Failure to file a Form 486 means that no payments may be made to a service provider (or for an applicant reimbursement, which is passed through the service provider) on the particular Funding Request Number. In addition, all members of a consortium must submit signed certifications to the Billed Entity (using a FCC Form 479, Certification by Administrative Authority to Billed Entity of Compliance with Children's Internet Protection Act) of each consortium, in language consistent with that on the FCC Form 486. Only some applicants will avail themselves of the FCC Form 500. It is available for applicants who wish to keep their information current or who wish to return funds to the Universal Service Fund. The forms and instructions may be obtained at the SLD web site, *http://www.sl.universalservice.org/*, or by contacting the SLD Client Service Bureau at 888–203–8100. Obligation to respond: Mandatory.

Public reporting burden for the collections of information are as noted above. Send comments regarding the burden estimates or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 02–1336 Filed 1–17–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATE AND TIME: Wednesday, January 23, 2002 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, January 24, 2002 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2001–20: Careau & Co. and Mohre Communications by Richard F. Carrot, President.

Civil Penalty Inflation Adjustments (11 CFR 111.24).

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–1459 Filed 1–16–02; 11:22 am]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1398–DR]

Mississippi; 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 declaration for the State of Mississippi, (FEMA–1398–DR), dated December 7, 2001, and related determinations.

EFFECTIVE DATE: January 10, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi 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 December 7, 2001:

Tate County for Public Assistance (already designated for Individual Assistance).

Coahoma and Tallahatchie Counties for Individual Assistance (already designated for 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)

Joe M. Allbaugh,

Director.

[FR Doc. 02–1315 Filed 1–17–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3170–EM]

New York; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of New York (FEMA–3170–EM), dated December 31, 2001, and related determinations.

EFFECTIVE DATE: December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 31, 2001, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the impact in certain areas of the State of New York,

resulting from record/near record snow on December 24–29, 2001, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act).

I, therefore, declare that such an emergency exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 48 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for subgrantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

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 Peter Martinasco of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared emergency:

The counties of Erie and Niagara for emergency protective measures under the Public Assistance program for a period of 48 hours.

(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.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–1316 Filed 1–17–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3170–EM]

New York; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of New York, (FEMA–3170–EM), dated December 31, 2001, and related determinations.

EFFECTIVE DATE: January 8, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that as authorized by the President in a letter dated December 31, 2001, FEMA is extending the time period for emergency protective measures under the Public Assistance program from 48 hours to 120 hours. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

(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)

Joe M. Allbaugh,

Director.

[FR Doc. 02–1317 Filed 1–17–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 11, 2002.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Chinatrust Financial Holding Company, Ltd., Taipei, Republic of China; to acquire 100 percent of the voting shares of Chinatrust Commercial Bank, Ltd., Taipei, Republic of China, and thereby indirectly acquire voting shares of China Trust Capital A/S, Copenhagen Denmark; China Trust Capital B.V., Amsterdam, The Netherlands; and China Trust Holdings Corporation, New York, New York; and Chinatrust Bank (U.S.A.), Torrance, California.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. SinoPac Holdings, Taipei, Taiwan, R.O.C.; to become a bank holding company by acquiring 100 percent of the voting shares of Bank SinoPac, Taipei, Taiwan, R.O.C., and thereby indirectly acquire 100 percent of the voting shares of SinoPac Bancorp, and Far East National Bank, both of Los Angeles, California.

Board of Governors of the Federal Reserve System, January 14, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–1282 Filed 1–17–02; 8:45 am]

BILLING CODE 6210–02–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99E–0117]

Determination of Regulatory Review Period for Purposes of Patent Extension; Heart Laser System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for the Heart Laser System 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. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–007), 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 Heart Laser System. Transmyocardial revascularization with the Heart Laser System is indicated for the treatment of patients with stable angina refractory to medical treatment and secondary to objectively demonstrated coronary artery atherosclerosis not amenable to direct coronary revascularization. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for the Heart Laser System (U.S. Patent No. 5,125,926) from PLC Medical Systems, Inc., 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 16, 1999, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of the Heart Laser System represented the first permitted commercial marketing or use of the product. Subsequently, 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 the Heart Laser System is 3,135 days. Of this time, 2,586 days occurred during the testing phase of the regulatory review period, while 549 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*: January 21, 1990. The applicant claims that 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 on November 30, 1990. However, FDA records indicate that the IDE was determined substantially complete for clinical studies to have begun on January 21, 1990, which represents the IDE effective date.

2. *The date the application was initially submitted with respect to the device under section 515 of the act (21 U.S.C. 360e)*: February 18, 1997. FDA has verified the applicant's claim that the premarket approval application (PMA) for the Heart Laser System (PMA P950015) was initially submitted February 18, 1997.

3. *The date the application was approved*: August 20, 1998. FDA has verified the applicant's claim that PMA P950015 was approved on August 20, 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 695 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (address above) written comments and ask for a redetermination by March 19, 2002. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by July 17, 2002. 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. Three copies of any information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 28, 2001.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–1320 Filed 1–17–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the

Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Proposed Project: National Health Service Corps (NHSC) Waiver Request Worksheets (OMB No. 0915–0234)—Revision

The National Health Service Corps (NHSC) of HRSA's Bureau of Health Professions (BHPr) is committed to improving the health of the Nation's underserved by uniting communities in need with caring health professionals and by supporting communities' efforts to build better systems of care.

The NHSC Site Bill is sent to all sites where NHSC members have been assigned for all or part of the calendar year. The sites are billed for the full amount of the calculated costs associated with the assignee(s). The Public Health Service Act, Section 334(b) contains provisions which permit a waiver of the reimbursement requirement for entities which are assigned Corps members. The Waiver Request Worksheets are used by the NHSC to collect the necessary information from sites which are requesting a waiver to determine if such a waiver is justified.

Estimates of annualized reporting burden are as follows:

Type of report	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Billing Form	1200	1	1200	.25	300
Budget Form	1200	1	1200	.75	900
Total	1200	1	2400	1.00	2400

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 10, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–1283 Filed 1–17–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–03]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7262, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–4300; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provided an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a

Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register,** the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Agriculture:* Ms. Marsha Pruitt, Realty Officer, Department of Agriculture, Reporters Building, 300 7th St., SW., Rm 310B, Washington, DC 20250; (202) 720–4335; *DOT:* Mr. Rugene Spruill, Principal, Space Management, SVC–140, Transportation Administrative Service Center, Department of Transportation, 400 7th St., SW, Rm 2310, Washington, DC 20590; (202) 366–4246; *GSA:* Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; *Interior:* Ms. Linda Tribby, Acquisition & Property Management, Department of the Interior, 1849 C St., NW, MS5512, Washington, DC 20240; (202) 219–0728; (These are not toll-free numbers).

Dated: January 10, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

Suitable/Available Properties

Buildings (by State)

Kentucky

Residence
420 Willow Street
Moorhead Co: KY 40351
Landholding Agency: Agriculture
Property Number: 15200210004
Status: Excess
Comment: 1300 sq. ft., brick

Ranger's Residence
125 Cherry Road
Berea Co: KY
Landholding Agency: Agriculture
Property Number: 15200210005
Status: Excess
Comment: 1680 sq. ft., brick, needs repair

Montana

Ranger Residence Garage
401 Manix Street
Augusta Co: Lewis & Clark MT 59422–
Landholding Agency: Agriculture
Property Number: 15200210001
Status: Excess
Comment: 372 sq. ft., needs repair, most recent use—bunkhouse, off-site use only

Ranger Residence
401 Manix Street
Augusta Co: Lewis & Clark MT
Landholding Agency: Agriculture
Property Number: 15200210002
Status: Excess
Comment: 856 & 700 sq. ft., needs repair, most recent use—bunkhouse, off-site use only

Choteau Bunkhouse
4236 Hwy 89
Choteau Co: Teton MT 59422–
Landholding Agency: Agriculture
Property Number: 15200210003
Status: Excess
Comment: 1209 sq. ft., needs repair, presence of asbestos, most recent use—bunkhouse, off-site use only

Land (by State)

New Jersey

0.27 acres
lots 3103, 3106
209 Bay Road
Ocean City Co: Cape May NJ 08226–
Landholding Agency: GSA
Property Number: 54200210003
Status: Surplus
Comment: Undeveloped land, endangered species documented
GSA Number: 1–U–NJ–645

North Carolina

4.939 acres
Staton Road
Greenville Co: Pitt NC
Landholding Agency: GSA
Property Number: 54200210002
Status: Surplus
Comment: Undeveloped land
GSA Number: 4–D–NC–738

Washington

Richland Rail R/W
East of 1335 Lee Blvd.
Richland Co: Benton WA
Landholding Agency: GSA
Property Number: 54200210005
Status: Excess
Comment: 0.59 acre, long narrow curved strip, most recent use—gravel rail bed/parking
GSA Number: 9–B–WA–1197

Unsuitable Properties

Buildings (by State)

Maryland

Bldg. #81
U.S. Coast Guard YARD
Baltimore Co: Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87200210001
Status: Underutilized
Reason: Secured Area

Bldg. #85
U.S. Coast Guard YARD
Baltimore Co: Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87200210002
Status: Underutilized
Reason: Secured Area

Bldg. #86
U.S. Coast Guard YARD
Baltimore Co: Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87200210003
Status: Underutilized
Reason: Secured Area

Bldg. #86D
U.S. Coast Guard YARD
Baltimore Co: Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87200210004
Status: Underutilized
Reason: Secured Area

Bldg. #149
U.S. Coast Guard YARD
Baltimore Co: Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87200210005
Status: Underutilized
Reason: Secured Area

New Mexico

Bldg. 220, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Interior
Property Number: 61200210002
Status: Excess
Reason: Secured Area

Bldg. 222, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Interior
Property Number: 61200210003
Status: Excess
Reason: Secured Area

Bldg. 223, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Interior
Property Number: 61200210004
Status: Excess
Reason: Secured Area

Bldg. 224, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Interior
Property Number: 61200210005
Status: Excess
Reason: Secured Area

Bldg. 226, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Interior
Property Number: 61200210006
Status: Excess
Reason: Secured Area

Bldg. 1, TA–22
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Interior
Property Number: 61200210007
Status: Excess

Reason: Secured Area; Extensive deterioration

Bldg. 25, TA–22
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Interior
Property Number: 61200210008
Status: Excess
Reason: Secured Area; Extensive deterioration

New York

Middle Marker
Wind Shear Site
31st Ave & 75th St
Jackson Heights Co: Queens NY 11434–
Landholding Agency: GSA
Property Number: 54200210004
Status: Surplus
Reason: Extensive deterioration
GSA Number: 1–U–NY–889

Washington

Dam Tenders Qtrs.
O'Sullivan Dam
Warden Co: Grant WA 98857–
Landholding Agency: Interior
Property Number: 61200210009
Status: Unutilized
Reason: Extensive deterioration

Cox Property
Road 7820
Mesa Co: Franklin WA 99343–
Landholding Agency: Interior
Property Number: 61200210010
Status: Unutilized
Reason: Extensive deterioration

Unsuitable Properties

Land (by State)

California

1.23 acre
Delta-Mendota Canal
Bell Road
Stanislaus Co: CA
Property Number: 61200210001
Status: Underutilized
Reason: Floodway

Kentucky

64.47 acres
between airport & prison
Pine Knot Co: McCreary KY 42635–
Landholding Agency: GSA
Property Number: 54200210001
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone
GSA Number: 4–J–KY–0610

[FR Doc. 02–1030 Filed 1–17–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–HY–P; F–21901–56, F–21904–91, DOA–12]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Doyon, Limited, for lands in Tps. 10 S., Rs. 20 and 21 W., Fairbanks Meridian, Alaska, located in the vicinity of Denali National Preserve, aggregating approximately 37,235 acres. Notice of the decision will also be published four times in the *Fairbanks Daily News-Miner.*

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until February 19, 2002 to file an appeal.

2. Parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Barbara Opp Waldal, (907) 271–5669.

Barbara Opp Waldal,
Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 02–1380 Filed 1–17–02; 8:45 am]

BILLING CODE 4310–88–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–350–1060–JJ]

Notice of Public Meetings on the Use of Helicopters and Motorized Vehicles in Wild Horse and Burro Gather Operations

AGENCY: Bureau of Land Management, Interior; Eagle Lake Field Office, Susanville, California.

ACTION: Notice of public meetings on the use of helicopters and motorized vehicles in wild horse and burro gather operations.

SUMMARY: In accordance with 43 CFR 4740.1(b), two public meetings will be held to discuss the use of helicopters and other motorized vehicles during wild horse and burro gathering operations on public lands managed by the Bureau of Land Management's Surprise, Eagle Lake, and Alturas Field Offices.

SUPPLEMENTARY INFORMATION: The meetings will be conducted on Monday, April 15, 2002, at the Bureau of Land Management's Eagle Lake Field Office, 2950 Riverside Drive, Susanville, California, and on Tuesday, April 15, 2002, at the Bureau of Land Management's Surprise Field Office, 602 Cressler Street, Cedarville, California. Both meetings will begin at 7 p.m. The use of helicopters and other motorized equipment in conducting wild horse and burro gathers during calendar year 2002 will be discussed and the public will be given the opportunity to submit oral or written comments during the meeting.

FOR FURTHER INFORMATION: Contact Linda Hansen, Eagle Lake Field Manager, at (530) 257–5381 0456, or Rob Jeffers, Wild Horse and Burro Specialist, Surprise Field Office, at (530) 279–6101.

Linda D. Hansen,
Field Manager.

[FR Doc. 02–1378 Filed 1–17–02; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1430–PE; NMNM101473]

Notice of Realty Action; Recreation and Public Purposes Act Classification; New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action: Recreation and Public Purposes (R&PP) Act classification.

SUMMARY: The following public land in Dona Ana County, New Mexico has been examined and found suitable for classification for lease or conveyance to Gadsden Independent School District (GISD), New Mexico under the provision of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*). GISD proposes to use the land for an elementary school site.

T. 26 S., R. 5 E., NMPM
Section 13, part of the S1/2SE1/4NE1/4
Containing approximately 20 acres.

DATES: Comments regarding the proposed lease/conveyance or classification must be submitted on or before March 4, 2002.

ADDRESSES: Comments should be sent to the BLM, Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Gilda Fitzpatrick at the address above or at (505) 525–4454.

SUPPLEMENTARY INFORMATION: Lease or conveyance will be subject to the following terms, conditions, and reservations.

1. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Upon publication of this notice in the **Federal Register**, the land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws. On or before March 4, 2002 , interested persons may submit comments regarding the proposed lease/conveyance or classification of the land to the District Manager, Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico 88005. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective March 19, 2002.

Classification Comments: Interested parties may submit comments involving the suitability of the land for an elementary school site. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for an elementary school.

Dated: October 15, 2001.

Leonard T. Brooks,

Acting Field Manager, BLM Las Cruces Field Office.

[FR Doc. 02–1383 Filed 1–17–02; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID074–02–1430–DU 241E]

Idaho; Notice of Intent To Prepare a Land Use Plan Amendment and Environmental Assessment

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice of intent to prepare a land use plan amendment and Environmental Assessment (EA) to provide for a proposed direct land sale.

SUMMARY: Pursuant to 43 CFR 1600, the Bureau of Land Management (BLM) Idaho Falls Field Office is considering an amendment to the Medicine Lodge Resource Management Plan (RMP) to provide for the possible disposal by direct sale of approximately 140 acres of public land in Madison County, Idaho.

DATES: Comments regarding the proposed plan amendment must be received on or before March 4, 2002.

ADDRESSES: Written comments should be sent to Joe Kraayenbrink, Field Manager, Idaho Falls Field Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83401. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the proposed plan amendment may be obtained by contacting Skip Staffel, Realty Specialist, at the above address or by calling (208) 524–7562.

SUPPLEMENTARY INFORMATION: The following described public land in Madison County, Idaho, will be examined for possible disposal by direct sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 1719.

Boise Meridian, Idaho

T. 6 N., R. 38 E.,

Sec. 26, N½SW¼ and SW¼SW¼;
Sec. 27, E½SE¼ (that portion east of the Twin Buttes Road).

The land described above contains 140 acres, more or less.

Upon publication of this notice in the **Federal Register**, the land described above will be segregated from appropriation under the public land laws, including the mining laws, except for the sale provisions of FLPMA.

An environmental assessment will be completed for this action. If the land is found suitable for disposal, the United States would offer it for direct sale to Madison County at fair market value. This action would provide Madison County with a site for solid waste disposal. The public is invited to provide scoping comments on the issues that should be addressed in the plan amendment and environmental assessment. The following resources will be considered in preparation of the plan amendment: lands, wildlife, recreation, wilderness, range, minerals, cultural resources, watershed/soils, threatened/endangered species, and hazardous materials. Staff specialists representing these resources will make up the planning team. Planning issues will include the same planning criteria originally considered for the Medicine Lodge RMP; however, issues for this amendment are expected to primarily involve the adjustment of land tenure. This action is not expected to be controversial.

No public meetings are scheduled.

Current land use planning information is available at the Idaho Falls BLM office. Office hours are 7:45 a.m. to 4:30 p.m., Monday through Friday except holidays.

Dated: December 17, 2001.

Joe Kraayenbrink,

Field Manager, Idaho Falls Field Office.

[FR Doc. 02–1382 Filed 1–17–02; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–930–1610–DO]

Utah Bureau of Land Management Price Field Office Resource Management Plan and the Richfield Field Office Resource Management Plan; Extension of Scoping Periods.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of extension of scoping periods.

SUMMARY: The Price Field Office and Richfield Field Office published Notices

of Intent to prepare Resource Management Plans (RMP) in the **Federal Register** on November 7 and November 1, 2001 respectively. These notices officially started the scoping process for each planning area.

Since that time, the public has expressed an interest in extending the scoping period for each of these plans. In order to be responsive to the public, the Utah Bureau of Land Management (BLM) hereby extends the scoping periods for both of the above mentioned plans.

Comments, including names and addresses of respondents, will be available for public review at the BLM offices listed in this notice during regular business hours. If you wish to withhold your name and or address from public review or from disclosure under the Freedom of Information Act, you must state so prominently at the beginning of your written comments.

Public notification of scoping meetings and open houses will be made in local and regional publications at least 15 days prior to the meetings being held. Meetings are expected to be held in locally affected communities as well as the Wasatch Front area.

Even though the formal scoping period ends on the dates described below, opportunities to get involved in planning are still available for all of our planning efforts. You are welcome at any time to contact our offices which are involved in planning. Our ability to consider your input will become more limited the closer we get to alternative development and analysis. These phases are expected to begin in late summer and fall of 2002.

DATES: The scoping period for the Price Field Office Resource Management Plan is extended to February 1, 2002. The scoping period for the Richfield Field Office Resource Management Plan is extended to April 1, 2002. All comments regarding issues, concerns, resource values, or considerations for alternative development are due by the dates listed above and will be summarized in a forthcoming Scoping Summary Report.

ADDRESSES: For the Richfield Field Office Resource Management Plan, written comments should be sent to RMP Comments, Bureau of Land Management, Richfield Field Office, 150 East 900 North, Richfield Utah 84701; or faxed at 1–435–896–1550. For the Price Field Office Resource Management Plan, written comments should be sent to RMP Comments, Bureau of Land Management, Price Field Office, 125 South 600 West, Price, Utah 84501; or faxed at 1–435–636–3657.

Documents pertinent to these proposals including public comment may be examined at either BLM Field Office during regular business hours; 8 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: If you are interested in the Price Field Office RMP, contact Floyd Johnson, Supervisory Planning Coordinator at 1–435–636–3600 or e-mail *floyd_johnson@ut.blm.gov.* If you are interested in the Richfield Field Office RMP, contact Frank Erickson, Assistant Field Manager for Planning at 1–435–896–1532 or e-mail *frank_erickson@ut.blm.gov.*

Dated: December 19, 2001.

Sally Wisely,

Utah State Director.

[FR Doc. 02–1381 Filed 1–17–02; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–952–02–1420–BJ]

Notice of Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, (30) thirty calendar days from the date of this publication.

New Mexico Principal Meridian, New Mexico

T. 7 N., R. 13 W., approved September 18, 2001, for Group 946 NM;

Indian Meridian, Oklahoma

T. 11 N., R. 10 E., approved September 27, 2001, for Group 74 OK;
T. 7 N., R. 14 W., approved September 18, 2001, for Group 62 OK;

Texas

Padre Island National Seashore, approved September 27, 2001, for Group 6 TX;

Amended Protraction Diagrams for

T. 15 S., R. 9 W., approved September 18, 2001, NM;
T. 16 S., R. 9 W., approved September 18, 2001, NM;
T. 17 S., R. 9 W., approved September 27, 2001, NM;
T. 16 S., R. 10 W., approved September 27, 2001, NM;

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the NM State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed. The above-listed plats represent dependent resurveys, surveys, and subdivisions.

These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, PO Box 27115, Santa Fe, New Mexico, 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: January 4, 2002.

Stephen W. Beyerlein,

Acting Chief Cadastral Surveyor, for New Mexico.

[FR Doc. 02–1384 Filed 1–17–02; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–BJ: GP02–0009]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 25 S., R. 7 W., accepted August 15, 2001
T. 9 S., R. 3 E., accepted August 22, 2001
T. 40 S., R. 8 W., accepted September 7, 2001
T. 38 S., R. 3 W., accepted September 7, 2001

Washington

T. 17 N., R. 11 E., accepted September 7, 2001
T. 40 N., R. 34 E., accepted September 27, 2001

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the

filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, surveys, and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 S.W. 5th Avenue) PO Box 2965, Portland, Oregon 97208.

Dated: October 12, 2001.

Robert D. DeViney, Jr.,

Branch of Realty and Records Services.

[FR Doc. 02–1377 Filed 1–17–02; 8:45 am]

BILLING CODE 4310–33–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–467]

Certain Canary Yellow Self-Stick Repositionable Note Products

AGENCY: United States International Trade Commission.

ACTION: Correction notice for the subject investigation.

SUMMARY: On January 7, 2002, the Commission published in the **Federal Register** (67 FR 757) a notice of investigation in certain canary yellow self-stick repositionable note products under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337). The Commission gives notice of a needed correction to the above mentioned notice. The date ''December 17, 2001'' in the sentence following the words ''Scope of Investigation'' should be ''December 27, 2001.''

EFFECTIVE DATE: January 7, 2002.

FOR FURTHER INFORMATION CONTACT: Jeffrey R. Whieldon, Esq. (202–205–2580), U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

Issued: January 14, 2002.

By order of the Commission.

Marilyn R. Abbott,

Acting Secretary.

[FR Doc. 02–1302 Filed 1–17–02; 8:45 am]

BILLING CODE 7020–04–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearing of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Civil Procedures.

ACTION: Notice of cancellation of open hearing.

SUMMARY: The public hearing on proposed amendments to the Federal Rules of Civil Procedure, scheduled for February 4, 2002, in Dallas, Texas, has been canceled.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: January 14, 2002.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 02–1361 Filed 1–17–02; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, including 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States of America and State of Louisiana* v. *City of Baton Rouge and Parish of East Baton Rouge,* Civil Action No. 01–978–B–M–3, was lodged on November 13, 2001, with the United States District Court for the Middle District of Louisiana.

The proposed Consent Decree settles an action brought under Clean Water Act (''CWA'') Section 301, 33 U.S.C. 1311, for civil penalties and injunctive relief for violations related to the publicly owned treatment works owned and operated by the City/Parish. The Consent Decree resolves all claims in the Complaint and provides for injunctive relief, a civil penalty of $729,500; a $1.125 million supplemental environmental project that will connect certain neighborhoods to the sewage treatment system; and payment $216,000 in stipulated penalties which accrued under a prior Consent Decree. The injunctive relief will require the City/Parish to implement specified projects including a 13–15 year project to improve its sewage collection system, a Sanitary Sewer Overflow Response Plan to protect the public health by responding to overflows, and an extensive preventive maintenance program.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. As a result of the discovery of anthrax contamination at the District of Columbia mail processing center in mid-October 2001, the delivery of regular first-class mail sent through the U.S. Postal Service has been disrupted. Consequently, public comments which are addressed to the Department of Justice in Washington, DC, and sent by regular, first-class mail through the U.S. Postal Service are not expected to be received in timely manner. Therefore, comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, and sent: (1) c/o United States Attorneys Office, Middle District of Louisiana, 777 Florida St., Ste 208, Baton Rouge, LA 70801, Attention: John Gaupp; and/or (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW., 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States and Louisiana* v. *Baton Rouge,* No. 01–978–B–M–3 (M.D. La.), DOJ Ref. # 90–5–1–1–2769/1.

Notice of this Consent Decree was previously published at 66 FR 66931 (2001), and, that notice instructed commenters to send comments via the U.S. Postal Service to P.O. Box 7611, Washington, DC 20044–7611. Due to the

same mail delivery problems referred to in the previous paragraph, any comments submitted pursuant to the previous notice through the U.S. Postal Service are not expected to be received in a timely manner. In order to ensure that all comments are considered, any persons who submitted comments via the U.S. Postal Service pursuant to the previous notice are advised to resubmit those comments by one of the methods specified in the previous paragraph.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Middle District of Louisiana, 777 Florida St., Ste 208, Baton Rouge, LA 70801, and at the Region 6 office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. A copy of the proposed Consent Decree may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 616–6584; phone confirmation no. (202) 514–1547. There is a charge for the copy (25 cent per page reproduction cost). Upon requesting a copy, please mail a check in the amount of $67.75 payable to the ''U.S. Treasury'' to: Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. The check should refer to *United States and Louisiana* v. *Baton Rouge,* No. 01–978–B–M–3 (M.D. La.), DOJ Ref. # 90–5–1–2769/1.

Thomas A. Mariani, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1298 Filed 1–17–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy and 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Goodyear Tire & Rubber Co., Corning, Inc. and First Piedmont Corp.,* Civil Action No. 4:01CV00062, was lodged on October 30, 2001 with the United States District Court for the Western District of Virginia. The consent decree resolves the United States' claims against defendants with respect to past costs incurred in response to contamination at the First Piedmont Rock Quarry (Route 719) Site in Pittsylvania County, Virginia, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9607.

Under the consent decree, defendants will pay the United States $973,095 in reimbursement of past response costs incurred in connection with the Site. Said amount will be paid within thirty (30) days after entry of the consent decree by the Court. As part of the proposed settlement, defendants will receive a covenant not to sue for and contribution protection for past response costs.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree that were previously submitted during the original comment period. Any persons who previously submitted comments should resubmit those comments. As a result of the discovery of anthrax contamination at the District of Columbia mail processing center in mid-October, 2001, the delivery of regular first-class mail sent through the U.S. Postal Service has been disrupted. Consequently, public comments which are addressed to the Department of Justice in Washington, DC and sent by regular, first-class mail through the U.S. Postal Service are not expected to be received in a timely manner. Therefore, comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, and sent: (1) c/o Natalie Katz, USEPA Region III (3RC42), 1650 Arch Street, Philadelphia, PA 19103 and/or (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW., 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States* v. *Goodyear Tire & Rubber Co., Corning, Inc. and First Piedmont Corp.,* DOJ # 90–11–3–07144.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Western District of Virginia, 105 Franklin Road, SW., Suite One, Roanoke, Virginia 24008 and at the Region 3 office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed Consent Decree may also be obtained by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 616–6584; phone confirmation no. (202) 514–1547. There is a charge for the copy (25 cent per page reproduction cost). Upon requesting a copy, please mail a check payable to the ''U.S. Treasury'', in the amount of $4.75, to: Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. The check should refer to *United States* v. *Goodyear Tire & Rubber Co., Corning, Inc. and First Piedmont Corp.,* DOJ # 90–11–3–07144.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1296 Filed 1–17–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Resolving U.S. v. IBP Inc. (D. Nebraska)

Notice is hereby given that the United States, on behalf of the United States Environmental Protection Agency (''EPA''), intends, on or before February 4, 2002, to move for entry of the Consent Decree lodged with the United States District Court for the District of Nebraska on October 12, 2001. This Consent Decree, together with the Partial Consent Decree for Interim Injunctive Relief previously entered in this case, will fully resolve the United States' Complaint filed on January 12, 2000, in the District of Nebraska, alleging violations by IBP, inc. [sic] (''IBP'') of the Clean Air Act, 42 U.S.C. 7401 *et seq.*; the Clean Water Act, 33 U.S.C. 1311 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*; and the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. 11001 *et seq.*, at its Dakota City Nebraska slaughterhouse facility.

Notice of the lodging of the Consent Decree was previously published in the **Federal Register** on November 15, 2001 (Volume 66, Number 221, Page 57484), triggering a thirty-day public comment period that expired on December 15, 2001. One set of comments was received during this period by facsimile transmission on December 12, 2001, from a Nebraska group called Citizens Promoting Environmental Stewardship, to which the United States will respond in connection with its motion to enter the Consent Decree. However, as a result of the discovery of anthrax contamination at the District of Columbia mail processing center, the delivery of regular first-class mail sent through the U.S. Postal Service has been disrupted. Consequently, any additional public comments on the proposed Consent Decree that were timely sent to

the Department of Justice in Washington, DC, by regular, first-class mail through the U.S. Postal Service, but not sent by additional means such as overnight or facsimile transmission, have not been received. This notice, therefore, is intended to advise any such commenters that their comments on the Proposed Consent Decree have not been received to date. Any previously submitted comments thus should be re-submitted by January 31, 2002, addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, and sent: (1) c/o Howard Bunch, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VII, 901 N. 5th St., Kansas City, Kansas 66101 and/or (2) by facsimile to (202) 353–0296; and/or (3) by overnight delivery, other than through the U.S. Postal Service, to Chief, Environmental Enforcement Section, 1425 New York Avenue, NW., 13th Floor, Washington, DC 20005. Each communication should refer on its face to *United States* v. *IBP,* DOJ Ref. #90–11–3–06517/1. Any such re-submitted comments will be evaluated and responded to prior to any final decision by the United States to move to enter the Consent Decree.

Robert E. Maher,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–1297 Filed 1–17–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

AGENCY: United States Department of Justice.

ACTION: Policy guidance document.

SUMMARY: The United States Department of Justice (DOJ) is republishing for additional public comment policy guidance on Title VI's prohibition against national origin discrimination as it affects limited English proficient persons.

DATES: This guidance was effective January 19, 2001. Comments must be submitted on or before February 19, 2002. DOJ will review all comments and will determine what modifications to the policy guidance, if any, are necessary.

ADDRESSES: Interested persons should submit written comments to Ms. Merrily Friedlander, Chief, Coordination and Review Section, Civil Rights Division, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530; Comments may also be submitted by facsimile at 202–307–0595.

FOR FURTHER INFORMATION CONTACT: Christine Stoneman or Sebastian Aloot at the Civil Rights Division, 950 Pennsylvania Avenue, N.W., Washington, DC 20530. Telephone 202–307–2222; TDD: 202–307–2678. Arrangements to receive the policy in an alternative format may be made by contacting the named individuals.

SUPPLEMENTARY INFORMATION: Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.* and its implementing regulations provide that no person shall be subjected to discrimination on the basis of race, color, or national origin under any program or activity that receives federal financial assistance.

The purpose of this policy guidance is to clarify the responsibilities of recipients of federal financial assistance from the U.S. Department of Justice (DOJ) (''recipients''), and assist them in fulfilling their responsibilities to limited English proficient (LEP) persons, pursuant to Title VI of the Civil Rights Act of 1964 and implementing regulations. The policy guidance reiterates DOJ's longstanding position that in order to avoid discrimination against LEP persons on the ground of national origin, recipients must take reasonable steps to ensure that such persons have meaningful access to the programs, services, and information those recipients provide, free of charge.

This document was originally published on January 16, 2001. See 66 FR 3834. The document was based on the policy guidance issued by the Department of Justice entitled ''Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency.'' 65 FR 50123 (August 16, 2000).

On October 26, 2001 and January 11, 2002, the Assistant Attorney General for the Civil Rights Division issued to federal departments and agencies guidance memoranda, which reaffirmed the Department of Justice's commitment to ensuring that federally assisted programs and activities fulfill their LEP responsibilities and which clarified and answered certain questions raised regarding the August 16th publication. The Department of Justice is presently reviewing its original January 16, 2001 publication in light of these clarifications to determine whether there is a need to clarify or modify the January 16th guidance. In furtherance of those memoranda, the Department of Justice is republishing its guidance for the purpose of obtaining additional public comment.

The policy guidance includes appendices. Appendix A provides examples of how this guidance would apply to DOJ recipients. Appendix B provides further information on the legal bases for the guidance. It also explains further who is covered by this guidance. The text of the complete guidance document, including appendices, appears below.

Dated: January 15, 2002.

Ralph F. Boyd, Jr.,

Assistant Attorney General, Civil Rights Division.

I. Introduction

For most people living in the United States, English is their native language or they have learned to read, speak, and understand English. There are others for whom English is not their primary language. If they also have limited ability to read, speak, or understand English, then these people are limited English proficient, or ''LEP.'' For them, language can be a barrier to accessing benefits or services, understanding and exercising important rights, or understanding other information provided by federally funded programs and activities.

This guidance (''Guidance'') is based on Title VI of the Civil Rights Act of 1964 and regulations that implement Title VI. Title VI was intended to eliminate barriers based on race, color, and national origin in federally assisted programs or activities. In certain circumstances, failing to ensure that LEP persons can effectively participate in or benefit from federally assisted programs and activities or imposing additional burdens on LEP persons is national origin discrimination. Therefore, recipients must take reasonable steps to ensure meaningful access for LEP persons.

In August, 2000, the President signed Executive Order 13166. Under that order, every federal agency that provides financial assistance to non-federal entities must create guidance on how their recipients can provide meaningful access to LEP persons and therefore comply with the longstanding Title VI law and its regulations. DOJ is issuing this Guidance to comply with the Executive Order. The guidance document is new, but Title VI's meaningful access requirement is not.

This Guidance should help recipients of Department of Justice (DOJ) financial assistance understand how to comply with the law. Recipients have a great

deal of flexibility in determining how to comply with the meaningful access requirement, and are not required to use all of the suggested methods and options listed. As always, recipients also have the freedom to and are encouraged to go beyond mere compliance and create model programs for LEP access.

Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance. Recipients of DOJ assistance include, for example:

- police and sheriffs' departments
- departments of corrections
- courts
- certain nonprofit agencies with law enforcement missions

When federal funds are passed through from one recipient to a subrecipient, the subrecipient is also covered by Title VI.

The LEP persons that are eligible to be served or encountered by these recipients include, but are not limited to:

- LEP persons who are in the custody of the recipient, including juveniles, detainees, wards, and inmates.
- LEP persons subject to or serviced by law enforcement activities, including, for example, suspects, violators, witnesses, victims, and community members.
- LEP persons who are not in custody but are under conditions of parole or probation.
- LEP persons who encounter the court system.
- Parents and family members of the above.

Title VI applies to the entire program or activity of a recipient of DOJ assistance. That means that Title VI covers all parts of a recipient's operations. This is true even if only one part of the agency uses the federal assistance.

Example: DOJ provides assistance to a state department of corrections to improve a particular prison facility. All of the operations of the entire state department of corrections—not just the particular prison—are covered by Title VI.

Technical Assistance

DOJ plans to continue to provide assistance and guidance in this important area. For example, DOJ plans to work with representatives of law enforcement, corrections, courts, and LEP persons to identify model plans and examples of best practices and share those with recipients.

DOJ Programs and Activities

At the same time as federal agencies are creating recipient guidance, Executive Order 13166 requires that they create LEP plans for their own agencies that are consistent with the standards for recipients. Therefore, DOJ will apply the standards in this guidance to its own activities.[1]

Appendices

There are two appendices to this guidance. Appendix A provides examples of how this guidance would apply to DOJ recipients.

Appendix B provides further information on the legal bases for the guidance. It also explains further who is covered by this guidance.

Both of these appendices should be considered part of this guidance.

State or Local ''English-Only'' Laws

State or local ''English-only'' laws do not change the fact that recipients cannot discriminate in violation of Title VI. Entities in states and localities with ''English-only'' laws do not have to accept federal funding. However, if they do, they still have to comply with Title VI, including its prohibition against national origin discrimination by recipients.

II. How Recipients Should Decide What Language Services They Should Provide

As mentioned in Executive Order 13166 and the DOJ Guidance issued in August, 2000, recipients should apply a four-factor test to decide what steps to take to provide meaningful access to their programs and activities for LEP persons. Once the recipient has chosen the services it will provide, the recipient should prepare a written policy on language assistance for LEP persons (an ''LEP policy'').

A. The Four-Factor Analysis

Recipients must take reasonable steps to ensure meaningful access to their services, programs, and activities. What ''reasonable steps to ensure meaningful access'' means depends on a number of factors. DOJ recipients should apply the following four factors to the various kinds of contacts that they have with the public to decide what reasonable steps they should take to ensure meaningful access for LEP persons. The results of this balancing test allow a recipient to decide what documents to translate, when oral translation is necessary, and whether language services must be made immediately available.

After applying the four-factor analysis, a recipient may conclude that different language assistance measures are needed for its different types of programs or activities. For instance, some of a recipient's activities will be more important than others and/or have greater impact on or contact with LEP persons, and thus require more in the way of language assistance.

(1) The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population

One factor in determining what language services recipients should provide is the number or proportion of LEP persons eligible to be served or encountered by the recipient in carrying out its operations. Recipients should look to available data, such as the latest census data for the area served, data from school systems and from community organizations, and data collected by the recipient.[2] The greater the number or proportion of LEP persons, the more likely language services are needed.

(2) The Frequency With Which LEP Individuals Come in Contact With the Program

Recipients should assess, as accurately as they can, the frequency with which they have or should have contact with LEP language groups. The more frequent the contact, the more likely that language services are needed. The steps that are reasonable for a recipient that serves one LEP person a year may be very different than those expected from a recipient that serves several LEP persons each day. But even those that serve very few LEP persons on an infrequent basis should utilize this balancing analysis to determine what to do if an LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use one of the commercially available language lines to obtain immediate interpreter services.

In applying this standard, recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

[1] DOJ has created, pursuant to the Executive Order, a separate plan for providing meaningful access to LEP persons in DOJ conducted activities.

[2] The focus of the analysis is on lack of English proficiency, not the ability to speak more than one language. Note that census data may indicate the most frequently spoken languages other than English and the percentage of people who speak that language who do not speak or understand English very well. Some of the most commonly spoken languages other than English may be spoken by people who are also overwhelmingly proficient in English. Thus, they may not be the languages spoken most frequently by limited English proficient individuals. When using census data, it is important to focus in on the languages spoken by those who are not proficient in English.

(3) The Nature and Importance of the Program, Activity, or Service Provided By the Program

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. For example, the obligations to communicate rights to a person who is arrested or to provide medical services to an ill or injured inmate differ from those to provide bicycle safety courses or recreational programming. A recipient needs to determine if a denial or delay of access to services or information could have serious implications for the LEP individual. In addition, a decision by a federal, state, or local entity to make an activity compulsory, such as particular educational programs in a correctional facility or the communication of *Miranda* rights, serves as strong evidence of the program's importance.

(4) The Resources Available to the Recipient

A recipient's level of resources may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. Resource issues can sometimes be minimized by technological advances and sharing of resources and translations. Large entities should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance.

Applying the four factors, for example, a small police department with limited resources encountering very few LEP people has far fewer language assistance responsibilities than larger departments with more resources and large populations of LEP individuals.[3]

B. Selecting Language Assistance Services

After applying the four-factor analysis, recipients have two main ways to provide language services, where needed: oral interpretation and written translation. In deciding how to provide these services, recipients should consider the following information.

(1) Oral Language Services

Where oral interpretation is needed, recipients should develop procedures for providing competent interpreters in a timely manner. To do so, the recipient should consider some or all of the following options:

Hiring Bilingual Staff for public contact positions. When particular languages are encountered often, hiring bilingual staff offers one of the best options. Recipients can, for example, fill public contact positions with staff who are bilingual and competent to communicate directly with LEP persons in their language. If bilingual staff are also used to interpret between English speakers and LEP persons, or to orally translate documents, they must be competent in the skill of interpreting. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

Hiring Staff Interpreters. Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages.

Contracting for Interpreters. Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill.

Using Community Volunteers. Recipient-coordinated use of community volunteers may provide a cost-effective way to provide language services. It is often best to use community volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, must be competent in the skill of interpreting. It is best to make formal arrangements with volunteers. That way, the service is available more regularly and volunteers understand applicable confidentiality and impartiality rules.

Using Telephone Interpreter Lines. Telephone interpreter service lines often offer speedy interpreting assistance in many different languages. Although they are useful in many situations, it is important to ensure that such services have interpreters who are able to interpret any legal terms or terms that are specific to a particular program when such terms may come up in the conversation. Also, sometimes it may be necessary to provide on-site interpreters to provide accurate and meaningful communication with an LEP person.

Competence of Interpreters. When providing oral assistance, recipients should ensure competency of the language service provider, no matter which of the above options they use. Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English.

Competency to interpret does not always mean formal certification as an interpreter. However, certification is helpful. When using interpreters, recipients should ensure that they:

- demonstrate proficiency in both English and in the other language;
- are bound to confidentiality and impartiality to the same extent the recipient employee they are interpreting for is so bound and/or to the extent their position requires;
- have knowledge in both languages of any specialized terms or concepts peculiar to the entity's program or activity; and
- demonstrate the ability to convey information in both languages, accurately;

Some recipients, such as courts, may have additional self-imposed requirements for interpreters.

Inappropriate Use of Family Members, Friends, Other Inmates, or Detainees. As a general rule, when language services are required, recipients should provide competent interpreter services free of cost to the LEP person. LEP persons should be advised that they may choose either to secure the assistance of an interpreter of their own choosing, at their own expense, or a competent interpreter provided by the recipient.[4] If the LEP

[3] As another example, under the four-part analysis, Title VI does not require recipients to translate documents requested under a state equivalent of the Freedom of Information Act or Privacy Act, or to translate all official state statutes or notices of rulemaking. The focus of the analysis is the nature of the information being communicated, the intended or expected audience, and the cost of providing translations. In virtually all instances, one or more of these criteria would lead to the conclusion that recipients need not translate these types of official documents. These criteria, however, may result in translation obligations where, for instance, laws are otherwise posted or summarized in waiting rooms, summarized or set forth in forms, applications, or vital outreach material, or special populations are provided with rules and regulations they must follow (*e.g.*, in prisons, *see* Appendix A).

[4] While an LEP person may sometimes look to bilingual family members or friends or other persons with whom they are comfortable for language assistance, there are many situations where an LEP person might want to rely upon recipient-supplied interpretative services. For example, such individuals may not be available when and where they are needed, or may not have the ability to translate program-specific technical information. Alternatively, an individual may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, law enforcement (e.g., sexual or violent assaults), family, or financial information to a family member, friend, or member of the local community.

Continued

person decides to provide his or her own interpreter, the provision of this notice and the LEP person's election should be documented in any written record generated with respect to the LEP person. In emergency situations that are not reasonably foreseeable, use of interpreters not provided by the recipient may be necessary. Proper recipient planning and implementation can help avoid such situations.

(2) Translation of Written Materials

An effective LEP policy ensures that vital written materials are translated into the language of each regularly encountered LEP group eligible to be served and/or likely to be affected by the recipient's program.

The term ''vital documents'' includes, for example:

- consent and complaint forms
- intake forms with the potential for important consequences
- written notices of rights, denial, loss, or decreases in benefits or services, parole, and other hearings
- notices of disciplinary action
- notices advising LEP persons of free language assistance
- prison rule books
- written tests that do not assess English language competency, but test competency for a particular license, job, or skill for which knowing English is not required
- applications to participate in a recipient's program or activity or to receive recipient benefits or services.

Whether or not a document is ''vital'' also depends upon the importance of the program, information, encounter, or service involved. For instance, applications for bicycle safety courses would not generally be considered vital, whereas applications for drug and alcohol counseling in prison would generally be considered vital.

Many large documents have both vital and non-vital information in them. Written translation of only the vital information is usually sufficient.

It sometimes may be hard to tell the difference between vital and non-vital documents. This may be especially true for outreach materials like brochures or other information on rights and services. In order to have meaningful access, LEP persons need to be aware of those rights and services. Of course, it would be impossible to translate every piece of outreach material into every language. However, sometimes lack of awareness that a particular program, right, or service exists may effectively deny LEP individuals meaningful access. Thus, recipients should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate.

Recent technological advances have made it easier for recipients to store and share translated documents. At the same time, DOJ recognizes that recipients in a number of areas, such as many large cities, regularly serve LEP persons from many different areas of the world who speak dozens and sometimes over 100 different languages. It would be too burdensome to demand that recipients in these circumstances translate all written materials into all of those languages. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the most frequently encountered languages, and to set benchmarks for continued translations over time. As a result, the extent of the recipient's obligation to provide written translations of documents will be determined on a case-by-case basis, looking at the totality of the circumstances.

One way for a recipient to know with greater certainty that it will be found in compliance with its obligation to provide written translations in languages other than English is for the DOJ recipient to meet the guidelines outlined in paragraphs (a) and (b) below.

Paragraphs (a) and (b) outline the circumstances that provide a ''safe harbor'' for recipients regarding the requirements for translation of written materials. A ''safe harbor'' means that if a recipient provides written translations under these circumstances, this will be considered strong evidence of compliance, in the area of written translations.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) will not necessarily mean non-compliance with Title VI. In such circumstances, DOJ reviews the totality of the circumstances to determine the recipient's obligation to provide written materials in languages other than English.

Example: Even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, DOJ will not find the translation of written materials necessary for compliance with Title VI. Other ways of providing meaningful access, such as effective oral interpretation of vital documents, would be acceptable under such circumstances.

Safe Harbor. DOJ will consider a recipient to be in compliance with its Title VI obligation to provide written materials in non-English languages if:

(a) The DOJ recipient provides written translations of, at a minimum, vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other vital documents, if needed, can be provided orally; or

(b) If there are fewer than 50 persons in a language group that reaches the five percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral translation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed. For example, correctional facilities should ensure that prison rules have been explained to LEP inmates, at orientation, for instance, prior to taking disciplinary action against them.

The term ''persons eligible to be served or likely to be affected or encountered'' as used in paragraph (a) relates to the issue of identifying the DOJ recipient's service area for purposes of meeting its Title VI obligation. Because of the wide variety of recipient programs and activities, there is no ''one size fits all'' definition of what constitutes ''persons eligible to be served or likely to be affected or encountered.'' Generally, the term means those persons who are in the geographic area that has been approved by a federal grant agency as the service area and who are either eligible for the recipient's services or otherwise might be affected or encountered by the recipient.

Where no service area has been approved, DOJ will consider the relevant service area as that approved by

Similarly, there may be situations where a recipient's own interests justify the provision of an interpreter regardless of whether the LEP individual also provides his or her own interpreter. For example, where precise, complete and accurate translations of information and/or testimony are critical for law enforcement, adjudicatory or legal reasons, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use their own interpreter as well.

state or local authorities or designated by the recipient itself, provided that these designations do not themselves discriminatorily exclude certain populations. Appendix A provides examples of determining the relevant service area. When considering the number or proportion of LEP individuals in a service area, recipients need to consider LEP parent(s) when their English-proficient or LEP minor children and dependents encounter the legal system.

Just as with oral interpreters, translators of written documents must be competent. It is a good idea to build in a ''check'' on the translation. For instance, an independent translator could check the first translation. Or, one translator could translate the document, and a second, independent translator could translate it back into English. This is called ''back translation.''

Translators should understand the expected reading level of the audience. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version. Community organizations may be able to help consider whether a document is written at a good level for the audience.

Finally, recipients will find it more effective and less costly if they try to maintain consistency in the words and phrases used to translate terms of art, legal, or other technical concepts. Creating or using already-created glossaries of commonly-used terms may be useful for LEP persons and translators, and cost effective for the recipient. Providing translators with examples of previous translations of similar material by the recipient, other recipients, or federal agencies may be helpful.

C. Elements of Effective Written Policy on Language Assistance for LEP Persons (''LEP Policy'')

After completing the four-factor analysis and deciding what language assistance services are needed, the recipient should include those in a written LEP policy. The key to providing meaningful access is accurate and effective communication between the DOJ recipient and the LEP individual.

Although DOJ recipients have a great deal of flexibility in designing their policies, effective programs usually have five elements, discussed below. Failure to take all of the steps outlined in this section does not necessarily mean that a recipient has violated the law. Just as with all Title VI complaints, DOJ assesses each complaint on a case-by-case basis. DOJ applies the four factors in deciding whether the steps taken by a recipient provide meaningful access.

(1) Identifying LEP Individuals Who Need Language Assistance

As noted above, the first two parts of the four-factor analysis of need include an assessment of the number or proportion of LEP individuals eligible to be served or encountered and the frequency of encounters. In addition, when developing a plan, recipients should develop a process for employees to identify the language of LEP persons encountered so that language services can be provided.

One way to determine the language of communication is to use language identification cards (or ''I speak cards''), which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say ''I speak Spanish'' in both Spanish and English, ''I speak Vietnamese'' in both English and Vietnamese, etc. When records are normally kept of past interactions with members of the public, the language of the LEP person should be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future application of the first two factors of the four-factor analysis.

(2) Language Assistance Measures

The LEP policy should include information about the ways in which language assistance will be provided. For instance, it should include information on at least the following:

- Types of language services available (see Section IIB, above).
- How staff can obtain those services.
- How to respond to LEP callers.
- How to respond to written communications from LEP persons.
- How to respond to LEP individuals who have in-person contact with recipient staff.
- How to ensure competency of interpreters and translation services.

(3) Training Staff

Staff need to know that they must provide meaningful access to information and services for LEP persons. Recipients should provide training to ensure that:

- Staff know about LEP policies and procedures.
- Staff having contact with the public (or those in a recipient's custody) are trained to work effectively with in-person and telephone interpreters.

It is important that this training be part of the orientation for new employees and that all employees in public contact positions (or having contact with those in a recipient's custody) be properly trained. Recipients have flexibility in deciding the way the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of an LEP policy.

(4) Providing Notice to LEP Persons

Once an agency has decided, based on the four factors, that it will provide language services, it is important to let LEP persons know that those services are available and that they are free of charge. Recipients should provide this notice in a language LEP persons will understand. Examples of notification that recipients should consider include:

- Posting signs in intake areas and other entry points. When language assistance is needed to ensure meaningful access to information and services, the signs could state that LEP persons have a right to free language assistance. The signs should be translated into the most common languages encountered. They should explain how to get the language help.
- Stating in outreach documents that language services are available from the agency. Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and could be ''tagged'' onto the front of common documents.
- Working with community-based organizations and other stakeholders to inform LEP individuals of the recipients' services, including the right to language services.
- Using a telephone voice mail menu. The menu could be in the most common languages encountered. It should provide information about available language assistance services and how to get them.
- Including notices in local newspapers in languages other than English.
- Providing notices on non-English-language radio stations about the available language assistance services and how to get them.

(5) Monitoring and Updating the LEP policy

Recipients should always consider whether new documents, programs, services, and activities need to be made accessible for LEP individuals, and they should make any needed changes. They should then provide notice of any changes in services to the LEP public and to employees. In addition, DOJ

recipients should evaluate their entire language policy at least every three years. One way to evaluate the LEP policy is to seek feedback from the community.

In their reviews, recipients should assess changes in:

- Current LEP populations in service area or population affected or encountered.
- Frequency of encounters with LEP language groups.
- Nature and importance of activities to LEP persons.
- Availability of resources, including technological advances and sources of additional resources.
- Whether existing assistance is meeting the needs of LEP persons.
- Whether staff knows and understands the LEP policy and how to implement it.
- Whether identified sources for assistance are still available and viable.

III. Application to Specific Types of Recipients

Appendix A of this Guidance provides examples of how the Title VI meaningful access requirement applies to law enforcement, corrections, courts, and other recipients of DOJ assistance.

A. State and Local Law Enforcement

Appendix A further explains how law enforcement recipients can apply the four factors to a range of encounters with the public. The responsibility for providing language services differs with different types of encounters.

Appendix A helps recipients identify the population they should consider when deciding the types of services to provide. It then provides guidance and examples of applying the four factors. For instance, it gives examples on how to apply this guidance to:

- Receiving and responding to requests for help
- Enforcement stops short of arrest and field investigations
- Custodial interrogations
- Intake/detention
- Community outreach

B. Departments of Corrections

Appendix A also helps departments of corrections understand how to apply the four factors. For instance, it gives examples of LEP access in:

- Intake
- Disciplinary action
- Health and safety
- Participation in classes or other programs affecting length of sentence
- English as a Second Language (ESL) Classes
- Community corrections programs

C. Other Types of Recipients

Appendix A also applies the four factors and gives examples for other types of recipients. Those include, for example:

- Courts
- Juvenile Justice Programs
- Domestic Violence Prevention/ Treatment Programs

Title VI Compliance Procedures

DOJ recipients have a great deal of flexibility in deciding how to comply with these obligations. DOJ will continue to use the same process for handling complaints based on LEP as it uses in any other Title VI complaint. That process emphasizes voluntary compliance. (*See* Appendix B for further information). In addition, DOJ will use this Guidance, including the appendices, in conducting investigations or reviews of a recipient's language services.

Appendix A—Application of LEP Guidance for DOJ Recipients to Specific Types of Recipients

While a wide range of entities receive federal financial assistance through DOJ, most of DOJ's assistance goes to law enforcement agencies, including state and local police and sheriffs' departments, and to state departments of corrections. Sections A and B below provide examples of how these two major types of DOJ recipients might apply the four-factor analysis. Section C provides examples for other types of recipients. The examples in this Appendix are not meant to be exhaustive.

The requirements of Title VI and its implementing regulations, as clarified by this Guidance, supplement, but do not supplant, constitutional and other statutory or regulatory provisions that may require LEP services. For instance, while application of the four-factor analysis may lead to a similar result, it does not replace constitutional or other statutory protections mandating warnings and notices in languages other than English in the criminal justice context. Rather, this Guidance clarifies the Title VI obligation to address, in appropriate circumstances and in a reasonable manner, the language assistance needs of LEP individuals beyond those required by the Constitution or statutes and regulations other than Title VI.

A. State and Local Law Enforcement

For the vast majority of the public, exposure to law enforcement begins and ends with interactions with law enforcement personnel discharging their duties while on patrol, responding to a request for services, talking to witnesses, or conducting community outreach activities. For a much smaller number, that exposure includes a visit to a station house. And for an important but even smaller number, that visit to the station house results in entry into the criminal justice, judicial, or juvenile justice systems.

The common thread running through these and other interactions between the public and law enforcement is the exchange of information. LEP individuals' encounters with police and sheriffs' departments are covered by Title VI if those departments receive federal financial assistance. This Guidance focuses on the requirements under Title VI to communicate effectively with persons who are LEP to ensure that they have meaningful access to the system, including, for example, understanding rights and accessing police assistance.

Many police and sheriffs' departments already provide language services in a wide variety of circumstances to obtain information effectively, to build trust and relationships with the community, and to contribute to the safety of law enforcement personnel. For example, many police departments have available printed *Miranda* rights in languages other than English.[1] In areas where significant LEP populations reside, law enforcement officials already may have forms and notices in languages other than English or they may employ bilingual law enforcement officers, intake personnel, counselors, and support staff. These experiences can form a strong basis for assessing need and implementing a plan in compliance with Title VI and its implementing regulations.

1. General Principles

The touchstone of the four-factor analysis is reasonableness based upon the specific purposes, needs, and capabilities of the law enforcement service under review and an appreciation of the nature and particularized needs of the LEP population served. Accordingly, the analysis cannot provide a single uniform answer on how service to LEP persons must be provided in all programs or activities in all situations. Knowledge of local conditions and community needs becomes critical in determining the type and level of language services needed. The more predictable the need for language

[1] DOJ's own Federal Bureau of Investigation makes written versions of those rights available in several different languages.

services, the greater the responsibility under the four-factor analysis.

Before giving specific examples, several general points should assist law enforcement planners in correctly applying the analysis to the wide range of services employed in their particular jurisdictions.

a. Permanent Versus Seasonal Populations. In many communities, resident populations change over time or season. For example, in some resort communities, populations swell during peak vacation periods, many times exceeding the number of permanent residents of the jurisdiction. In other communities, primarily agricultural areas, transient populations of agricultural workers will require increased law enforcement services during the relevant harvest season. This dynamic demographic ebb and flow can also dramatically change the size and nature of the LEP community likely to come into contact with law enforcement personnel. Thus, law enforcement officials should not limit their analysis to numbers and percentages of permanent residents. In assessing factor one—the number or proportion of LEP individuals—police departments should consider any significant but temporary changes in a jurisdiction's demographics.

Example: A rural jurisdiction has a permanent population of 30,000, 7% of which is Hispanic. Based on census data and an information from the contiguous school district, of that number, only 15% are estimated to be LEP individuals. Thus, the total estimated permanent LEP population is 315 or approximately 1% of the total permanent population. Under the four-factor analysis, a sheriffs' department could reasonably conclude that the small number of LEP persons makes the affirmative translation of documents and/or employment of bilingual staff unnecessary. However, during the spring and summer planting and harvest seasons, the local population swells to 40,000 due to the influx of seasonal agricultural workers. Of this transitional number, about 75% are Hispanic and about 50% of that number are LEP individuals. This information comes from the schools and a local migrant worker community group. Thus, during the harvest season, the jurisdiction's LEP population increases to over 10% of all residents. In this case, the department should consider, under the safe harbor provisions of this Guidance, translating vital written documents into Spanish. In addition, the predictability of contact during those seasons makes it important for the jurisdiction to review its oral language services to ensure meaningful access for LEP individuals.

b. Target Audiences. For most law enforcement services, the target audience is defined in geographic rather than programmatic terms. However, some services may be targeted to reach a particular audience (*e.g.,* elementary school children, elderly, residents of high crime areas, minority communities, small business owners/operators, etc.). Also, within the larger geographic area covered by a police department, certain precincts or portions of precincts may have concentrations of LEP persons. In these cases, even if the overall number or proportion of LEP individuals in the district is low, the frequency of contact may be foreseeably higher for certain areas or programs. Thus, the second factor—frequency of contact—should be considered in light of the specific program or the geographic area being served. The police department could then focus language services where they are most likely to be needed.

Example: A police department that receives funds from the DOJ Office of Justice Programs initiates a program to increase awareness and understanding of police services among elementary school age children in high crime areas of the jurisdiction. This program involves ''Officer in the Classroom'' presentations at elementary schools located in areas of high poverty. The population of the jurisdiction is estimated to include only 3% LEP individuals. However, the LEP population at the target schools is 35%, the vast majority of whom are Vietnamese speakers. In applying the four-factor analysis, the higher LEP language group populations of the target schools and the frequency of contact within the program with LEP students in those schools, not the LEP population generally, should be used in determining the nature of the LEP needs of that particular program. Further, because the Vietnamese LEP population is concentrated in one or two main areas of town, the police department should expect the frequency of contact with Vietnamese LEP individuals in general to be quite high in those areas, and it should plan accordingly.

c. Importance of Service/Information. Given the critical role law enforcement plays in maintaining quality of life and property, traditional law enforcement and protective services rank high on the critical/non-critical continuum. However, this does not mean that information about, or provided by, each of the myriad services and activities performed by law enforcement officials must be equally available in languages other than English. While clearly important to the ultimate success of law enforcement, certain community outreach activities do not have the same direct impact on the provision of core law enforcement services as the activities of 911 lines or law enforcement officials' ability to respond to requests for assistance while on patrol, to communicate basic information to suspects, etc. Nevertheless, with the rising importance of community partnerships and community-based programming as a law enforcement technique, the need for language services should be considered in such activities as well.

d. Interpreters. Just as with other recipients, law enforcement recipients have a variety of options for providing language services. As a general rule, when language services are required, recipients should provide competent interpreter services free of cost to the LEP person. LEP persons should be advised that they may choose either to secure the assistance of an interpreter of their own choosing, at their own expense, or a competent interpreter provided by the recipient.

If the LEP person decides to provide his or her own interpreter, the provision of this notice and the LEP person's election should be documented in any written record generated with respect to the LEP person. While an LEP person may sometimes look to bilingual family members or friends or other persons with whom they are comfortable for language assistance, there are many situations where an LEP person might want to rely upon recipient-supplied interpretative services. For example, such individuals may not be available when and where they are needed, or may not have the ability to translate program-specific technical information. Alternatively, an individual may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, law enforcement (*e.g.,* sexual or violent assaults), family, or financial information to a family member, friend, or member of the local community. Similarly, there may be situations where a recipient's own interests justify the provision of an interpreter regardless of whether the LEP individual also provides his or her own interpreter. For example, where precise, complete and accurate translations of information and/or testimony are critical for law enforcement, adjudicatory or legal reasons, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use their own interpreter as well.

In emergency situations that are not reasonably foreseeable, the recipient may have to temporarily rely on non-recipient-provided language services. Proper recipient planning and implementation can help avoid such situations.

While all language services need to be competent, the greater the potential consequences, the greater the need to monitor interpretation services for quality. For instance, it is important that interpreters in custodial interrogations

be highly competent to translate legal and other law enforcement concepts, as well as be extremely accurate in their interpretation. It may be sufficient, however, for a desk clerk who is bilingual but not skilled at interpreting to help an LEP person figure out to whom he or she needs to talk about setting up a neighborhood watch.

2. Applying the Four-Factor Analysis Along the Law Enforcement Continuum

While all police activities are important, the Title VI analysis requires some prioritizing so that language services are targeted where most needed because of the nature and importance of the particular law enforcement activity involved. In addition, because of the ''reasonableness'' standard, and frequency of contact and resources factors, the obligation to provide language services increases where the importance of the activity is greater, the law enforcement activity is more focused, and/or the provision of language services is more ''within the control'' of the police department.

Under this framework, then, critical areas for language assistance include: 911 calls, custodial interrogation, and health and safety issues for persons within the control of the police. These activities should be considered the most important under the four-factor analysis. Systems for receiving and investigating complaints from the public are important; further, complaint forms and investigations/hearings are directly within the control of the department. Thus, forms, hearings, and other complaint procedures should be made accessible to LEP individuals. Often very important, but less focused and controlled are: routine patrol activities, receiving non-emergency information regarding potential crimes, and ticketing. In these situations, the LEP plan should provide for a great deal of flexibility while at the same time ensuring that, wherever reasonable, language resources are available to officers and the LEP persons they encounter and that, when not available, the consequences to the LEP individuals are minimized. Community outreach activities are hard to categorize, but generally they do not rise to the same level of importance as the other activities listed. However, with the importance of community partnerships and community-based programming as a law enforcement technique, the need for language services should be considered in these activities as well. Police departments have a great deal of flexibility in determining how to best address their outreach to LEP populations.

a. Receiving and Responding to Requests for Assistance. LEP persons must have meaningful access to police services when they are victims of or witnesses to alleged criminal activity. Effective reporting systems transform victims, witnesses, or bystanders into assistants in law enforcement and investigation processes. Given the critical role the public plays in reporting crimes or directing limited law enforcement resources to time-sensitive emergency or public safety situations, efforts to address the language assistance needs of LEP individuals could have a significant impact on improving responsiveness, effectiveness, and safety.

All emergency service lines, or ''911'' lines, operated by agencies that receive federal financial assistance must be accessible to persons who are LEP. This will mean different things to different jurisdictions. For instance, in large cities with significant LEP communities, the 911 line may have operators who are bilingual and capable of accurately interpreting in high stress situations. Smaller cities or areas with small LEP populations should still have to have a plan for serving callers who are LEP, but the LEP policy and implementation may involve a telephonic language line that is fast enough and reliable enough to attend to the emergency situation, or include some other accommodation short of hiring bilingual operators.

Example: A large city provides bilingual operators for the most frequently encountered languages, and uses a commercial telephone language line when it receives calls from LEP persons who speak other languages. Ten percent of the city's population is LEP, and sixty percent of the LEP population speaks Spanish. In addition to 911 service, the city has a 311 line for non-emergency police services. The 311 Center has Spanish speaking operators available, and uses a language bank, staffed by the city's bilingual city employees who are competent translators, for other non-English-speaking callers. The city also has a campaign to educate non-English speakers when to use 311 instead of 911. Such services are consistent with Title VI principles.

b. Enforcement Stops Short of Arrest and Field Investigations. Field enforcement includes, for example, traffic stops, pedestrian stops, serving warrants and restraining orders, *Terry* stops, and crowd/traffic control. Because of the diffuse nature of these activities, the reasonableness standard allows for great flexibility in providing meaningful access, for example, in routine field investigations and traffic stops. Nevertheless, the ability of law enforcement personnel to discharge fully and effectively its enforcement and crime interdiction mission requires the ability to communicate instructions, commands, and notices. For example, a routine traffic stop can become a difficult situation if an officer is unable to communicate effectively the reason for the stop, the need for identifying or other information, and the meaning of any written citation. Requests for consent to search are meaningless if the request is not understood. Similarly, crowd control commands will be wholly ineffective where significant numbers of people in a crowd cannot understand the meaning of law enforcement commands.

Given the wide range of possible situations in which law enforcement in the field can take place, it is impossible to equip every officer with the tools necessary to respond to every possible LEP scenario. Rather, in applying the four factors to field enforcement, the goal should be to implement measures addressing the language needs of significant LEP populations in the most likely and common situations.

Example: A police department serves a jurisdiction with a significant number of LEP individuals residing in one or more precincts, and it is routinely asked to provide crowd control services at community events or demonstrations in those precincts. Consistent with the requirements of the four-factor analysis, the police department should assess how it will discharge its crowd control duties in a language-appropriate manner. Among the possible approaches are plans to assign bilingual officers, basic language training of all officers in common law enforcement commands, the use of devices that provide audio commands in the predictable languages, or the distribution of translated written materials for use by officers.

Field investigations include neighborhood canvassing, witness identification and interviewing, investigative or *Terry* stops, and similar activities designed to solicit and obtain information from the community. Encounters with LEP individuals will often be less predictable in field investigations. However, the jurisdiction should still assess the potential for contact with LEP individuals in the course of field investigations and investigative stops, identify the LEP language group(s) most likely to be encountered, and provide their officers with sufficient written or oral translation resources to ensure that lack of English proficiency does not impede otherwise proper investigations or unduly burden LEP individuals.

Example: A police department in a moderately large city includes a precinct that serves an area which includes significant LEP populations whose native languages are Spanish, Korean, and Tagalog. Law

enforcement officials could reasonably consider the adoption of a policy assigning bilingual investigative officers to the precinct and/or creating a resource list of department employees competent to interpret and ready to assist officers by phone or radio. This could be combined with developing language-appropriate written materials, such as consents to searches or statements of rights, for use by its officers where LEP individuals are literate in their languages. In certain circumstances, it may also be helpful to have telephone language line access where other options are not successful and safety and availability of phone access permit.

c. Custodial Interrogations. Custodial interrogations of unrepresented LEP individuals trigger constitutional rights that this Guidance is not designed to address. Given the importance of being able to communicate effectively under such circumstances, recipients' ability to anticipate and plan for a need for language services, and the control over LEP and other individuals asserted by recipients in custodial interrogation situations, law enforcement recipients must ensure competent and free language services for LEP individuals in such situations. A clear written policy, understood and easily accessible by all officers, will assist the law enforcement agency in complying with this obligation. In formulating a written policy for effectively communicating with LEP individuals, agencies should consider whether law enforcement personnel themselves ought to serve as interpreters during custodial interrogation, or whether a qualified independent interpreter would be more appropriate.[2]

Example: A large city police department institutes an LEP plan that requires arresting officers to procure a qualified interpreter for any custodial interrogation, notification of rights, or taking of a statement, and any communication by an LEP individual in response to a law enforcement officer. When considering whether an interpreter is qualified, the LEP policy discourages use of police officers as interpreters in interrogations except under circumstances in which the reliability of the interpretation is verified, such as, for example, where the officer has been trained and tested in interpreting and tape recordings are made of the entire interview. In determining whether an interpreter is qualified, the jurisdiction uses the analysis noted above. Such a plan is consistent with Title VI responsibilities.

d. Intake/Detention. State or local law enforcement agencies that arrest LEP persons should consider the inherent communication impediments to gathering information from the LEP arrestee through an intake or booking process. Aside from the basic information, such as the LEP arrestee's name and address, law enforcement agencies should evaluate their ability to communicate with the LEP arrestee about his or her medical condition. Because medical screening questions are commonly used to elicit information on the arrestee's medical needs, suicidal inclinations, presence of contagious diseases, potential illness, resulting symptoms upon withdrawal from certain medications, or the need to segregate the arrestee from other prisoners, it is essential that law enforcement agencies have the ability to communicate effectively with an LEP arrestee. In jurisdictions with few bilingual officers or in situations where the LEP person speaks a language not encountered very frequently, language lines may provide the most cost effective and efficient method of communication.

e. Community Outreach. Community outreach activities increasingly are recognized as important to the ultimate success of more traditional duties. Thus, an application of the four-factor LEP analysis to community outreach activities can play an important role in ensuring that the purpose of these activities (to improve police/community relations and advance law enforcement objectives) is not thwarted due to the failure to address the language needs of LEP persons.

Example: A police department initiates a program of domestic counseling in an effort to reduce the number or intensity of domestic violence interactions. A review of domestic violence records in the city reveals that 25% of all domestic violence responses are to minority areas and 30% of those responses involve interactions with one or more LEP persons, most of whom speak the same language. The department should take reasonable steps to make the counseling accessible to LEP individuals. In this case, the department successfully sought bilingual counselors (for whom they provided training in translation) for some of the counseling positions. In addition, the department has an agreement with a local university in which bilingual social work majors who are competent in interpreting, as well as language majors who are trained by the department in basic domestic violence sensitivity and counseling, are used as interpreters when the in-house bilingual staff cannot cover the need. Interpreters must sign a confidentiality agreement with the department. This would be consistent with Title VI responsibilities.

Example: A large city has initiated an outreach program designed to address a problem of robberies of Vietnamese homes by Vietnamese gangs. One strategy is to work with community groups and banks and others to help allay traditional fears in the community of putting money and other valuables in banks. Because a large portion of the target audience is Vietnamese speaking and LEP, the department contracts with a bilingual community liaison competent in the skill of translating to help with outreach activities. This would be consistent with Title VI responsibilities.

B. Departments of Corrections

All departments of corrections that receive federal financial assistance from DOJ must provide LEP prisoners[3] with meaningful access to benefits and services within the program. In order to do so, corrections departments, like other recipients, must apply the four-factor analysis.

1. General Principles

Departments of corrections also have a wide variety of options in providing translation services appropriate to the particular situation. Bilingual staff competent in translating, in person or by phone, pose one option. Additionally, particular prisons may have agreements with local colleges and universities, interpreter services, and/or community organizations to provide paid or volunteer competent translators under agreements of confidentiality and impartiality. Language lines may offer a prudent oral interpreting option for prisons with very few and/or infrequent prisoners in a particular language group. Reliance on fellow prisoners is generally not appropriate. Reliance on fellow prisoners should only be an option in unforeseeable emergency circumstances; when the LEP inmate signs a waiver that is in his/her language and in a form designed for him/her to understand; or where the topic of communication is not sensitive, confidential, important, or technical in nature and the prisoner is competent in the skill of interpreting.

In addition, a department of corrections that receives federal financial assistance would be ultimately responsible for ensuring that LEP inmates have meaningful access within a prison run by a private or other entity with which the department has entered into a contract. The department may provide the staff and materials necessary to provide required language services, or it may choose to require the

[2] Some state laws prohibit police officers from serving as interpreters during custodial interrogation of suspects.

[3] In this Guidance, the terms ''prisoners'' or ''inmates'' include all of those individuals, including Immigration and Naturalization Service (INS) detainees and juveniles, who are held in a facility operated by a recipient. Certain statutory, regulatory, or constitutional mandates/rights may apply only to juveniles, such as educational rights, including those for students with disabilities or limited English proficiency. Because a decision by a recipient or a federal, state, or local entity to make an activity compulsory serves as strong evidence of the program's importance, the obligation to provide language services may differ depending upon whether the LEP person is a juvenile or an adult inmate.

entity with which it contracted to provide the services itself.

2. Applying the Four Factors Along the Corrections Continuum

As with law enforcement activities, critical and predictable contact with LEP individuals poses the greatest obligation for language services. Corrections facilities have somewhat greater abilities to assess the language needs of those they encounter, although inmate populations may change rapidly in some areas. Contact affecting health and safety, length of stay, and discipline present the most critical situations under the four-factor analysis.

a. Assessment. In order to create a plan for providing language services, each department of corrections that receives federal financial assistance should assess the number of LEP prisoners who are in the system, in which prisons they are located, and the languages he or she speaks. Each prisoner's LEP status, and the language he or she speaks, should be placed in his or her file. Although this Guidance and Title VI are not meant to address literacy levels, agencies should be aware of literacy problems so that LEP services are provided in a way that is meaningful and useful (*e.g.,* translated written materials are of little use to a nonliterate inmate). After the initial assessment, new LEP prisoners should be identified at intake or orientation, and the data should be updated accordingly.

b. Intake/Orientation. Intake/Orientation plays a critical role not merely in the system's identification of LEP prisoners, but in providing those prisoners with fundamental information about their obligations to comply with system regulations, participate in education and training, receive appropriate medical treatment, and enjoy recreation. Even if only one prisoner doesn't understand English, that prisoner should be given the opportunity to be informed of the rules, obligations, and opportunities in a manner designed effectively to communicate these matters. An appropriate analogy is the obligation to communicate effectively with deaf prisoners, which is most frequently accomplished through sign language interpreters or written materials. Not every prison will use the same method for providing language assistance. Prisons with large numbers of Spanish-speaking LEP prisoners, for example, will likely need to translate written rules, notices, and other important orientation material into Spanish, with oral instructions, whereas prisons with very few such inmates may choose to rely upon a language line or qualified community volunteers to assist.

Example: The department of corrections in a state with a 5% Haitian Creole-speaking LEP corrections population and an 8% Spanish-speaking LEP population receives federal financial assistance to expand one of its prisons. The department of corrections has developed an intake video in Haitian Creole and another in Spanish for all of the prisons within the department to use when orienting new prisoners who are LEP and speak one of those languages. In addition, the department provides inmates with an opportunity to ask questions and discuss intake information through either bilingual staff who are competent in interpreting who are present at the orientation or who are patched in by phone to act as interpreters. The department also has an agreement whereby some of its prisons house a small number of INS detainees. For those detainees or other inmates who are LEP and do not speak Haitian Creole or Spanish, the department has created a list of sources for interpretation, including department staff, contract interpreters, university resources, and a language line. Each person receives at least an oral explanation of the rights, rules, and opportunities. This orientation plan would be considered consistent with Title VI.

c. Disciplinary Action. When a prisoner who is LEP is the subject of disciplinary action, the prison must provide language assistance. That assistance must ensure that the LEP prisoner had adequate notice of the rule in question and is meaningfully able to understand and participate in the process afforded prisoners under those circumstances. As noted previously, fellow inmates cannot serve as interpreters in disciplinary hearings.

d. Health and Safety. Prisons providing health services should refer to Department of Health and Human Services' guidance [4] regarding health care providers' Title VI obligations, as well as with this Guidance.

Health care services are obviously extremely important. LEP individuals must be provided with access to those services. How that access is provided depends upon the number or proportion of LEP individuals, the frequency of contact with those LEP individuals, and the resources available to the recipient. If, for instance, a prison serves a high proportion of LEP individuals who speak Spanish, then the prison health care provider should have available qualified bilingual medical staff or interpreters versed in medical terms. If the population of LEP individuals is low, then the prison may choose instead, for example, to rely on a local community volunteer program that provides qualified interpreters through a university. Due to the private nature of medical situations, only in unpredictable emergency situations or in non-emergency cases where the inmate has waived rights to a non-inmate interpreter would the use of other bilingual inmates be appropriate.

e. Participation Affecting Length of Sentence. If a prisoner's LEP status makes him/her unable to participate in a particular program, such a failure to participate cannot be used to adversely impact the length of stay or significantly affect the conditions of imprisonment. Prisons have options in how to apply this standard. For instance, prisons could: (1) make the program accessible to the LEP inmate; or (2) waive the requirement.

Example: State law provides that otherwise eligible prisoners may receive early release if they take and pass an alcohol counseling program. Given the importance of early release, LEP prisoners must be provided access to this prerequisite in some fashion. How that access is provided depends on the three factors other than importance. If, for example, there are many LEP prisoners speaking a particular language in the prison system, the class could be provided in that language for those inmates. If there were far fewer LEP prisoners speaking a particular language, the prison will still need to ensure access to this prerequisite because of the importance of early release opportunities. Options include, for example, use of bilingual teachers, contract interpreters, or community volunteers to interpret during the class, reliance on videos or written explanations in a language the inmate understands, and/or modification of the requirements of the class to meet the LEP individual's ability to understand and communicate. Another possible option would be to waive the requirement for the LEP prisoners and allow early release without this prerequisite.

f. ESL Classes. States often mandate English-as-a-Second language (ESL) classes for LEP inmates. Nothing in this Guidance prohibits or requires such mandates. ESL courses often serve as an important part of a proper LEP plan in prisons because, as prisoners gain proficiency in English, fewer language services are needed. However, the fact that ESL classes are provided does not obviate the need to provide meaningful access for prisoners who are not yet English proficient.

g. Community Corrections. This guidance also applies to community corrections programs that receive, directly or indirectly, federal financial assistance. For them, the most frequent contact with LEP individuals will be with an offender, a victim, or the family members of either, but may also include witnesses and community members in

[4] A copy of that guidance can be found on the HHS website at *http://www.hhs.gov/ocr/lep/* and at *http://www.usdoj.gov/crt/cor.*

the area in which a crime was committed.

As with other recipient activities, community corrections programs should apply the four factors and determine areas where language services are most needed. Important oral communications include, for example: Interviews; explaining conditions of probations/release; developing case plans; setting up referrals for services; regular supervision contacts; outlining violations of probations/parole and recommendations; and making adjustments to the case plan. Competent oral language services for LEP persons are important for each of these types of communication. Recipients have great flexibility in determining how to provide those services.

Just as with all language services, it is important that language services be competent. Some knowledge of the legal system may be necessary in certain circumstances. For example, special attention should be given to the technical interpretation skills of interpreters used when obtaining information from an offender during pre-sentence and violation of probation/parole investigations or in other circumstances in which legal terms and the results of inaccuracies could impose an enormous burden on the LEP person.

In addition, just as with other recipients, corrections programs should identify vital written materials for probation and parole that should be translated when a significant number or proportion of LEP individuals that speak a particular language is encountered. Vital documents in this context could include, for instance: probation/parole department descriptions and grievance procedures, offender rights information, the pre-sentence/release investigation report, notices of alleged violations, sentencing/release orders, including conditions of parole, and victim impact statement questionnaires.

C. Other Types of Recipients

DOJ provides federal financial assistance to many other types of entities and programs, including, for example, courts, juvenile justice programs, shelters for victims of domestic violence, and domestic violence prevention programs. Title VI and this Guidance apply to those entities. Examples involving some of those recipients follow:

1. Courts.

Application of the four-factor analysis requires recipient courts to ensure that LEP parties and witnesses receive competent language services. At a minimum, every effort should be taken to ensure translations for LEP individuals during all hearings, trials, and motions during which the LEP individual must and/or may be present. When a recipient court appoints an attorney to represent an LEP defendant, the court should ensure that either the attorney is proficient in the LEP person's language or that a competent interpreter is provided during consultations between the attorney and the LEP person.

Many states have created certification procedures for interpreters. This is one way of meeting the Title VI requirement that recipients ensure competency of interpreters. Courts will not, however, always be able to find a certified interpreter, particularly for less frequently encountered languages.

Example: A state court receiving DOJ federal financial assistance has frequent contact with LEP individuals as parties and witnesses, but has experienced a shortage in certified interpreters in the range of languages encountered. State court officials work with training and testing consultants to broaden the number of certified interpreters available in the top several languages spoken by LEP individuals in the state. Because resources are scarce and the development of tests expensive, state court officials decide to partner with other states that have already established agreements to share proficiency tests and to develop new ones together. The state court officials also look to other existing state plans for examples of: codes of professional conduct for interpreters; mandatory orientation and basic training for interpreters; interpreter proficiency tests in Spanish and Vietnamese language interpretation; a written test in English for interpreters in all languages covering professional responsibility, basic legal term definitions, court procedures, etc. They are considering working with other states to expand testing certification programs in coming years to include several other most frequently encountered languages. This type of assessment of need, planning, and implementation is consistent with Title VI principles.

Many individuals, while able to communicate in English to some extent, are still LEP. Courts should consider carefully whether a person will be able to understand and communicate effectively in the stressful role of a witness or party and in situations where knowledge of language subtleties and/or technical terms and concepts are involved.

Example: Judges in a county court receiving federal financial assistance have adopted a *voir dire* for determining a witness' need for an interpreter. The voir dire avoids questions that could be answered with ''yes'' or ''no.'' It includes questions about comfort level in English, and questions that require active responses, such as: ''How did you come to court today?'' etc. The judges also ask the witness more complicated conceptual questions to determine the extent of the person's proficiency in English. Such a procedure is consistent with Title VI principles.

When courts experience low numbers or proportions of LEP individuals from a particular language group and infrequent contact with that language group, creation of a new certification test for interpreters may be overly burdensome. In such cases, other methods should be used to determine the competency of interpreters for the court's purposes.

Example: A witness in a county court in a large city speaks Urdu and not English. The jurisdiction has no court interpreter certification testing for Urdu language interpreters because very few LEP individuals encountered speak Urdu. However, a non-certified interpreter is available and has been given the standard English-language test on court processes and interpreter ethics. The judge brings in a second, independent, bilingual Urdu-speaking person from a local university, and asks the prospective interpreter to interpret the judge's conversation with the second individual. The judge then asks the second Urdu speaker a series of questions designed to determine whether the interpreter accurately interpreted their conversation. Given the infrequent contact, the low number and proportion of Urdu LEP individuals in the area, and the high cost of providing certification tests for Urdu interpreters, this ''second check'' solution is one appropriate way of ensuring meaningful access to the LEP individual.

Another key to successful use of interpreters in the courtroom is to ensure that everyone in the process understands the role of the interpreter.

Example: Judges in a recipient court administer a standard oath to each interpreter and make a statement to the jury that the role of the interpreter is to interpret, verbatim, the questions posed to the witness and the witness' response. The jury should focus on the words, not the non-verbals, of the interpreter. The judges also clarify the role of the interpreter to the witness and the attorneys. These are important steps in providing meaningful access to the court for LEP individuals.

Just as corrections recipients must take care to ensure that eligible LEP individuals have the opportunity to reduce the term of their sentence to the same extent that non-LEP individuals do, courts must ensure that LEP persons have access to programs that would give them the opportunity to avoid serving a sentence at all.

Example: An LEP defendant should be given the same access to alternatives to sentencing, such as anger management and alcohol abuse counseling, as is given to non-LEP persons in the same circumstances.

Courts have significant contact with the public outside of the courtroom. Providing meaningful access to the legal process for LEP individuals requires more than just providing interpreters in the courtroom. Recipient courts should assess the need for language services all along the process, particularly in areas with high numbers of unrepresented individuals, such as family and small claims courts.

Example: Only twenty thousand people live in a rural county. The county superior court receives DOJ funds but does not have a budget comparable to that of a more-populous urbanized county in the state. Over 1000 LEP Hispanic immigrants have settled in the rural county. The urbanized county also has more than 1000 LEP Hispanic immigrants. Both counties have ''how to'' materials in English helping unrepresented individuals negotiate the family court processes. The urban county has taken the lead in developing Spanish-language translations of materials that would explain the process. The rural county modifies these slightly and thereby benefits from the work of the urban county. Because this type of outreach material can be vital for an unrepresented person seeking access to a vital service of the court, such a translation is consistent with Title VI obligations and falls within the safe harbor. Creative solutions, such as sharing resources across jurisdictions, can help overcome serious financial concerns in areas with few resources.

Just as with police departments, courts and/or particular divisions within courts may have more contact with LEP individuals than an assessment of the general population would indicate. Recipients should consider that higher contact level when determining the number or proportion of LEP individuals in the contact population, and the frequency of such contact.

Example: A county has very few residents who are LEP. However, many Vietnamese-speaking LEP motorists go through a major freeway running through the county, which connects two areas with high populations of Vietnamese speaking LEP individuals. As a result, the Traffic Division of the county court processes a large number of LEP persons, but it has taken no steps to train staff or provide forms or other language access in that Division because of the small number of LEP individuals in the county. The Division should assess the number and proportion of LEP individuals processed by the Division and the frequency of such contact. With those numbers high, the Traffic Division may find that it needs to provide key forms or instructions in Vietnamese. It may also find, from talking with community groups, that many older Vietnamese LEP individuals do not read Vietnamese well, and that it should provide oral language services as well. The court may already have Vietnamese-speaking staff competent in interpreting in a different section of the court; it may decide to hire a Vietnamese-speaking employee who is competent in the skill of interpreting; or it may decide that a language line service suffices.

2. Juvenile Justice Programs

DOJ provides funds to many juvenile justice programs to whom this Guidance applies.

Example: A county coordinator for an anti-gang program operated by a DOJ recipient has noticed that increasing numbers of gangs have formed comprised primarily of LEP individuals speaking a particular foreign language. The coordinator should assess the number of LEP youths at risk of involvement in these gangs, so that she can determine whether the program should hire a counselor who is bilingual in the particular language and English, or provide other types of language services to the LEP youths.

3. Domestic Violence Prevention/ Treatment Programs

Several domestic violence prevention and treatment programs receive DOJ financial assistance and thus must apply this Guidance to their programs and activities.

Example: A shelter for victims of domestic violence is operated by a recipient of DOJ funds and located in an area where 15 percent of the women in the service area speak Spanish and are LEP. Seven percent of the women in the service area speak various Chinese dialects and are LEP. The shelter uses community volunteers to help translate vital outreach materials into Chinese (which is one written language despite many dialects) and Spanish. The shelter hotline has a menu providing key information, such as location, in English, Spanish, and two of the most common Chinese dialects. Calls for immediate assistance are handled by the bilingual staff. The shelter has one counselor and several volunteers fluent in Spanish and English. Some volunteers are fluent in different Chinese dialects and in English. The shelter works with community groups to access interpreters in the several Chinese dialects that they encounter. Shelter staff train the community volunteers in the sensitivities of domestic violence intake and counseling. Volunteers sign confidentiality agreements. The shelter is looking for a grant to increase its language capabilities despite its tiny budget. This program is consistent with Title VI principles.

D. Framework for Creating a Model Plan

The following is an example of a framework for a model LEP policy that is potentially useful for all recipients, but is particularly appropriate for recipients serving and encountering significant and diverse LEP populations. The framework for a model plan incorporates a variety of options and methods for providing meaningful access to LEP persons. Recipients should consider some or all of these options for their plans:

- A formal written LEP policy;
- Identification and assessment of the number or proportion of LEP persons likely to be encountered through a review of census, school district, community agency, recipient and/or other data. The data will clearly be more within the control of some recipients than others. For instance, corrections facilities will likely be able to obtain accurate data more easily than police departments. Nevertheless, police departments should take reasonable steps to identify the language needs of the population they serve.
- Identification of the frequency of contact with LEP language groups.
- Identification of important information, services, and encounters that may require language services.
- Identification of resources available to provide services.
- Posting of signs in waiting areas and public entry points, in several languages, informing people what interpreter services are available and inviting them to identify themselves as needing language assistance.
- Informing LEP suspects, detainees, inmates and others potentially subject to criminal or disciplinary action of their right to language assistance.
- Use of ''I speak'' cards by those who encounter the public in-person, in order to identify the language an LEP person speaks.
- If a record is normally kept on encounters with individuals, noting the language of the LEP person in his or her record.
- Employing bilingual staff in public contact positions such as police officers, 911 operators, guards, etc.
- Contracting with interpreting services that can provide competent interpreters in a variety of languages in a timely manner.
- Formal arrangements with community groups for competent and timely interpreter services by community volunteers.
- An arrangement with a telephone language interpreter line (these can be arranged by, for instance, contacting major telephone services and asking if they have language line services).
- Where certain LEP populations make up a significant number of the population in the recipient's target

area and are frequently encountered by the recipient, translation of vital documents into the languages of those LEP populations.
- Notice and training to staff, particularly those with public contact, of the LEP policy and how to access language services.
- Outreach to the LEP population on available language services.
- Appointing a senior level employee to coordinate the language assistance program, and ensure that there is regular monitoring of the program.

As noted, these suggestions for a model plan are particularly appropriate for larger recipients encountering significant LEP populations. However, several of these steps will help smaller recipients prepare for and provide meaningful access when LEP individuals are encountered.

For smaller recipients with few LEP encounters, identifying the most important activities is critical, and determining how to provide language services in those critical areas should be a priority. This may be as simple as accessing a commercially available language line. Plans for such recipients should include monitoring and expanding services as needed.

Appendix B—Coverage and Legal Background

A. Who Is Covered?

Title VI applies to every entity that manages or administers a program or activity receiving direct or indirect federal financial assistance from DOJ. The term ''recipients,'' as used in this guidance, includes all covered entities. ''Covered entities'' include any state or local agency, private institution or organization, or any public or private individual that receives federal financial assistance from DOJ directly or through another DOJ recipient. Examples of covered entities include but are not limited to: police departments; sheriffs' departments; state departments of corrections; courts; shelters for victims of domestic violence; community corrections programs; juvenile justice programs; and nonprofit organizations with law enforcement missions. DOJ operates over eighty different grant programs that provide funding to these and other different types of non-federal entities. Many of those grants are disbursed to subrecipients, which are also covered entities.

Grants are not the only type of ''federal financial assistance'' to which Title VI applies. Federal financial assistance includes, but is not limited to: grants and loans of federal funds; grants or donations of federal surplus or real property; details of federal personnel; use of federal facilities; or any agreement, arrangement, or other contract which has as one of its purposes the provision of assistance. See 28 CFR 42.102(c). Training, equitable sharing of federally forfeited property, and use of FBI computers can also be considered federal financial assistance.[1]

In 1988, Congress clarified what constitutes a ''program or activity'' covered by Title VI when it enacted the Civil Rights Restoration Act of 1987 (CRRA). The CRRA provides that, in most cases, when a recipient receives federal financial assistance for a particular program or activity, all operations of the recipient are covered by Title VI, not just the part of the program that uses the federal assistance. Thus, Title VI covers all parts of the recipient's operations, even if only one part of the agency uses the federal assistance. For example, when DOJ provides federal financial assistance to a state department of corrections to improve a particular prison facility, all of the operations of the entire department of corrections—not just the particular prison—are covered by Title VI.[2]

The Department of Justice also has jurisdiction over enforcement of the antidiscrimination provisions of the Omnibus Crime Control and Safe Streets Act, as amended, 42 U.S.C. 3789d(c) (Safe Streets Act). The standards for compliance with Title VI's prohibition against national origin discrimination also apply to the prohibition against national origin discrimination by recipients of Safe Streets Act funds.

B. Legal Background and Authority

The Title VI requirement to provide meaningful access to LEP persons is not new. The Department's position with regard to written language assistance is articulated in 28 CFR 42.405(d)(1), which is contained in the DOJ Coordination Regulations, 28 CFR part 42, subpart F, issued in 1976. These regulations ''govern the respective obligations of Federal agencies regarding enforcement of Title VI.'' 28 CFR 42.405. Section 42.405(d)(1) addresses the prohibitions cited by the Supreme Court in *Lau* v. *Nichols,* 414 U.S. 563 (1974). Thus, this Guidance draws its authority from Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, *et seq.*; 28 CFR part 42, subpart C (DOJ Title VI Regulations) and the Title VI regulations of other federal agencies; 28 CFR part 42, subpart F. Further, this Guidance is issued pursuant to Executive Order 12250, reprinted at 42 U.S.C. 2000d, note; Executive Order 13166, 65 FR 50121 (August 16, 2000); and is consistent with the DOJ ''Policy Guidance Document: on Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency (LEP Guidance),'' reprinted at 65 FR 50123 (August 16, 2000).

For additional background on Title VI and its methods of enforcement, see the DOJ *Title VI Legal Manual* (September, 1998); DOJ's Investigation Procedures Manual for the *Investigation and Resolution of Complaints Alleging Violations of Title VI and Other Nondiscrimination Statutes* (September 1998); DOJ Guidelines for the Enforcement of Title VI, 28 CFR 50.3; the Attorney General's ''Memorandum for Heads of Departments and Agencies that Provide Federal Financial Assistance Regarding the Use of the Disparate Impact Standard in Administrative Regulations Under Title VI of the Civil Rights Act of 1964'' (July 14, 1994); and the Assistant Attorney General for Civil Rights' ''Policy Guidance Document: Enforcement of Title VI and Related Statutes in Block Grant-Type Programs'' (January 28, 1999).[3]

1. Existing State and Local Laws

State and local laws may provide additional obligations to serve LEP individuals, but such laws cannot compel recipients of federal financial assistance to violate Title VI. For instance, given our constitutional structure, state or local ''English-only'' laws do not relieve an entity that receives federal funding from its responsibilities under federal anti-discrimination laws. Entities in states and localities with ''English-only'' laws are certainly not required to accept federal funding—but if they do, they have to comply with Title VI, including its prohibition against national origin discrimination by recipients of federal assistance. Failing to make federally assisted programs and activities accessible to individuals who are LEP will, in certain circumstances, violate Title VI.

[1] *See* Appendix A to Subpart C of the Department of Justice's regulations implementing Title VI of the Civil Rights Act of 1964 (Subpart C, 28 CFR 42.101–112).

[2] However, if a federal agency were to decide to terminate federal funds based on noncompliance with Title VI, only funds directed to the specific entity that is out of compliance—*e.g.,* a particular prison—would be terminated. 42 U.S.C. 2000d-1.

[3] The documents referenced in this section are available for viewing or downloading at *http://www.usdoj.gov/crt/cor.*

2. Basic Requirements Under Title VI

Title VI prohibits recipients of federal financial assistance from discriminating against or otherwise excluding individuals on the basis of race, color, or national origin in any of their activities. Section 601 of Title VI, 42 U.S.C. 2000d, provides:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

The term ''program or activity'' is broadly defined. 42 U.S.C. 2000d–4a.

On its face, Title VI prohibits only intentional discrimination.[4] However, virtually every federal agency, including DOJ, that grants federal financial assistance has promulgated regulations implementing Title VI. Those regulations prohibit recipients from ''restrict[ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program'' and ''utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination'' or have ''the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.'' 28 CFR 42.04(b)(2). The Supreme Court has consistently upheld agency regulations prohibiting unjustified discriminatory effects.[5]

In *Lau* v. *Nichols,* 414 U.S. 563 (1974), the Supreme Court interpreted similar U.S. Department of Education regulations to require recipients of federal financial assistance to ensure, in appropriate circumstances, that language barriers did not exclude LEP persons from effective participation in federally assisted programs or activities. In *Lau,* a recipient provided the same services—an education provided solely in English—for a group of students who did not speak English as it did for students who did speak English. In finding for the Chinese-American students, the Court held that, under these circumstances, the school's practice violated the Title VI regulations' prohibition against discrimination on the basis of national origin. The Court observed that ''[i]t seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents' school system which denies them a meaningful opportunity to participate in the educational program—all earmarks of the discrimination banned by'' the Title VI implementing regulations.[6]

While *Lau* arose in the educational context, its core holding—that the failure to address limited English proficiency among beneficiary classes could constitute national origin discrimination in violation of Title VI—has equal vitality with respect to any federally assisted program or activity providing services to the public.[7]

The failure to provide language assistance has significant discriminatory effects on the basis of national origin. The Department of Justice has consistently adhered to the view that these effects place the treatment of LEP individuals comfortably within the ambit of Title VI and agencies' implementing regulations.[8] Also, existing language barriers may reflect underlying intentional or invidious discrimination of the type prohibited directly by Title VI itself.

Title VI does not require recipients to remove language barriers when English is an essential aspect of the program (such as providing civil service examinations in English when the job requires person to communicate in English, *see Frontera* v. *Sindell,* 522 F.2d 1215 (6th Cir. 1975)), or there is another non-pretextual ''substantial legitimate justification for the challenged practice'' and there is no comparably effective alternative practice with less discriminatory affects. *Elston* v. *Talladega County Bd. of Educ.,* 997 F.2d 1394, 1407 (11th Cir. 1993); *New York City Environmental Alliance* v. *Giuliani,* 214 F.3d 65, 72 (2nd Cir. 2000) (plaintiffs failed to show less discriminatory options available to accomplish defendant city's legitimate goal of building new housing and fostering urban renewal). Similar balancing tests are used in other nondiscrimination provisions that are concerned with effects of an entity's actions. For example, under Title VII of the Civil Rights Act of 1964, employers need not cease practices that have a discriminatory effect if they are job-related and ''consistent with business necessity'' and there is no equally effective ''alternative employment practice'' that is less discriminatory. 42 U.S.C. 2000e–2(k). Under Section 504 of the Rehabilitation Act, 29 U.S.C. 794, recipients do not need to provide access to persons with disabilities if such steps impose an undue burden on the recipient. *Alexander* v. *Choate,* 469 U.S. at 300. Thus, in situations where all of the factors identified in the text are at their nadir, it may be ''reasonable'' not to take affirmative steps to provide further access.

Executive Order 13166 reaffirms and clarifies the obligation to eliminate limited English proficiency as a barrier to full and meaningful participation in federally assisted programs and activities. 65 FR 50121 (August 16, 2000). That order states, in part:

> The Federal Government is committed to improving the accessibility of * * * services to eligible [limited English proficiency] persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English* * * [E]ach Federal agency shall* * * work to ensure that recipients of Federal financial assistance (recipients) provide meaningful access to their LEP applicants and beneficiaries* * * . [R]ecipients must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.[9]

The Executive Order requires each federal agency to develop agency-specific LEP guidance for recipients of federal financial assistance. As an aid in developing this Guidance, the Executive Order incorporates the Department of Justice's Policy Guidance Document: ''Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency ('LEP Guidance')'' issued contemporaneously with the Executive Order.[10] That general LEP Guidance ''sets forth the

[4] *Alexander* v. *Choate,* 469 U.S. 287, 293 (1985).

[5] *Id.* at 293–294; *Guardians Ass'n* v. *Civil Serv. Comm'n,* 463 U.S. 582, 584 n.2 (1983) (White, J.), 623 n.15 (Marshall, J.), 642–645 (Stevens, Brennan, Blackmun, JJ.); *Lau* v. *Nichols,* 414 U.S. at 568; *id.* at 571 (Stewart, J., concurring in result). Further, in a July 24, 1994, Memorandum to Heads of Departments and Agencies that Provide Federal Financial Assistance concerning Use of the Disparate Impact Standard in Administrative Regulations Under Title VI of the Civil Rights Act of 1964, the Attorney General stated that each agency ''should ensure that the disparate impact provisions of your regulations are fully utilized so that all persons may enjoy equally the benefits of federally financed programs.''

[6] 414 U.S. at 568. Congress manifested its approval of the *Lau* decision by enacting provisions in the Education Amendments of 1974, Pub. L. 93–380, secs. 105, 204, 88 Stat. 503–512, 515 codified at 20 U.S.C. 1703(f), and the Bilingual Education Act, 20 U.S.C. 7401, *et seq.*, which provided federal financial assistance to school districts to provide language services to LEP students.

[7] For cases outside the educational context, *see, e.g., Sandoval* v. *Hagan,* 7 F. Supp. 2d 1234 (M.D. Ala. 1998), *affirmed,* 197 F.3d 484,(11th Cir. 1999), *rehearing and suggestion for rehearing en banc denied,* 211 F.3d 133 (11th Cir. Feb. 29, 2000) (Table, No. 98–6598–II), *petition for certiorari granted, Alexander* v. *Sandoval* 121 S. Ct. 28 (Sept. 26, 2000) (No. 99–1908) (giving drivers' license tests only in English violates Title VI); and *Pabon* v. *Levine,* 70 F.R.D. 674 (S.D.N.Y. 1976) (summary judgment for defendants denied in case alleging failure to provide unemployment insurance information in Spanish violated Title VI).

[8] *See, e.g.*, 28 CFR 42.405(d)(1).

[9] Section 1, Executive Order 13166.

[10] LEP Guidance, 65 FR 50123.

compliance standards that recipients must follow to ensure that programs and activities they normally provide in English are accessible to LEP persons.'' [11] This LEP Guidance for DOJ Recipients represents the application of DOJ's general LEP Guidance to recipients of DOJ's federal financial assistance.

While the Department of Justice's Coordination Regulation, 28 CFR 42.405(d)(1),[12] expressly addresses requirements for provision of written language assistance, a recipient's obligation to provide meaningful opportunity is not limited to written translations.

Oral communication between recipients and beneficiaries, clients, customers, wards, or other members of the public often is a necessary part of the exchange of information. In some cases, ''meaningful opportunity'' to benefit from the program requires the recipient to take steps to assure that translation services are promptly available. In other circumstances, instead of translating all of its written materials, a recipient may meet its obligation by making available oral assistance, or by commissioning written translations on reasonable request. Thus, a recipient that limits its language assistance to the provision of written materials may not be allowing LEP persons ''effectively to be informed of or to participate in the program.'' This Guidance provides information to recipients on how to comply with the meaningful access requirement.

D. Explanation of Title VI Compliance Procedures

This Guidance, including appendices, is not intended to be exhaustive. DOJ recipients have considerable flexibility in determining how to comply with their legal obligations in the LEP setting, and are not required to use all of the suggested methods and options listed. However, DOJ recipients must establish and implement policies and procedures for providing language assistance sufficient to fulfill their Title VI responsibilities and provide LEP persons with meaningful access to services. DOJ encourages recipients to document efforts to comply with the provisions of this Guidance. DOJ will make assessments on a case-by-case basis and will consider the four factors in assessing whether the steps taken by a DOJ recipient provide meaningful access.

DOJ enforces Title VI through the procedures identified in the Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance. In addition, aggrieved individuals may seek judicial relief.

The Title VI regulations provide that DOJ will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI. If the investigation results in a finding of compliance, DOJ will inform the recipient in writing of this determination, including the basis for the determination. DOJ uses voluntary mediation to resolve most complaints. However, if a case is fully investigated and results in a finding of noncompliance, DOJ must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, DOJ must secure compliance through the termination of federal assistance after the DOJ recipient has been given an opportunity for an administrative hearing, and/or by referring the matter to a DOJ litigation section to seek injunctive relief or pursue other enforcement proceedings.

DOJ engages in voluntary compliance efforts and provides technical assistance to recipients at all stages of an investigation. During these efforts, DOJ proposes reasonable timetables for achieving compliance and consults with and assist recipients in exploring cost-effective ways of coming into compliance by sharing information on potential community resources, by increasing awareness of emerging technologies, and by sharing information on how other recipient/covered entities have addressed the language needs of diverse populations.

In determining a recipient's compliance with Title VI, DOJ's primary concern is to ensure that the recipient's policies and procedures overcome barriers resulting from language differences that would deny LEP persons a meaningful opportunity to participate in and access programs, services, and benefits.

[FR Doc. 02–1391 Filed 1–17–02; 8:45 am]

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[11] *See* Executive Order 13166 at Section 1.

[12] Section 42.405(d)(1) states: ''Where a significant number or proportion of the population eligible to be served or likely to be affected by a federally assisted program (e.g., affected by relocation) needs service or information in a language other than English in order effectively to be informed or to participate in the program, the recipient shall take reasonable steps, considering the scope of the program and the size and concentration of such population, to provide information in appropriate languages to such persons. This requirement applies with regard to written material of the type which is ordinarily distributed to the public.'' This LEP Guidance for DOJ Recipients is intended to clarify obligations under this regulation and further obligations under Title VI to provide language services outside of the context of such written documents.

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. The 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 tot he provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1994, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 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, constitutes 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 the section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and

supersedes 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 governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number f the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

None

Volume IV

None

Volume V

None

Volume VI

None

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage determinations Issued Under the Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon.*

They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specifiy the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 10th day of January 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–1073 Filed 1–17–02; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2002–06; Exemption Application No. D–10894, et al.]

Grant of Individual Exemptions; Brookshire Brothers, Ltd., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition, the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Brookshire Brothers, Ltd. (Brookshire) Located in Lufkin, Texas

[Prohibited Transaction Exemption 2002–06 Application No. D–10894]

Exemption

Section I. Transaction

The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the establishment by Brookshire of a minimum price guarantee (the Minimum Price Guarantee) for the valuation and purchase by Brookshire of Profit Sharing Stock owned by the Brookshire Brothers Employee Stock Ownership Plan (the ESOP), provided the conditions set forth in Section II are satisfied:

Section II. Conditions

A. The ESOP shall pay no consideration, interest or other fee or expense in connection with the Minimum Price Guarantee.

B. The Minimum Price Guarantee shall expire on the first date after December 22, 1999 upon which the fair market value of a share of the Profit Sharing Stock exceeds the minimum price per share established by the Minimum Price Guarantee.

Section III. Definitions

A. The term ''Brookshire'' means Brookshire Brothers, Ltd., a Texas limited partnership with headquarters in Lufkin, Texas.

B. The term ''Profit Sharing Plan'' means the Brookshire Brothers Profit Sharing Plan, as amended and restated effective April 30, 1988.

C. The term ''Profit Sharing Stock'' means approximately 600,182 shares of the common stock of Brookshire Brothers Holding, Inc., Brookshire's parent company, transferred from the Profit Sharing Plan to the ESOP on November 19, 1999.

D. The term ''Minimum Price Guarantee'' means the guarantee established pursuant to the ESOP whereby the value of the Profit Sharing Stock will be equal to the price of such stock prior to December 22, 1999 plus a 4% annual increase.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on September 7, 2001 at 66 FR 46837.

EFFECTIVE DATE: The exemption is effective as of November 19, 1999.

Written Comments

The Department received one comment letter with respect to the Notice. The comment letter was submitted by the Applicant's legal counsel, and concerned a typographical error in the Notice. The comment stated that the Profit Sharing Stock was transferred from the Profit Sharing Plan to the ESOP on November 19, 1999, rather than December 19, 1999 as stated in the Notice. Accordingly, the Applicant noted the following corrections:

First, Section III.C. would be restated to read as follows: ''The term 'Profit Sharing Stock' means approximately 600,182 shares of the common stock of Brookshire Brothers Holding, Inc., Brookshire's parent company, transferred from the Profit Sharing Plan to the ESOP on November 19, 1999.''

Second, the effective date of the exemption would be changed from December 19, 1999 to November 19, 1999.

Third, the second sentence of paragraph 3 of the Summary of Facts and Representations would read as follows: ''As of November 19, 1999, the Profit Sharing Plan held approximately 600,182 shares of the common stock (the Stock) of Brookshire Brothers Holding, Inc. (Holding), Brookshire's parent company.''

Finally, the first sentence of paragraph 4 of the Summary of Facts and Representations would read as follows: ''On November 19, 1999, the Stock was transferred from the Profit Sharing Plan to the ESOP.''

The Department concurs with the Applicant's comment and has modified the language of the final exemption accordingly.

After giving full consideration to the entire record, including the written comment, the Department has decided to grant the exemption as modified herein.

FOR FURTHER INFORMATION CONTACT: Karen Lloyd of the Department, telephone (202) 693–8540. (This is not a toll-free number).

Ford Motor Company (Ford) Located in Dearborn, Michigan

[Prohibited Transaction Exemption 2002–07; Exemption Application No. L–10937]

Exemption

The restrictions of section 406(a) and 406(b) of the Employee Retirement Income Security Act of 1974 (ERISA) shall not apply, effective August 4, 2000, to: (1) the receipt by the Ford-UAW Benefits Trust (the VEBA) of approximately $2.9 billion of certain securities (the Partnership Securities) pursuant to the redemption (the Redemption) by the VEBA of its interest in the Ford Enhanced Investment Partnership and the Ford Super-Enhanced Investment Partnership (collectively, the Partnerships); and (2) the transfer of the Partnership Securities by the VEBA to Ford in exchange for the transfer of approximately $2.9 billion of certain securities (the Ford-Owned Securities) to the VEBA (the Exchange), provided that the following conditions were met:

(a) The terms of the Redemption and the terms of the Exchange were at least as favorable to the VEBA as the terms that would have been available in arm's-length transactions between unrelated parties;

(b) The total value of the Partnership Securities received by the VEBA pursuant to the Redemption equaled the value of the VEBA's pro rata interest in the Partnerships on the date of the Redemption;

(c) The net asset value of the VEBA's interest in the Partnerships and each Partnership Security received by the VEBA pursuant to the Redemption were valued in the same manner using August 4, 2000 close-of-market bid prices as determined by an independent, recognized pricing service;

(d) In the case of the Exchange, the VEBA received Ford-Owned Securities equal in value to the Partnership Securities transferred to Ford;

(e) Each Partnership Security transferred to Ford by the VEBA pursuant to the Exchange was valued according to its August 4, 2000 close-of-market bid price as determined by an independent, recognized pricing service;

(f) Each Ford-Owned Security transferred to the VEBA by Ford pursuant to the Exchange was valued according to its August 4, 2000 close-of-market bid price as determined by an independent, recognized pricing service, or to the extent that a price could not be obtained in this manner, such security was priced according to

the average of three (or a minimum of two) August 4, 2000 close-of-market bid prices obtained from independent market-makers;

(g) The Ford-Owned Securities transferred to the VEBA pursuant to the Exchange were not issued by Ford and were comprised solely of cash and marketable short-term debt securities under the management of unrelated, independent investment managers;

(h) The Partnership Securities transferred to Ford pursuant to the Exchange were comprised solely of cash and marketable short-term debt securities;

(i) Upon the completion of the Exchange, no single issue of Ford-Owned Securities accounted for more than 25% of the assets of the VEBA;

(j) State Street Bank and Trust Company (SSBT), acting as an independent fiduciary on behalf the VEBA, monitored the Redemption and the Exchange; and

(k) SSBT, as independent fiduciary, approved the Redemption and the Exchange upon determining that the Redemption and the Exchange were in the best interests of the VEBA and its participants.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on September 27, 2001 at 66 FR 49415.

FOR FURTHER INFORMATION CONTACT: Christopher Motta of the Department, telephone (202) 693–8544 (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 15th day of January, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–1365 Filed 1–17–02; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 02–08; Exemption Application No. D–10997]

Grant of Individual Exemption To Modify Prohibited Transaction Exemption 97–08 (PTE 97–08) Involving Morgan Stanley Dean Witter & Co. Incorporated (MSDW&Co) Located in New York, NY

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Grant of individual exemption to modify PTE 97–08.

SUMMARY: This document contains a final exemption before the Department of Labor (the Department) which amends PTE 97–08 (62 FR 4811, January 31, 1997), an exemption granted to Morgan Stanley & Co., Incorporated (MSC), a subsidiary of MSDW&Co.

PTE 97–08 provided relief for certain securities lending, principal transactions, and extensions of credit. This exemption modifies PTE 97–08 to permit a U.S. affiliate of a foreign broker-dealer to guaranty the obligations of such broker-dealer that arise in connection with transactions described in PTE 97–08 and affects the participants and beneficiaries of certain employee benefit plans (the Plans or Plan) participating in such transactions and the fiduciaries with respect to such plans.

EFFECTIVE DATE: The amendments to PTE 97–08 are effective, as of August 25, 1995, the effective date of PTE 97–08.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 693–8540. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 7, 2001, the Department published in the **Federal Register**, at 66 FR 46843, a Notice of Proposed Exemption that would amend PTE 97–08. PTE 97–08 provides an exemption from certain prohibited transaction restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code. Specifically, PTE 97–08 provides retroactive exemptive relief from the restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, for certain principal transactions between Plans and broker-dealers affiliated with MSC which are subject to British law (the MSC/UK Affiliates), the lending of securities that are assets of Plans to MSC/UK Affiliates, and any extensions of credit to Plans by MSC/UK Affiliates to permit the settlement of securities transactions or in connection with the writing of options contracts; provided certain conditions are satisfied.

The amendment was requested in an application filed on behalf of MSDW&Co, MSC, and any current and future U.K. broker-dealer affiliates of MSDW&CO and MSC, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR 2570, Subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this final exemption is issued solely by the Department.

The Notice of Proposed Exemption invited all interested persons to comment on the proposed amendment to PTE 97–08 and to request a public hearing. During the comment period, the Department received no comments and no requests for a hearing.

For further information regarding the matters discussed herein, interested persons are encouraged to obtain copies

of the exemption application file (Exemption Application No. D–10997) that the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department are made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption to modify PTE 97–08.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The exemption will not extend to transactions prohibited under section 406(b)of the Act and section 4975(c)(1)(E) or (F) of the Code;

(3) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990), and based upon the entire record, the Department finds that the exemption is administratively feasible, in the interest of plans and of their participants and beneficiaries and protective of the rights of participants and beneficiaries of such plans;

(4) The exemption will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This exemption is subject to the express condition that the Summary of Facts and Representations set forth in the Notice of Proposed Exemption relating to PTE 97–08, as amended by the Notice of Proposed Exemption relating to this exemption, accurately describes, where relevant, the material terms of the transactions to be consummated pursuant to this exemption.

Exemption

Based on the facts and representations set forth in the application, under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990), the Department hereby amends PTE 97–08 to include in Section I an additional transaction (D), as set forth below:

Section I. Transactions

D. Effective August 25, 1995, the restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, to a guaranty given to a Plan by MSDW&Co or any U.S. affiliate of MSDW&Co, provided that the guaranty when given:

(a) Is in connection with one of the transactions, described in section I (A), (B), or (C) of PTE 97–08, for which the specific conditions for such transaction and all of the general conditions, as set forth in PTE 97–08 have been satisfied;

(b) Is lawful under the applicable securities laws;

(c) Is provided at no separate cost to the Plan; and

(d) Is not a prohibited transaction under section 503(b) of the Code.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the application change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant PTE 97–08, refer to the Notice of Proposed Exemption (61 FR 58237, November 13, 1996) and the Final Exemption (62 FR 4811, January 31, 1997). For a more complete statement of the facts and representations supporting the Department's decision to grant this amendment to PTE 97–08, refer to the Notice of Proposed Exemption to Modify PTE 97–08 (66 FR 46843, September 7, 2001).

Signed at Washington, DC, this 15th day of January, 2002.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–1366 Filed 1–17–02; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–11035, et al.]

Proposed Exemptions; Smart Chevrolet Co. Employees' Profit Sharing Retirement Plan et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration (PWBA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No._____, stated

in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *''moffittb@pwba.dol.gov''*, or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Smart Chevrolet Co. Employees' Profit Sharing Retirement Plan (the Plan) Located in Pine Bluff, Arkansas

[Application No. D–11035]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) The proposed secured loans (the Loans) by the Plan to Motors Finance Company (Motors), a party in interest with respect to the Plan, and (2) the guaranty of such Loans (the Guaranty) by the individual partners of Motors; provided that the following conditions are met: (a) The terms and conditions of the Loans are at least as favorable as those which the Plan could have received in similar transactions with an unrelated third party; (b) an independent fiduciary negotiates, reviews, approves, and monitors the Loans and the Guaranty under the terms and conditions, as set forth in paragraph #6 below; and (c) the balance of all Loans will at no time exceed 15% of the assets of the Plan.[1]

Temporary Nature of Exemption

The proposed exemption is temporary and, if granted, will expire September 16, 2007. However, the exemption will extend until the maturity of any of the 90 day Loans made prior to September 16, 2007.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan which, as of December 31, 2000, had assets totaling $3,261,663. As of the same date, the Plan had forty-one (41) participants. Richard L. Smart (Mr. Smart), S. Ray West, Jr. (Mr. West), Lee Smart (Lee) and Roger Smart (Roger) are participants in and are the Advisory Committee of the Plan. Smart Chevrolet Company (the Employer) is the sponsor of the Plan. The Employer sells new and used automobiles in the Pine Bluff, Arkansas area. As of December 31, 2000, the Employer had a net worth of $5,260,199. Mr. Smart is the president of and a shareholder in the Employer.

2. Motors is engaged in financing the purchase of new and used automobiles sold by the Employer to its customers. The net worth of Motors, as of December 31, 2000, was $300,000. Certain of the principal owners of the Employer are also partners in Motors. Mr. Smart is a five percent (5%) managing partner in Motors. Meredith S. Maxwell, Felix Smart, Lee, Roger and Mr. West each own a fifteen percent (15%) partnership interest in Motors. The collective net worth of the partners of Motors, as of December 31, 2000, was $11,700,000. The net worth of the partners of Motors includes their respective interests in Motors, in the Employer, and in certain notes payable to its partners by Motors.

3. The current trustee of the Plan is Pine Bluff National Trust Department (the Trustee), successor in interest to Boatmen's Trust Company of Arkansas (Boatmen's), the trustee at the time Prohibited Transaction Exemption (PTE) 97–52 (see rep. 4, below) was granted. Pine Bluff National Bank (PBNB) is the parent corporation of the Trustee, and participates in a line of credit to supply Motors with operating funds of from $100,000 to $200,000 daily.

4. On July 8, 1985, the Department granted an exemption (PTE 85–121, 50 FR 27863) which permitted for a period of seven (7) years beginning July 8, 1985, certain Loans to Motors by two employee benefit plans (the Plans) then sponsored by the Employer, and to the guaranty of such Loans by the Employer and the individual partners of Motors. Subsequent to the grant of PTE 85–121, the Smart Chevrolet Employees Retirement Plan, one of the Plans which participated in the exemption for PTE 85–121, was merged into the Plan.[2] On June 17, 1992, the Department granted an exemption (PTE 92–43, 57 FR 27073) which permitted, for a period of five (5) years, certain Loans by the Plan to Motors. On September 16, 1997, the Department granted an exemption (PTE 97–52, 62 FR 48673) extending PTE 92–43 for a period of five years, thus permitting certain Loans by the Plan to Motors for an additional five-year period.

It is represented that under the three prior exemptions Motors has made all payments on the Loans in a timely manner and has never defaulted on any of the Loans made by the Plans. As a result of such Loans made pursuant to PTE 97–52, the Plan received an interest rate of between 6.50% to 8.00%, depending on the Federal Discount Rate in effect at the time such Loans were executed. Further, though the principal balance of these Loans has varied from time to time, the terms and conditions of each of the Loans complied with the requirements set forth in the exemptions. The aggregate fair market value of these Loans by the Plan to Motors, as of the most recent annual report, was $486,224, which represented 14.91% of the fair market value of the total assets of the Plan. The applicant,

[1] For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[2] All references in this Summary of Fact and Representations to the Plan will, if applicable, include both Plans prior to the merger unless the context clearly dictates otherwise.

herein, is requesting another exemption which will permit the continuation of such Loans for a period of five (5) years beginning on the date of the grant of this proposed exemption. The applicant has represented that with respect to Loans made pursuant to the exemption proposed herein, the Loans will not exceed 15% of aggregate Plan assets.

5. Jess P. Walt (Mr. Walt), who served as the Plan's independent fiduciary for purposes of the transactions exempted by PTE 97–52, has agreed to continue to serve as the independent fiduciary. Mr. Walt, who is a banker, represents that he is independent in that none of the partners of Motors, or the stockholders, officers, or directors of the Employer are officers or directors of the bank where Mr. Walt is employed, the First National Bank of Altheimer, Arkansas (the Bank). In addition, Mr. Walt represents that none of these persons are stockholders of the Bank, except Felix Smart, who owns 35 of the 7,500 outstanding shares, which represent a .47% ownership percentage of the Bank. It is represented that the partners of Motors, the Employer and its officers, directors, and shareholders do not have any loans or accounts outstanding at the Bank. Further, the Bank represents that it does not participate in the line of credit extended to Motors by PBNB.

Mr. Walt represents that he is qualified to act on behalf of the Plan in that he, as a Bank officer, has been involved for many years in making automobile installment loans and evaluating credit and collateral considerations related to such loans. Mr. Walt also represents that he is knowledgeable in selecting appropriate rates of return on short term investments and will be continuously aware of the fluctuations in short term interest rates and the alternative low risk short term investments that would be available to the Plan.

6. Mr. Walt will accept fiduciary responsibility with respect to the proposed transactions. In this regard, Mr. Walt will be responsible for determining whether it is advisable for the Plan to enter into the Loans and the Guaranty which are the subject of this proposed exemption and to continue to participate in such transactions, taking into account the rate of return of such investment and the liquidity and diversification of the Plan.

It is represented that Mr. Walt will approve Loans in an amount not to exceed fifteen percent (15%) of the assets of the Plan, provided that all of the terms and conditions described herein are met.[3] All Loans will have a maturity of ninety (90) days and will bear interest at a rate which is two percentage points above the Federal Discount Rate. Mr. Walt represents that such interest rate reflects the prevailing fair market interest rate on comparable short-term investments. Mr. Walt represents that he will receive copies of all the promissory notes evidencing the Loans in order to insure that the interest rate is two percent (2%) above the Federal Discount Rate. If at any time a rate of two percentage points above the Federal Discount Rate is not reflective of the prevailing fair market rate of return on comparable ninety (90) day investments, Mr. Walt indicates that the Loans should be liquidated at the next maturity date, or the yield on such Loans be increased to the then prevailing fair market rate.

The Loans will be secured by all of the installment sale contracts (the Contracts) of Motors. As of December 31, 2000, Motors had 1,098 outstanding Contracts totaling $10,530,000, with an average balance of $9,590 per Contract. Mr. Walt has represented that he will examine the security agreement and financing statements with regard to the Contracts and will ascertain that the Plan's security interest in all of the Contracts is properly executed, and that such security interest is perfected by properly filed financing statements in conformity with the applicable Uniform Commercial Code (UCC) provisions, as adopted in Arkansas. It is represented that Mr. Walt, through a combination of monthly reports from PBNB and monthly Certification of Compliance Statements signed by Mr. Smart, will insure that at all times the aggregate face value of the Contracts equals at least 200% of the total outstanding balance of the Loans. It is further represented that if at the end of any month the report from the Trustee indicates that the aggregate face value of the Contracts does not equal at least 200% of the total outstanding balance of the Loans, Mr. Walt will direct Motors to pay the Plan an amount sufficient to bring the Loans into compliance with the 200% collateral requirement.

Mr. Walt, on behalf of the Plan, has accepted the commitment of the Employer and Motors that the Contracts will conform to the following loan policy guidelines: (a) A complete credit history will be performed for each customer; (b) a customer's credit history will be analyzed together with the customer's equity and the terms of the Loan; (c) depending on the use of the vehicle, a customer equity of from 10% to 30% will be required; (d) with an extension of six months available in circumstances of minimal vehicle use, the maximum term of any of the Contracts will be 60 months on new and current year used vehicles, 54 months, 42 months, 42 months, 36 months, and 24 months, respectively, on one, two, three, four, and five-year old vehicles; (e) prior to closing on any Contracts, a written certificate of insurance from an insurance agent will be required showing that the automobile is covered for physical damage with no more than a $250 deductible; (f) such insurance coverage includes fire, theft, and other perils and shows Motors as loss payee; and (g) Motors will employ a full time collector and strict management supervision will be maintained daily over collections.

Motors has represented that if, at any time, it changes the above-described loan policy guidelines it will notify Mr. Walt. Therefore, it is the responsibility of Mr. Walt to determine whether such changes materially affect the value of the Contracts. Mr. Walt represents that if the value of the Contracts is materially affected, such Contracts will be excluded from the collateral which secures the Loans by the Plan to Motors.

The Loans will also be secured by the Guaranty of the partners of Motors. In this regard, the partners of Motors have executed a blanket Guaranty in order to satisfy the requirements of PTE's 92–43 and 97–52. Mr. Walt is responsible for ascertaining that any Loans entered by the Plan pursuant to this proposed exemption are also covered by this blanket Guaranty or, if necessary, a new Guaranty will be executed. In addition, it is represented that all of the partners in Motors are jointly and severally liable for the debts of the partnership, specifically including the Loans.

It is represented that from time to time in order to secure its line of credit to Motors, PBNB may take a security interest in the Contracts. However, it is represented that such security interest will be at all times subordinated to 200% of the indebtedness of Motors to the Plan. Further, it is represented that other notes payable from Motors to its partners will be subordinated to the Loans. As of December 31, 2000, a total amount of $4,994,560 was due to the partners of Motors under the terms of the notes, but such amount was subordinated to the indebtedness of Motors to the Plans.

[3] PTE's 85–121 and 92–43 permitted the Plan to invest up to 25% of its assets in these Loans. PTE 97–52 limited the Plan's investment in these Loans to no more than 15% of the Plan's assets. The applicant has represented that no more than 15% of the Plan's assets will be invested in the Loans under the exemption proposed herein.

In addition, it is represented that all of the Contracts provide Motors with recourse against the Employer for the amount of any defaulted Contracts. In this regard, should there be defaults on any of the Contracts, it is represented that the Employer will repurchase such Contracts from Motors after giving legal notice to the customer under Arkansas law. Once the Employer repurchases any defaulted Contracts, the Employer, not Motors, will repossess the vehicles. The Employer has informed the Department that for 1999 and 2000, the average number of Contracts equaled 1,100. Of these Contracts, twenty-one (21) vehicles were repossessed in 1999 and forty-six (46) vehicles were repossessed in 2000. The Employer maintains that defaults and repossessions constitute a very small percentage of the total number of Contracts outstanding at any time.

In addition to the responsibilities outlined above, Mr. Walt is responsible for monitoring Motors' compliance with the terms of the Loans and the Guaranty. In this regard, Mr. Walt has reviewed certain monthly reports (the Monthly Reports) which have been furnished by PBNB and by Boatmen's, the trustee at the time PTE 97–52 was granted. Mr. Walt represents that such Monthly Reports are appropriate for the purposes of monitoring the proposed transactions. If this proposed exemption is granted, it is represented that similar Monthly Reports will be provided to Mr. Walt and will be reviewed monthly by Mr. Walt, or more frequently as Mr. Walt determines is necessary.

In addition, Mr. Walt is responsible for receiving and reviewing the monthly financial statements for Motors and for the Employer and annual financial statements of the partners of Motors. Mr. Walt represents that this information will assist him in monitoring the credit-worthiness of the Employer and Motors. If there are any material decreases in the net worth of any of the parties involved, it is represented that Mr. Walt will liquidate the Loans at the next maturity date. In this regard, Mr. Walt represents that he places the most significance on the ability of the Employer to repurchase any of the Contracts that are in default and considers the net worth of the partners of Motors to be a secondary source of protection for the Plan. Mr. Walt further represents that if, in reviewing the monthly financial statements of the Employer, he determines that a decrease in the net worth of the Employer has impaired the Employer's ability to repurchase any of the Contracts, he will carefully review the aggregate net worth of the partners of Motors. After such review, if he determines, based on his banking experience, judgment, and other factors, that the Plan is not properly protected, Mr. Walt will instruct the Trustee to liquidate the Loans at the next maturity date. In the event of a default by Motors on the Loans, Mr. Walt will be responsible for taking all necessary steps to protect the Plan and for enforcing all of the rights of the Plan, including pursuing the partners of Motors under the terms of the Guaranty.

In the opinion of Mr. Walt, the terms and conditions of the Loans and Guaranty are based on arm's-length considerations. After reviewing the proposed transactions, Mr. Walt represents that he would make the Loans, on behalf of the Bank, under the same terms to Motors. In conclusion, Mr. Walt has determined that the proposed transactions are in the best interest of the Plan and its participants and beneficiaries for the following reasons: (a) The Loans by the Plan to Motors are well collateralized; (b) the risk of loss to the Plan is almost non-existent; (c) the ninety (90) day maturity of the Loans will enable the Plan to shift its investments from the Loans in a short period of time, if necessary, to provide liquidity to the Plan; (d) the yield to the Plan is expected to be approximately 200 basis points greater than that of a ninety (90) day bank certificate of deposit; (e) the rate of return, which will be at all times two percentage points above the Federal Discount Rate, prevents the Plan from becoming locked into a below market interest rate and insures a favorable rate on a continuing basis; and (f) administration of the proposed transactions should generate less expense than that of other investments.

7. The applicant maintains that the wide diversity of customers executing the Contracts significantly spreads the risk to the Plan. Further, the Employer will bear all costs of filing the application for exemption, providing notice to interested persons, and paying for the services rendered by Mr. Walt, as independent fiduciary to the Plan. In the event that it becomes necessary to appoint a successor independent fiduciary (the Successor) to replace Mr. Walt, the applicant will notify the Department at least sixty (60) days in advance of such appointment. The applicant states that the successor will be independent and will possess comparable experience and responsibilities as those of Mr. Walt. In addition, it is represented that throughout the five (5) year duration of this proposed exemption, the Plan will not pay any fees or other expenses in connection with the proposed transactions.

8. In summary, the applicant represents that the Loans will satisfy the criteria of section 408(a) of the Act because, among other things: (a) Mr. Walt, the independent fiduciary of the Plan, has agreed to review, approve, and monitor the terms and conditions of the Loans and the Guaranty; (b) Mr. Walt has represented that the Loans will be in the best interest of the participants and beneficiaries of the Plan; (c) the Loans will be short-term loans limited to no more than 15% of the total assets of the Plan; (d) the Loans will be adequately secured by a perfected security interest in the Contracts, through properly filed financing statements in conformity with the UCC provisions adopted in Arkansas; (f) the face amount of the Contracts will at all times exceed 200% of the total amount of the Loans; (g) the Loans are guaranteed by the partners of Motors; (h) the terms of the Contracts provide Motors with recourse to the Employer in the event of a default on any of the Contracts; and (i) the Plan will receive a return on the Loans of at least two percentage points above the Federal Discount Rate which is represented to be the prevailing fair market rate of return on comparable short-term investments.

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll free number.)

Prudential Insurance Company of America (Prudential Insurance) and Its Affiliates (collectively, Prudential) Located in Newark, NJ

[Application No. D–11051]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[4]

Section I. Exemption for the Acquisition, Holding and Disposition of Prudential Stock

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(D), 406(b)(1) and section 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(D) and

[4] For purposes of this proposed exemption, references to provisions of the Act refer also to corresponding provisions of the Code.

(E) of the Code, shall not apply, effective December 13, 2001, to the acquisition, holding and disposition of common stock issued by Prudential Financial, Inc. (the Prudential Financial Stock) and/or common stock issued by a Prudential affiliate (the Prudential Affiliate Stock; together, the Prudential Stock), by Index and Model-Driven Funds that are managed by Prudential, in which client plans of Prudential invest, provided that the following conditions and the General Conditions of Section II are met:

(a) The acquisition or disposition of Prudential Stock is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based, and does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring Prudential Stock which is intended to benefit Prudential or any party in which Prudential may have an interest.

(b) Whenever Prudential Stock is initially added to an index on which an Index or Model-Driven Fund is based, or initially added to the portfolio of an Index or Model-Driven Fund, all acquisitions of Prudential Stock necessary to bring the Fund's holdings of such stock either to its capitalization-weighted or other specified composition in the relevant index, as determined by the independent organization maintaining such index, or to its correct weighting as determined by the model which has been used to transform the index, occur in the following manner:

(1) Purchases are from, or through, only one broker or dealer on a single trading day;

(2) Based on the best available information, purchases are not the opening transaction for the trading day;

(3) Purchases are not effected in the last half hour before the scheduled close of the trading day;

(4) Purchases are at a price that is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry from non-affiliated brokers;

(5) Aggregate daily purchases do not exceed 15 percent of the average daily trading volume for the security, as determined by the greater of either (i) the trading volume for the security occurring on the applicable exchange and automated trading system on the date of the transaction, or (ii) an aggregate average daily trading volume for the security occurring on the applicable exchange and automated trading system for the previous 5 business days, both based on the best information reasonably available at the time of the transaction;

(6) All purchases and sales of Prudential Stock occur either (i) on a recognized U.S. securities exchange (as defined in Section III(k) below), (ii) through an automated trading system (as defined in Section III(j) below) operated by a broker-dealer independent of Prudential that is registered under the Securities Exchange Act of 1934 (the 1934 Act), and thereby subject to regulation by the Securities and Exchange Commission (the SEC), which provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) through an automated trading system (as defined in Section III(j) below) that is operated by a recognized U.S. securities exchange (as defined in Section III(k) below), pursuant to the applicable securities laws, and provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; and

(7) If the necessary number of shares of Prudential Stock cannot be acquired within 10 business days from the date of the event which causes the particular Fund to require Prudential Stock, Prudential appoints a fiduciary which is independent of Prudential to design acquisition procedures and monitor compliance with such procedures.

(c) Subsequent to acquisitions necessary to bring a Fund's holdings of Prudential Stock to its specified weighting in the index or model pursuant to the restrictions described in Section I(b) above, all aggregate daily purchases of Prudential Stock by the Funds do not exceed on any particular day the greater of:

(1) 15 percent of the average daily trading volume for Prudential Stock occurring on the applicable exchange and automated trading system (as defined below) for the previous 5 business days, or

(2) 15 percent of the trading volume for Prudential Stock occurring on the applicable exchange and automated trading system (as defined below) on the date of the transaction, as determined by the best available information for the trades that occurred on such date.

(d) All transactions in Prudential Stock not otherwise described above in Section I(b) are either—(i) entered into on a principal basis in a direct, arm's length transaction with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of Prudential and is registered under the 1934 Act, and thereby subject to regulation by the SEC, (ii) effected on an automated trading system (as defined in Section III(j) below) operated by a broker-dealer independent of Prudential that is subject to regulation by either the SEC or another applicable regulatory authority, or an automated trading system operated by a recognized U.S. securities exchange (as defined in Section III(k) below) which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) effected through a recognized U.S. securities exchange (as defined in Section III(k) below), so long as the broker is acting on an agency basis.

(e) No transactions by a Fund involve purchases from, or sales to, Prudential (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption).

(f) No more than 5 percent of the total amount of Prudential Stock, that is issued and outstanding at any time, is held in the aggregate by Index and Model-Driven Funds managed by Prudential.

(g) Prudential Stock constitutes no more than 5 percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based.

(h) A fiduciary of a plan which is independent of Prudential authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds Prudential Stock, pursuant to the procedures described herein.

(i) A fiduciary independent of the Prudential directs the voting of Prudential Stock held by an Index or Model-Driven Fund on any matter in which shareholders of Prudential are required or permitted to vote.

Section II. General Conditions

(a) Prudential maintains or causes to be maintained for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (b) of this Section II to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Prudential, the records are lost or destroyed prior to the end of the six year period, and (2) no party in interest other than Prudential shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by

section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) of this Section II and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of this Section II are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the SEC,

(B) Any fiduciary of a plan participating in an Index or Model-Driven Fund who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an Index or Model-Driven Fund or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an Index or Model-Driven Fund, or a representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this Section II(b)(1) shall be authorized to examine trade secrets of Prudential or commercial or financial information which is considered confidential.

Section III. Definitions

(a) The term ''Index Fund'' means any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by Prudential, in which one or more investors invest, and—

(1) Which is designed to track the rate of return, risk profile and other characteristics of an independently maintained securities Index, as described in Section III(c) below, by either (i) replicating the same combination of securities which compose such Index or (ii) sampling the securities which compose such Index based on objective criteria and data;

(2) For which Prudential does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(3) That contains ''plan assets'' subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3–101, Definition of ''plan assets''—plan investments); and,

(4) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund which is intended to benefit Prudential or any party in which Prudential may have an interest.

(b) The term ''Model-Driven Fund'' means any investment fund, account or portfolio sponsored, maintained, trusteed, or managed by Prudential, in which one or more investors invest, and—

(1) Which is composed of securities the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria using independent third party data, not within the control of Prudential, to transform an independently maintained Index, as described in Section III(c) below;

(2) Which contains ''plan assets'' subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3–101, Definition of ''plan assets''—plan investments); and

(3) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund or the utilization of any specific objective criteria which is intended to benefit Prudential or any party in which Prudential may have an interest.

(c) The term ''Index'' means a securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States, but only if—

(1) The organization creating and maintaining the index is—

(A) Engaged in the business of providing financial information, evaluation, advice or securities brokerage services to institutional clients,

(B) A publisher of financial news or information, or

(C) A public stock exchange or association of securities dealers; and,

(2) The index is created and maintained by an organization independent of Prudential; and,

(3) The index is a generally-accepted standardized index of securities which is not specifically tailored for the use of Prudential.

(d) The term ''opening date'' means the date on which investments in or withdrawals from an Index or Model-Driven Fund may be made.

(e) The term ''Buy-up'' means an acquisition of Prudential Stock by an Index or Model-Driven Fund in connection with the initial addition of such stock to an independently maintained index upon which the Fund is based or the initial investment of a Fund in such stock.

(f) The term ''Prudential'' refers to Prudential Insurance Company of America, its indirect parent and holding company, Prudential Financial, and any current or future affiliates, as defined below in paragraph (h).

(g) The term ''Prudential Financial'' refers to Prudential Financial, Inc., the indirect parent and holding company of Prudential Insurance Company of America.

(h) An ''affiliate'' of Prudential includes:

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with the person;

(2) Any officer, director, employee or relative of such person, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(i) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(j) The term ''automated trading system'' means an electronic trading system that functions in a manner intended to simulate a securities exchange by electronically matching orders on an agency basis from multiple buyers and sellers, such as an ''alternative trading system'' within the meaning of the SEC's Reg. ATS [17 CFR part 242.300], as such definition may be amended from time to time, or an ''automated quotation system'' as described in section 3(a)(51)(A)(ii) of the 1934 Act [15 USC 8c(a)(51)(A) (ii)].

(k) The term ''recognized U.S. securities exchange'' means a U.S. securities exchange that is registered as a ''national securities exchange'' under section 6 of the 1934 Act (15 USC 78f), as such definition may be amended from time to time, which performs with respect to securities the functions commonly performed by a stock exchange within the meaning of definitions under the applicable securities laws (e.g., 17 CFR part 240.3b–16).

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of December 13, 2001.

Summary of Facts and Representations

1. Prudential Insurance is a stock life insurance company, which converted from a mutual life insurance company on December 18, 2001. Prudential Insurance is organized under the laws of the State of New Jersey. Its principal place of business is located at Prudential Plaza, Newark, New Jersey. Prudential Insurance is licensed to conduct the insurance business in all 50 states comprising the United States, as well as in the District of Columbia.

As of June 30, 2001, Prudential Insurance had $21.7 billion in total equity and $303.1 billion in total assets.

Also as of that date, Prudential Insurance had—

• Total assets under management and administration of $605.8 billion, consisting of total assets under management (including assets in general and separate accounts) of approximately $393.5 billion, and additional assets in securities brokerage and bank custodial accounts and other assets under administration of $212.3 billion.

• Total gross life insurance in force in the United States of $1.3 trillion (including individual and group insurance), and

• Total gross life insurance in force in Japan and other countries outside the United States of $508.2 billion (including individual and group insurance).

As of December 31, 2000 (the latest date for which such information is available), Prudential Insurance had the third largest individual life insurance business in the United States in terms of statutory in force premiums and in terms of total gross life insurance in force in the United States according to A.M. Best.

2. Prudential Insurance's principal products include individual and group life insurance contracts, endowment contracts, insurance contracts, annuities, including tax deferred annuities described in section 403(b) of the Code and individual retirement annuities described in section 408(b) of the Code, and a wide variety of pension contracts. Additionally, Prudential Insurance has a number of affiliates that provide financial services and products, including investment management, brokerage, and mutual funds, as well as real estate services. Prudential Insurance and its affiliates (together, Prudential) provide fiduciary and other services to ''employee benefit plans'' described in section 3(3) of the Act and to other plans described in section 4975(e)(1) of the Code.

As a mutual life insurance company, Prudential Insurance had no authorized, issued, or outstanding stock. Instead, policyholders of a mutual insurance company are both customers and owners of the company. Specifically, the life insurance, endowment, annuity, and certain other insurance and pension plan contracts issued by Prudential Insurance combined both insurance coverage and proprietary rights, so-called ''membership interests.''

Prudential Insurance demutualized on December 18, 2001. The company's Board of Directors, its policyholders, and the New Jersey Department of Banking and Insurance approved the proposed Plan of Reorganization prior to the demutualization. Following the demutualization of Prudential Insurance and the simultaneous corporate reorganizations of its affiliates, Prudential Insurance and its affiliates are now owned indirectly by Prudential Financial, a holding company, the common stock of which (i.e., Prudential Financial Stock) is publicly traded, as is or may be certain of its debt or other securities. In connection with the demutualization, Prudential Insurance is distributing Prudential Financial Stock, cash and policy credits to eligible policyholders in exchange for their membership interests. Demutualization, registration of the Prudential Financial Stock and other Prudential securities under federal securities laws, an initial public offering of Prudential Financial Stock and its listing on the New York Stock Exchange took place during December 2001.[5]

3. Prudential Insurance and certain of its affiliates, including Prudential Investment Management, Inc., and Jennison Associates Capital Corporation, offer asset management and investment advisory services, insurance, securities brokerage and other types of financial services, as well as trust services, to ERISA-covered plans. Among the services offered are investment management or advisory services for investment accounts of ERISA-covered plans. These investment accounts may be structured as pooled and single client insurance company separate accounts, single client bank trust accounts and bank collective investment trust accounts in which employee benefit plans have invested. In some cases, the trust accounts will be maintained with a Prudential Insurance affiliate as trustee, while in other cases, the Prudential Insurance affiliated investment manager will direct investment of assets held by an unrelated trustee.

4. Prudential Insurance and its affiliates act as investment managers of institutional accounts, including those of employee benefit plans. As of June 30, 2001, the asset management units of Prudential managed approximately $300 billion of Prudential's $394 billion of total assets under management, as follows:

• $100 billion of retail customer assets, including mutual funds and variable insurance and variable annuity products;

• $91 billion of institutional customer assets; and

• $109 billion of insurance company general account assets.

In providing investment management services with respect to the assets of plans, Prudential is a ''fiduciary'' of plans, as defined in section 3(21) of the Act and a ''party in interest,'' as defined in section 3(14)(A) and (B). Although it acts as an investment manager for the accounts, amounts invested in Prudential accounts are made at the direction of an independent plan fiduciary or by plan participants who have the ability to direct investments for their own plan accounts.[6]

5. Among the types of investment products and services Prudential provides to plans are Index and Model-Driven Funds. An Index Fund is an investment portfolio which may be, or form part of,[7] a single client trust account, a pooled or single client insurance company separate account, or a bank collective trust, with the investment objective of replicating the performance of an independently-maintained stock or bond index representing the performance of a specific segment of the public market for equity or debt securities. The Index Funds are passively-managed, in that the choice of stocks or bonds purchased and sold, and the volume purchased and sold, are made according to predetermined third party indexes rather than according to active decisionmaking on the basis of fundamental research on the valuation and prospects of the securities in which the portfolio invests. Plan fiduciaries often favor Index Funds because (a) their risks and returns tend to mirror an established market index, (b) they offer broad diversification within the asset class and strategy represented by the index, and (c) they are extremely competitive in fees and expenses.

A Model-Driven Fund is an investment portfolio which may be, or

[5] With respect to the demutualization, Prudential Insurance has requested an administrative exemption from the Department. On September 27, 2001, a notice of proposed exemption was published in the **Federal Register** at 66 FR 49408.

[6] For a relatively few plan clients, Prudential has discretionary asset management authority to allocate a plan's assets among several approved investment accounts, subject to investment guidelines. In those cases, the plan's fiduciary, who is independent of Prudential, decides whether or not the plan will be permitted to invest in a particular account, including the Index or Model-Driven Funds described herein, and agrees to the particular investment guidelines used for the allocation among the approved accounts.

[7] In some cases, an Index or Model-Driven Fund may be a discrete portfolio of equity securities that is part of a larger investment fund. For example, an Index Fund may be a component of a balanced investment fund that includes both a portfolio of equities and a portfolio of debt securities and the entire balanced fund constitutes one insurance company separate account or bank trust account. Financial institutions commonly offer balanced investment funds because they offer plan fiduciaries and participants the advantage of diversifying investments across equities and bonds through a single investment.

form part of, a single client trust account, a pooled or single client insurance company separate account, or a bank collective trust, the performance of which is based on computer models using prescribed objective criteria to transform an independently-maintained stock or bond index representing the performance of a specific segment of the public market for equity or debt securities. The portfolio of a Model-Driven Fund is determined by the details of the computer model, which examines structural aspects of the stock or bond market rather than the underlying values of individual securities in which a portfolio may invest. An example of a Model-Driven Fund would include a fund which transforms an index, making investments according to a computer model which uses quantitative data as earnings, dividends and price to earnings ratios for common stocks included in the index with the goal of exceeding the investment returns achieved by the index.

Prudential represents that the process it uses for the establishment and operation of all Model-Driven Funds is disciplined and consistent with the quantitative nature of such funds. In this regard, objective rules are established for each model as part of the computer programming for the model. Once established, these computer programs are rarely changed. The data used by the programs are updated regularly by the electronic feeds of the quantitative information (e.g., changes in corporate earnings) necessary for analysis. The computer models generally cannot be overriden in the management of the portfolios except in the event of errors or questionable data from the usual sources of data input. For example, errors in data transmission may cause an unwarranted direction by the model to sell a security due to an erroneously low valuation for the security on a given day, or public notice of the SEC. In addition, allegations of accounting improprieties in the issuer's financial statements may cause a portfolio manager to override the model with respect to a direction by the model to buy that security, because the issuer's quantitative data used for the model may be drawn from the financial statements of the issuer of the security. Such exceptions are rare and must be justified on a case-by-case basis. Prudential represents, however, that it will not exercise any discretion to override the computer model with respect to the acquisition, holding or disposition of Prudential Stock. Such transactions will always follow the output of the relevant computer model.

6. Prudential currently offers a number of Funds that are invested according to the criteria of various third party indexes or are model-driven based on such indexes. These indexes are compiled by financial information agencies that are engaged in the provision of financial information or securities brokerage services to institutional investors and/or are publishers of financial information. For example, Prudential offers some Funds that track the Wilshire 5000 Total Market Index,[8] the Russell 2000 Index,[9] and the Standard & Poor's 500 Composite Stock Price Index (the S&P 500 Index).[10] In each instance, the indexes are compiled by organizations that are independent of Prudential and are generally-accepted standardized indexes of securities that are not tailored for the use of Prudential.

7. On or after the effective date of Prudential Insurance's demutualization and initial public offering of Prudential Financial Stock, Prudential Insurance represents that the indexes employed by Index and Model-Driven Funds may include Prudential Financial Stock and/or Prudential Affiliate Stock. Prudential represents that the ability of all Funds to invest in Prudential Stock, when that stock is included in an index, is necessary to ensure tracking of the indexes. In addition, the ability of the Model-Driven Funds to invest in Prudential Stock, when that stock is included in the index on which the model is based, avoids disruption to the computer modeling that is designed to transform the index in the manner approved by plans when the investment in the Model-Driven Fund is authorized.

8. Accordingly, Prudential Insurance requests an administrative exemption from the Department. If granted, the exemption will permit Prudential Insurance and its current and future affiliates to maintain individual and pooled separate accounts, collective trusts, and single client trusts that hold Prudential Stock, provided certain conditions enumerated in the operative language of the exemption are met.

Specifically, the exemption will allow Index and Model-Driven Funds which are managed by Prudential Insurance or its affiliates, in which client plans of Prudential participate, to invest in Prudential Stock if such stock is included among the securities listed in the index utilized by the Fund. Prudential Insurance is not requesting, nor is the Department providing, administrative exemptive relief herein for plans sponsored by Prudential. Prudential believes that investments on behalf of its in house plans in Index and Model-Driven Funds have been made (and will be made) in accordance with the statutory exemption provided under section 408(e) of the Act.[11] Therefore, the subject exemption will apply to client plans of Prudential only. With respect to Prudential client plans, Prudential Insurance states that plan fiduciaries which are independent of Prudential have authorized or will authorize the investment of a plan's assets in an Index or Model-Driven Fund which acquires, holds, or disposes of Prudential Stock pursuant to procedures described herein.

Prudential Insurance requests that the proposed exemption be made effective as of December 13, 2001, which is the initial public offering date for Prudential Financial Stock as well as the date such stock commenced trading on the New York Stock Exchange. Prudential Insurance states that any exemptive relief for cross-trades of securities, including Prudential Stock, by Index and Model-Driven Funds maintained by it should be considered separately.[12]

9. Prudential Insurance states that the proposed exemption is necessary to allow Funds holding plan assets to purchase and hold Prudential Stock in order to replicate, properly, the capitalization-weighted or other specified composition of Prudential Stock in an independently-maintained,

[8] The Wilshire 5000 Total Market Index was established and is maintained by Wilshire Associates Incorporated, which is not an affiliate of Prudential. The Wilshire 5000 Total Market Index is a market weighted index of returns of over 6,500 U.S. stocks with readily available price data. It is the broadest U.S. equity index available and reflects the performance of the organized securities exchanges as well as the Over the Counter markets.

[9] The Russell 2000 Index was established and is maintained by the Frank Russell Company, which is not an affiliate of Prudential. The Russell 2000 Index is a subset of the larger Russell 3000 Index. The Russell 3000 Index consists of the largest 3,000 publicly-traded stocks of U.S. domiciled corporations, identified by the Frank Russell Company, and includes large, medium and small stocks.

[10] The S&P 500 Index is composed of 500 stocks that are traded on the New York Stock Exchange and the NASDAQ National Market System. The S&P 500 Index is a market-weighted index (i.e., shares outstanding times the stock price) in which each company's influence on the Index's performance is directly proportional to its market value.

[11] The Department is not providing an opinion in this proposed exemption on whether the conditions of section 408(e) of the Act have been or will be met for such transactions.

[12] In this regard, the Department directs interested persons to the Proposed Class Exemption for Cross-Trades of Securities by Index and Model-Driven Funds (the Cross-Trading Proposal) which was published in the **Federal Register** on December 15, 1999 (64 FR 70057).

third party index used by an Index Fund or to achieve the desired transformation of an index used to create a portfolio for a Model-Driven Fund.

In addition, Prudential Insurance represents that when Prudential Stock is added to an index on which a Fund is based, or when Prudential Stock is added to the portfolio of a Fund which tracks an index that includes Prudential Stock, all acquisitions necessary, as an initial matter, to bring the Fund's holdings of Prudential to its capitalization or other specified weighting in the applicable index,[13] will comply with conditions (see Section I(b)(1)–(7) above) that are designed to prevent possible market price manipulation and which are based, in part, on the restrictions of SEC Rule 10b–18.[14]

The conditions required for a ''Buy-up'' of Prudential Stock are as follows:

• Purchases are from, or through, only one broker or dealer on a single trading day;

• Based on the best available information, purchases are not the opening transaction for the trading day;

• Purchases are not be effected in the last half hour before the scheduled close of the trading day;

• Purchases are at a price that is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry from non-affiliated brokers;

• Aggregate daily purchases do not exceed 15 percent of the average daily trading volume for the security, as determined by the greater of either (i) the trading volume for the security occurring on the applicable exchange and automated trading system on the date of the transaction, or (ii) an aggregate average daily trading volume for the security occurring on the applicable exchange and automated trading system for the previous 5 business days, both based on the best information reasonably available at the time of the transaction;

• All purchases and sales of Prudential Stock occur either (i) on a recognized U.S. securities exchange [as defined in Section III(k)], (ii) through an automated trading system [as defined in Section III(j)] operated by a broker-dealer independent of Prudential that is registered under the 1934 Act, and thereby subject to regulation by the SEC, which provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) through an automated trading system [as defined in Section III(j)] that is operated by a recognized U.S. securities exchange, pursuant to the applicable securities laws, and provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; and

• If the necessary number of shares of Prudential Stock cannot be acquired within 10 business days from the date of the event which causes the particular Fund to require Prudential Stock, Prudential appoints an independent fiduciary to design acquisition procedures and monitor compliance with such procedures.

10. Prudential Insurance states that, if an independent fiduciary is required, such independent fiduciary and its principals will be parties completely unrelated to Prudential. The independent fiduciary will also be experienced in developing and operating investment strategies for individual and collective investment vehicles that track third party indexes. Furthermore, the independent fiduciary will not act as the broker for any purchases or sales of Prudential Stock and will not receive any consideration as a result of the initial acquisition program.

As its primary goal, the independent fiduciary will develop trading procedures that minimize the market impact of purchases made pursuant to the initial acquisition program by the particular Fund. Thus, Prudential Insurance believes that, under the trading procedures established by the independent fiduciary, the trading activities will be conducted in a low profile, mechanical, non-discretionary manner and involve a number of small purchases over the course of each day, randomly-timed. Prudential Insurance further believes that such a program will allow Prudential to acquire the necessary shares of Prudential Stock for the Funds with minimum impact on the market and in a manner that is in the best interests of any employee benefit plans that participate in such Funds.

The independent fiduciary will also be required to monitor compliance with the trading program and procedures developed for the initial acquisition of Prudential Stock. During the course of any initial acquisition program, the independent fiduciary will be required to review the activities weekly to determine compliance with the trading procedures and notify Prudential should any non-compliance be detected. Should the trading procedures need modifications due to unforeseen events or consequences, the independent fiduciary will be required to consult with Prudential and must approve in advance any alteration of the trading procedures.

11. Subsequent to the initial acquisitions necessary to bring a Fund's holdings of Prudential Stock to their specified weightings in the index or model pursuant to the restrictions described above, all aggregate daily purchases of Prudential Stock by the Funds will not exceed on any particular day the greater of—

• 15 percent of the average daily trading volume for Prudential Stock occurring on the applicable exchange and automated trading system for the previous 5 business days, or

• 15 percent of the trading volume for Prudential Stock occurring on the applicable exchange and automated trading system on the date of the transaction, as determined by the best available information for the trades that occurred on such date.

12. Prudential Insurance represents that all transactions by the Funds involving Prudential Stock which do not occur in connection with a Buy-up of such stock by a Fund, as described above, will be either (a) entered into on a principal basis in a direct arm's length transaction with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of Prudential and is registered under the 1934 Act, and thereby subject to regulation by the SEC; (b) effected on an automated trading system (as defined in Section III(j) of the proposed exemption) operated by a broker-dealer independent of Prudential that is either registered under the 1934 Act, and thereby subject to regulation by the SEC or another applicable regulatory agency, or an automated trading system operated by a recognized U.S. securities exchange (as defined in Section III (k)) which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (c) through a recognized U.S. securities exchange (as defined in Section III(k)),

[13] These instances are referred to herein as a ''Buy-up.'' Prudential Insurance believes that acquisitions of Prudential by an Index or Model-Driven Fund in a ''Buy-up'' will occur within 10 business days from the date of the event which causes the particular Fund to acquire Prudential. Prudential does not believe that the amounts of Prudential acquired by a Fund in a ''Buy-up'' will be significant. In this regard, the Department notes that the conditions required herein are designed to minimize the market impact of purchases made by the Funds in any ''Buy-up'' of Prudential.

[14] SEC Rule 10b–18 provides a ''safe harbor'' for issuers of securities from section 9(a)(2) of the 1934 Act and SEC Rule 10b–5 (which generally prohibits persons from manipulating the price of a security and engaging in fraud in connection with the purchase or sale of a security).

so long as the broker is acting on an agency basis.[15]

13. Prudential Insurance represents that all acquisitions, holdings, and dispositions of Prudential Stock by Index or Model-Driven Funds maintained by Prudential will also not involve purchases from or sales to Prudential (including officers, directors or employees thereof), or any party in interest that is a fiduciary with discretion to invest assets into the Fund (unless the transaction by the Fund with such party in interest is otherwise subject to an exemption).[16]

14. Prudential Insurance represents that no more than 5 percent of the total outstanding shares of Prudential will be held in the aggregate by the Index or Model-Driven Funds managed by Prudential. In addition, for purposes of acquisitions, holdings and dispositions of Prudential Stock by the Funds, Prudential Insurance states that such stock will not constitute more than 5 percent of the value of any independent third party index on which investments of an Index or Model-Driven Fund are based. Therefore, Prudential Insurance requests that the proposed exemption allow Prudential to design a passive investment strategy for an Index or Model-Driven Fund which seeks to track any index that contains Prudential Stock, or which transforms such an index in a fashion prescribed by the model, as long as the Prudential Stock does not constitute more than 5 percent of the index.

With respect to an index's specified composition of particular stocks in its portfolio, Prudential Insurance states that future Funds may track an index where the selection of a particular stock by the index and the amount of stock to be included in the index is not based on the market capitalization of the corporation issuing such stock. Therefore, since an independent organization may choose to create an index where there are other index weightings for stocks composing the index, the Prudential Insurance requests that the exemption allow for Prudential Stock to be acquired by a Fund in the amounts which are specified by the particular index, subject to the other restrictions imposed under this proposed exemption. In addition, Prudential Insurance represents that, in all instances, the acquisition, holding or disposition of Prudential Stock by a Fund is for the sole purpose of maintaining quantitative conformity with the relevant index upon which the Fund is based, or in the case of a Model-Driven Fund, a modified version of such an index as created by a computer model based on prescribed objective criteria and third party data.

15. Prudential Insurance will appoint an independent fiduciary to direct the voting of any Prudential Stock held by the Funds. The independent fiduciary will be a firm specializing in corporate governance issues and proxy voting on behalf of public and private pension funds. The independent fiduciary will be required to develop and follow standard guidelines and procedures for the voting of proxies by institutional fiduciaries.

Prudential Insurance will provide the independent fiduciary with all necessary information regarding the Funds that hold Prudential Stock on the record date for Prudential's shareholder meetings, and all proxy and consent materials with respect to Prudential Stock. The independent fiduciary will maintain records with respect to its activities as an independent fiduciary on behalf of the Funds, including the number of shares of Prudential Stock voted, the manner in which such shares were voted, and the rationale for the vote if the vote was not consistent with the independent fiduciary's procedures and current voting guidelines in effect at the time of the vote. The independent fiduciary will supply Prudential with the information after each shareholder meeting. The independent fiduciary will be required to acknowledge that it will be acting as a fiduciary with respect to the plans which invest in the Funds which own Prudential Stock, when voting such stock.

16. In summary, it is represented that the subject transactions have met or will meet the statutory criteria for an exemption under section 408(a) of the Act because:

(a) Each Index or Model-Driven Fund involved has been based or will be based on an index, as defined in Section III(c) above;

(b) The acquisition, holding and disposition of Prudential Stock by the Index or Model-Driven Fund has been or will be for the sole purpose of maintaining strict conformity with the relevant index upon which an Index or Model-Driven Fund is based, and will not involve an agreement, arrangement or understanding regarding the design or operation of the Fund acquiring Prudential Stock which is intended to benefit Prudential or any party in which Prudential may have an interest;

(c) Whenever Prudential Stock is initially added to an index on which a Fund is based, or initially added to the portfolio of a Fund (i.e., a Buy-up), all acquisitions of Prudential Stock necessary to bring the Fund's holdings of such stock either to its capitalization-weighted or other specified composition in the relevant index, as determined by the independent organization maintaining such index, or its correct weighting as determined by the computer model which has been used to transform the index, has been or will be restricted by conditions which are designed to prevent possible market price manipulations;

(d) Subsequent to acquisitions necessary to bring a Fund's holdings of Prudential Stock to its specified weighting in the index or model, pursuant to the restrictions above, all aggregate daily purchases of Prudential Stock by the Funds have not exceeded nor will exceed the greater of (i) 15 percent of the average daily trading volume for the Prudential Stock occurring on the applicable exchange and automated trading system for the previous 5 business days, or (ii) 15 percent of the trading volume for Prudential Stock occurring on the applicable exchange and automated trading system on the date of the transaction, as determined by the best available information for the trades that occurred on such date;

(e) All transactions in Prudential Stock, other than acquisitions of such stock in a Buy-up described above, have been or will be either (i) entered into on a principal basis with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of Prudential and is registered under the 1934 Act, and thereby subject to regulation by the SEC, (ii) effected on an automated trading system operated by a broker-dealer independent of Prudential that is subject to regulation by either the SEC or another applicable regulatory authority, or an automated trading system operated by a recognized U.S. securities exchange which, in either case, provides a mechanism for

[15] The Department notes that no relief is being provided herein for purchases and sales of securities between a Fund and a broker-dealer acting as principal, which may be considered prohibited transactions as a result of such broker-dealer being a party in interest under section 3(14) of the Act, with respect to any plans that are investors in the Fund. However, such transactions may be covered by one or more of the Department's existing class exemptions. For example, Prohibited Transaction Class Exemption 84–14 (49 FR 9497, March 13, 1984) permits, under certain conditions, parties in interest to engage in various transactions with plans whose assets are invested in an investment fund managed by a ''qualified professional asset manager'' (i.e., a QPAM) who is independent of the parties in interest (with certain limited exceptions) and meets specified financial standards.

[16] In this regard, the Department is providing no opinion herein on whether such principal transactions would be covered by any existing exemption.

customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) effected through a recognized U.S. securities exchange (as described herein) so long as the broker is acting on an agency basis;

(f) No transactions by a Fund has involved or will involve purchases from or sales to Prudential (including officers, directors or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption);

(g) No more than 5 percent of the total amount of Prudential Stock that is issued and outstanding at any time has been held or will be held, in the aggregate, by Index or Model-Driven Funds managed by Prudential;

(h) Prudential Stock has not constituted nor will constitute more than 5 percent of the value of any independent third party index on which investments of an Index or Model-Driven Fund are based;

(i) A plan fiduciary independent of Prudential has authorized or will authorize the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds Prudential Stock, pursuant to the procedures described herein; and

(j) A fiduciary independent of Prudential will direct the voting of Prudential Stock held by an Index or Model-Driven Fund on any matter in which shareholders of Prudential are required or permitted to vote.

Notice to Interested Persons

Notice of the proposed exemption will be mailed by first-class mail to interested persons, including the appropriate fiduciaries of employee benefit plans currently invested in the Index and/or Model-Driven Funds that may acquire and hold Prudential Stock. The notice will include a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required under 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment and/or to request a hearing with respect to the proposed exemption. All notices will be sent to interested persons within 30 days of the publication of the proposed exemption in the **Federal Register**. Any written comments and/or requests for a hearing are due within 60 days after the date of publication of the pendency notice in the **Federal Register**.

In addition, Prudential will provide, upon request, a copy of the proposed exemption and, if granted, a copy of the final exemption to all ERISA-covered plans which invest in any Index or Model-Driven Fund containing Prudential Stock in their respective portfolios after the date the final exemption is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 693–8556. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 15th day of January, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits, Administration, U.S. Department of Labor.

[FR Doc. 02–1367 Filed 1–17–02; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application Number D–11041]

Notice of Proposed Individual Exemption To Modify Prohibited Transaction Exemption 90–23 (PTE 90–23); Prohibited Transaction Exemption 90–31 (PTE 90–31) and Prohibited Transaction Exemption 90–33 (PTE 90–33) Involving J.P. Morgan Chase & Company and Its Affiliates (the Applicants) Located in New York, NY

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed individual exemption to modify PTE 90–23; PTE 90–31; and PTE 90–33 (collectively, the Exemptions).

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed individual administrative exemption which, if granted, would amend: PTE 90–23 (55 FR 20545, May 17, 1990), an exemption which was granted to J.P. Morgan Securities, Inc.; PTE 90–31 (55 FR 23144, June 6, 1990), an exemption which was granted to Chase Manhattan Bank; and PTE 90–33 (55 FR 23151, June 6, 1990), an exemption which was granted to Chemical Banking Corporation.[1] The Exemptions provide relief for the operation of certain asset pool investment trusts and the acquisition, holding and disposition by employee benefit plans (the Plans) of certificates or debt instruments that are issued by such trusts with respect to which one of the Applicants is the lead underwriter or a co-managing underwriter. If granted, this proposed amendment would permit the trustee of the trust to be an affiliate of the underwriter. If adopted, the proposed amendment would affect the participants and beneficiaries of the Plans participating

[1] The notice of proposed exemption for PTE 90–23 was published on February 20, 1990 at 55 FR 5906; the notice of proposed exemption for PTE 90–31 was published on February 21, 1990 at 55 FR 6074; and the notice of proposed exemption for PTE 90–33 was published on February 21, 1990 at 55 FR 6082.

in such transactions and the fiduciaries with respect to such Plans.

DATES: Written comments and requests for a public hearing should be received by the Department on or before 45 days from the date of the publication in the **Federal Register** of this notice of proposed amendment.

ADDRESSES: All written comments and requests for a public hearing (preferably three copies) should be addressed to the U.S. Department of Labor, Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, 200 Constitution Avenue, NW., Washington, DC 20210, (attention: Application No. D–11041; Proposal to Amend Certain Individual Exemptions for J.P. Morgan Chase & Co. and its Affiliates). Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *''moffittb@pwba.dol.gov''* or by FAX to (202) 219–0204 by the end of the scheduled comment period. The application pertaining to the exemptive relief proposed herein (Application No. D–11041) and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 693–8546. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed amendment that would modify the Exemptions. The Exemptions provide relief from certain prohibited transaction restrictions of sections 406 and 407(a) of the Employee Retirement Income Security Act of 1974 (the Act), as amended, and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code. Specifically, the Exemptions are three of the individual exemptions commonly known as the ''underwriter exemptions,'' all of which are essentially identical to the original underwriter exemptions issued by the Department in 1989 to permit Plans to invest in pass-through certificates representing undivided interests in certain categories of investment trusts, if certain conditions are met. All of the underwriter exemptions, including the Exemptions, were subsequently amended by Prohibited Transaction Exemption 97–34 (PTE 97–34, 62 FR 39021, July 21, 1997) and by Prohibited Transaction Exemption 2000–58 (PTE 2000–58, 65 FR 67765, November 13, 2000).

The proposed amendment has been requested in an application filed on behalf of J.P. Morgan Chase & Company and its Affiliates, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this proposed exemption is issued solely by the Department.

In their current form, the Exemptions permit employee benefit plans to purchase certain securities representing interests in asset- or mortgage-backed investment pools for which one of the Applicants is the lead underwriter or a co-managing underwriter. The securities generally take the form of certificates issued by a trust (the Trust). The Exemptions permit transactions involving a Trust (including the servicing, management and operation of the Trust) and certificates evidencing interests therein (including the sale, exchange or transfer of certificates in the initial issuance of the certificates or in the secondary market for such certificates). The entities covered include the sponsor of the Trust as well as the underwriter for the certificates issued by the Trust when the sponsor, servicer, trustee or insurer of the Trust, the underwriter of the certificates issued by the Trust, or an obligor of the receivables contained in the Trust, is a party in interest with respect to an investing plan.[2]

One of the requirements of the Exemptions (as amended by PTE 2000–58) is that the trustee of the Trust not be an affiliate of any member of what the Exemptions define as the ''Restricted Group''; i.e., in addition to the trustee, each underwriter, each servicer, each insurer, the sponsor, any more than 5% obligor with respect to receivables included in the Trust, each counterparty in an Eligible Swap Agreement, and any affiliate of such persons. This restriction is common to all of the underwriter exemptions.

The Applicants represent that, while the provision requiring an independent trustee was not a major issue in 1989, developments in the banking industry over the past twelve years have caused the requirement to become onerous and disadvantageous to investors, including Plans. As the banking industry has consolidated, the number of banks participating in the corporate trust business has shrunk dramatically. This trend has been due to a number of factors which have made participation in the trust business less attractive to banks. On the income side, these factors include competitive pressure on pricing corporate trust services and loss of transactional fees and traditional float income due to the growth in book entry securities. On the expense side, the cost of entry into the corporate trust business and the cost of remaining in the business have increased dramatically. This increase includes both technological and personnel costs. The cost increase is particularly acute in the structured finance sector of the corporate trust business, where both systems and staff need to have the capability of supporting increasingly complex transactions.The Applicants represent that the changes in the securities underwriting business are equally significant. These include the increased participation by banks and bank affiliates, and consolidation within the industry. As of the calendar year 2000, four of the top ten underwriters for structured finance transactions had affiliated corporate trust businesses. Eight of the top ten trustees, a group with a combined market share of over 76 percent in 2000, were affiliates of underwriters active in the structured finance sector. The trend in the market to broadly syndicate underwriting exacerbates the problem: the underwriter exemptions, including the Exemptions, prohibit affiliation not only between the trustee and the lead underwriter, but between the trustee and any underwriter, without regard to the amount underwritten.

The Applicants state that currently most providers of corporate trust and related services in the structured finance marketplace are large banks that have the requisite staff and systems resources to efficiently serve this marketplace. Most of these same banks, particularly those that are profitable and well-capitalized, have expanded into the securities underwriting business, including underwriting of structured finance transactions. Not only will investors (including Plans) be disadvantaged if banks and their

[2] Interested persons should review the Department's regulations at 29 CFR 2510.3–101 (Definition of ''plan assets''—plan investments) for the reasons why a Plan's investment in certificates issued by a Trust may raise prohibited transaction issues with respect to parties in interest.

affiliates which underwrite securities continue to be precluded from providing trust services, but further, it is clearly not in the best interest of investors, including Plan investors, to eliminate those banks— often the most competent in the servicing of structured finance transactions—from the pool of available corporate trust providers.

A trustee in a structured finance transaction, while involved in complex calculations and reporting, typically does not perform any discretionary functions. Such a trustee operates as a stakeholder and strictly in accordance with the explicit terms of the governing agreements so that the intent of the crafters of the transaction may be carried out. These functions are essentially ministerial, such as establishing accounts, receiving funds, making payments and issuing reports, all in a predetermined manner. Unlike trustees for corporate or municipal debt, there is no need for trustees in structured finance transactions to assume discretionary functions in order to protect the interests of debt holders in the event of default or bankruptcy, because structured finance entities are bankruptcy remote vehicles. There is no ''issuer'' outside the structured transaction to pursue for repayment of the debt. The trustee's role is defined by a contract, which provides an explicit structure spelling out the action to be taken upon the happening of specified events. There is no opportunity or incentive for the trustee in a structured finance transaction, by reason of its affiliation with an underwriter or otherwise, to take or not to take actions which might benefit the underwriter to the detriment of Plan investors. The Applicants represent that the role of the underwriter in a structured financing involves, among other things, assisting the sponsor or originator in structuring the contemplated transaction. The trustee becomes involved later in the process, after the principal parties have agreed on the essential components, to review the proposed transaction from the limited standpoints of technical workability and potential trustee liability. After the issuance of securities to the public, in a structured financing, while the trustee performs its role as trustee over the life of the transaction, the underwriter has no further role in the transaction. The trustee has no opportunity to take or not take action, or to use information in ways which might advantage the underwriter to the detriment of Plan investors. In fact, from the point of view of enhancing its reputation, the underwriter clearly wants the transaction to succeed as it was structured, which includes the trustee performing in a manner independent of the underwriter. Accordingly, the Applicants have requested this modification to the Exemptions to permit the trustee of the Trust to be an affiliate of the underwriter.

In summary, the Applicants represent that the proposed modification of the Exemptions satisfies the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (a) The amendment will benefit Plans by ensuring that the most capable corporate trustees will continue in the corporate trust business; (b) the amendment will not be harmful to Plans because the affiliation of the trustee to an underwriter will not cause any benefit to the underwriter to the detriment of any Plan investor; and (c) the safeguards provided by the Exemptions will not otherwise be altered.

Notice to Interested Persons

The Applicants believe that the market for the securities described in their application is so broad, and the number of potentially affected Plans is so large, that notice by mailing is impracticable and inadequate. Thus, publication of this Notice in the **Federal Register** is the only practical means of providing notice to interested persons. Written comments and hearing requests are due within 45 days of the publication of the Notice in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption can be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) This proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) This proposed exemption, if granted, is subject to the express condition that the Summary of Facts and Representations set forth in the notices of proposed exemption relating to the Exemptions, as modified by this Notice, accurately describe, where relevant, the material terms of the transactions to be consummated pursuant to this exemption.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time frame set forth above, after the publication of this proposed exemption in the **Federal Register**. All comments will be made a part of the record. Comments received will be available for public inspection with the referenced applications at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, subpart B (55 FR 32836, August 10, 1990), the Department proposes to modify PTE 90–23, PTE 90–31 and PTE 90–33, each as subsequently amended by PTE 97–34 and PTE 2000–58, as set forth below:

The first sentence of section II.A.(4) of the Exemptions is amended to read: ''The trustee is not an Affiliate of any member of the Restricted Group, other than an Underwriter.''

The availability of this proposed exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of

the material facts or representations described in the applications change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant the Exemptions, refer to the proposed exemptions and the grant notices that are cited above.

Signed at Washington, DC, this 15th day of January, 2002.

Ivan L. Strasfeld,

Director of Exemption, Determinations, Pension and Welfare Benefits, Administration, U.S. Department of Labor.

[FR Doc. 02–1364 Filed 1–17–02; 8:45 am]

BILLING CODE 4510–29–P

NUCLEAR REGULATORY COMMISSION

DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS

BUREAU OF LAND MANAGEMENT

DEPARTMENT OF TRANSPORTATION

SURFACE TRANSPORTATION BOARD

[Docket No. 72–22]

Notice of Availability of Final Environmental Impact Statement for the Proposed Private Fuel Storage, L.L.C.; Independent Spent Fuel Storage Installation on the Reservation of the Skull Valley Band of Goshute Indians and the Related Transportation Facility in Tooele County, UT

AGENCY: Nuclear Regulatory Commission; Bureau of Indian Affairs, Interior; Bureau of Land Management, Interior; Surface Transportation Board, Transportation.

ACTION: Notice of availability of Final Environmental Impact Statement.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC), in cooperation with the U.S. Department of Interior's Bureau of Indian Affairs (BIA) and Bureau of Land Management (BLM), and the Surface Transportation Board (STB), has published a Final Environmental Impact Statement (FEIS), ''Final Environmental Impact Statement for the Construction and Operation of an Independent Spent Fuel Storage Installation on the Reservation of the Skull Valley Band of Goshute Indians and the Related Transportation Facility in Tooele County, Utah'' NUREG–1714, January 2002, regarding the proposal of Private Fuel Storage, L.L.C. (PFS) to construct and operate an independent spent fuel storage installation (ISFSI) on the Reservation of the Skull Valley Band of Goshute Indians and construct and operate a new rail line and rail siding.

The Reservation is located approximately 44 km (27 miles) west-southwest of Tooele, Utah. PFS intends to transport spent nuclear fuel (SNF) by rail from commercial power reactor sites to an existing rail line north of Skull Valley. To transport the SNF from the existing rail line to the proposed facility, PFS proposes the construction and operation of a new rail siding and rail line on public land administered by BLM. This FEIS discusses the purpose and need for the PFS proposal and describes the proposed action and its reasonable alternatives, including the No-action Alternative. The FEIS also discusses the environment potentially affected by the proposal, presents and compares the potential environmental impacts resulting from the proposed action and its alternatives, and identifies mitigation measures that could eliminate or lessen the potential environmental impacts.

The PFS proposal requires approval from four federal agencies: NRC, BIA, BLM, and STB. The environmental issues that each of these agencies must evaluate pursuant to the National Environmental Policy Act of 1969 (NEPA) are interrelated. Therefore, the agencies have cooperated in the preparation of this FEIS, and this document serves to satisfy each agency's statutory responsibilities under NEPA.

Based on the evaluation in this FEIS, the NRC, BIA, BLM, and STB environmental review staffs have concluded that (1) the measures required by Federal, State, and Tribal permitting authorities other than the Cooperating Agencies and (2) the mitigation measures that the Cooperating Agencies propose be required would reduce any short-or long-term adverse environmental impacts associated with the proposed action (i.e., construction and operation of the proposed ISFSI and rail line) to acceptable levels. This FEIS reflects the final analysis of the environmental impacts of the PFS proposal and its alternatives including the consideration of public comments received by the NRC. In addition, the FEIS provides summaries of the substantive public comments received within the time allotted for public comment on the draft EIS, and responses, as appropriate, to such comments.

ADDRESSES: The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The FEIS and its appendices may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*The FEIS is also available for inspection at the Commission's Public Document Room, U.S. NRC's Headquarters Building, 11555 Rockville Pike (first floor), Rockville, Maryland. Upon written request and to the extent supplies are available, a single copy of the FEIS can be obtained for a fee by writing to the Office of the Chief Information Officer, Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by E-mail (*DISTRIBUTION@nrc.gov*); or by fax at (301) 415–2289.

FOR FURTHER INFORMATION CONTACT: Chester Poslusny Jr., Sr. Project Manager, Licensing and Inspection Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 415–1341, or E-mail (*CXP1@nrc.gov*).

SUPPLEMENTARY INFORMATION: The proposed action involves the construction and operation of a proposed SNF storage facility at a site (known as Site A) located on the Reservation, and transporting SNF from the existing railroad to the site by constructing a new rail siding and rail line to connect the proposed facility to the existing main line in Utah. This FEIS has been prepared in compliance with NEPA, NRC regulations for implementing NEPA (10 CFR Part 51), guidance provided by the Council on Environmental Quality (CEQ) regulations implementing the procedural provisions of NEPA (40 CFR Parts 1500–1508), STB regulations for implementing NEPA (49 CFR Part 1105), and BLM and BIA policy, procedures, and guidance documents.

Federal agencies' actions are considered in this FEIS. NRC's action is to grant or deny a 20-year license to PFS to receive, transfer, and possess SNF on the Reservation. BIA's action is to either approve or disapprove a 25-year lease between PFS and the Skull Valley Band for use of Reservation land to construct

and operate the proposed facility. If granted, both the NRC license and the BIA lease could be renewed. BLM's action is to either grant one or deny both requests for rights-of-way through public land administered by the BLM for transporting SNF from the existing rail line to the proposed facility site. Approval of the proposed action would require amending the Pony Express Resource Management Plan. STB's action is to grant or deny PFS's application for a license to construct and operate a new rail line to the proposed facility site.

This FEIS sets forth not only the Cooperating Agencies' evaluation of the proposed action (Alternative 1) described above, but also their evaluation of the environmental impacts of the alternative actions. Alternatives involving the Skull Valley site include an alternative site location on the Reservation (known as Site B), and an alternative transportation method (i.e., heavy-haul vehicles). Consideration of an alternative site location on the Reservation and an alternative transportation method resulted in evaluating the following alternatives:

Alternative 2—the construction and operation of the proposed facility at Site B on the Reservation with a rail siding and a rail line similar to that described above.

Alternative 3—construction and operation of the proposed facility at Site A, construction and operation of a new Intermodal Transfer Facility (ITF) near Timpie, Utah, and use of heavy-haul vehicles to transport SNF to the Reservation.

Alternative 4—the construction and operation of the proposed facility at Site B with the same ITF and SNF transport described in Alternative 3 above.

Additionally, the FEIS compares the construction and operation of an SNF storage facility in Wyoming in lieu of the Skull Valley site. This comparison was made to determine if an identified alternative site is obviously superior to the proposed site. Lastly, the FEIS sets forth the Cooperating Agencies' evaluation of the No-Action Alternative, i.e, not to construct and operate the proposed facility in Skull Valley. Under the No-Action Alternative, the potential impacts of constructing and operating the proposed facility and associated SNF transportation facilities in Skull Valley would not occur.

As set forth in the FEIS, the Cooperating Agencies assessed the impacts of the proposed action and its alternatives on minerals, soils, water resources, air quality, ecological resources, socioeconomics and community resources, cultural resources, human health impact, noise, scenic qualities, recreation, and environmental justice. Additionally, the NRC staff performed an analysis and comparison of the costs and benefits of the proposed action.

Based on the evaluation in the FEIS, the NRC staff's preferred alternative is the proposed action, with implementation of the mitigation measures that the Cooperating Agencies propose be required. The BIA lease will not be approved or disapproved unless the NRC issues a license to PFS, and commitments to the mitigation measures are made by PFS. BIA did not indicate a preferred alternative in the DEIS, however in the FEIS, BIA has chosen the proposed action, based on consideration of environmental impacts and mitigation measures identified in the FEIS. A BLM decision to grant a right-of-way to PFS would be dependent upon the decisions made by the NRC and BIA. If the NRC issues a license to PFS for the proposed facility and BIA approves the lease, then BLM's preferred alternative would be to amend the Pony Express Resource Management Plan and issue a right-of-way for the new rail siding and rail line. Absent such findings by the NRC and BIA, BLM would not grant either of PFS' rights-of-way requests. BLM would require resolution of a planning restriction imposed by Section 2815 of the National Defense Authorization Act for Fiscal Year 2000, and completion of the plan amendment process in accordance with 43 CFR part 1600, prior to issuance of the right-of-way grant. Based on the information and analysis to date, the STB environmental review staff has concluded that the proposed project, with the implementation of the mitigation measures that the Cooperating Agencies propose be required, would not result in significant adverse impacts to the environment and that construction and operation of the proposed rail line is the environmentally preferred alternative.

Dated at Rockville, Maryland, this 11th day of January 2002.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

Dated at Washington, D.C., this 8th day of January 2002.

For the Surface Transportation Board.

Victoria J. Rutson,

Chief, Section of Environmental Analysis.

Dated at Salt Lake City, Utah, this 9th day of January 2002.

For the Bureau of Land Management.

Glenn A. Carpenter,

Field Office Manager, Salt Lake Field Office.

Dated at Phoenix, Arizona, this 9th day of January 2002.

For the Bureau of Indian Affairs.

Barry W. Welch,

Acting Director, Western Regional Office.

[FR Doc. 02–1351 Filed 1–17–02; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of an Expiring Information Collection: SF 3102

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for an expiring collection. SF 3102, Designation of Beneficiary, is used by employees and annuitants covered under the Federal Employees Retirement System to designate a beneficiary to receive any lump sum due in the event of his/her death.

Approximately 1,136 SF 3102 forms are completed annually. Each form takes approximately 15 minutes to complete. The annual estimated burden is 284 hours.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or e-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before March 19, 2002.

ADDRESSES: Send or deliver comments to—John C. Crawford, Chief, FERS Division, Retirement and Insurance Service, U.S. Office of Personnel

Management, 1900 E Street, NW, Room 3313, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Team Leader, Forms Analysis & Design, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–1321 Filed 1–17–02; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of an Expiring Information Collection: SF 2809

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of an expiring information collection. SF 2809, Employee Health Benefits Election Form, is used by Federal employees, certain separated former Federal employees, and former dependents of Federal employees, to enroll for health insurance coverage under the Federal Employees Health Benefits (FEHB) Program. Certain former spouses who are eligible for enrollment under the Spouse Equity Act of 1984 (Pub. L. 98–615), and former employees and former dependents who are eligible for enrollment under the Temporary Continuation of Coverage (TCC) provisions of FEHB law (5 U.S.C. 8905a) also use this form.

Approximately 9,000 SF 2809 forms are completed annually. Each form takes approximately 30 minutes to complete. The annual estimated burden is 4,500 hours.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or e-mail to *mbtoomey@opm.gov*. Please be sure to include a mailing address with your request.

DATES: Comments on this proposal should be received on or before March 19, 2002.

ADDRESSES: Send or deliver comments to—Abby L. Block, Assistant Director, Office of Insurance Programs, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3400, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Team Leader, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–1323 Filed 1–17–02; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of an Expiring Information Collection: SF 2809–1

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for review of an expiring collection. SF 2809–1, Annuitant/OWCP Health Benefits Election Form, is used by annuitants of Federal retirement systems other than the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS), including the Foreign Service Retirement System and the Office of Workers' Compensation Programs (OWCP), and certain former dependents of these individuals. These former dependents include certain former spouses who are eligible for enrollment under the Spouse Equity Act of 1984 (Pub. L. 98–615), and certain former dependents who are eligible for enrollment under the Temporary Continuation of Coverage (TCC) provisions of FEHB law (5 U.S.C. 8905a).

Approximately 9,000 SF 2809–1 forms are completed annually. Each form takes approximately 30 minutes to complete. The annual estimated burden will be 4,500 hours.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or e-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before March 19, 2002.

ADDRESSES: Send or deliver comments to—Abby L. Block, Assistant Director, Office of Insurance Programs, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3400, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Team Leader, Forms Analysis & Design, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–1325 Filed 1–17–02; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 38–45

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised information collection. RI 38–45, We Need the Social Security Number of the

Person Named Below, is used by the Civil Service Retirement System and the Federal Employees Retirement System to identify the records of individuals with similar or the same names. It is also needed to report payments to the Internal Revenue Service.

Comments are particularly invited on:

—Whether this collection of information is necessary for the proper performance of functions of OPM, and whether it will have practical utility;

—Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

—Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

Approximately 3,000 RI 38–45 forms are completed annually. Each form requires approximately 5 minutes to complete. The annual estimated burden is 250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251or E-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before March 19, 2002.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349A, Washington, DC 20415–3540.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Team Leader, Forms Analysis and Design, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–1326 Filed 1–17–02; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for the Reinstatement of a Revised Information Collection: OPM Online Form 1417

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management is submitting to the Office of Management and Budget a request for reinstatement of a revised information collection. OPM Online Form 1417, CFC Online Results Report, is used to record Combined Federal Campaign pledges from local Principle Combined Fund Organizations (PCFOs).

We estimate 360 OPM Online Form 1417's will be completed annually. Each form takes approximately 30 minutes to complete. The annual estimated burden is 180 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on 202/606–8358, Fax 202/418–3251 or e-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before February 19, 2002.

ADDRESSES: Send or deliver comments to:

Elizabeth Barber, Office of CFC Operations, U.S. Office of Personnel Management, 1900 E Street, NW, Room 5450, Washington, DC 20415, (202) 606–2564

and

Joseph Lackey, OPM Desk Manager, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building NW, Rm. 10235, Washington, DC 20503.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–1322 Filed 1–17–02; 8:45 am]

BILLING CODE 6325–46–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Pam Shivery, Director, Washington Service Center, Employment Service (202) 606–1015.

SUPPLEMENTARY INFORMATION: Individual authorities established or revoked under Schedule C between November 1, 2001, and November 30, 2001, appear in the listing below. A consolidated listing of all authorities as of June 30 is published each year.

Schedule C

Commission on Civil Rights

Special Assistant to the Staff Director. Effective November 29, 2001.

Department of Agriculture

Confidential Assistant to the Chief Financial Officer. Effective November 13, 2001.

Confidential Assistant to the Administrator, Rural Business-Cooperative Service. Effective November 19, 2001.

Confidential Assistant to the Administrator, Rural Business-Cooperative Service. Effective November 20, 2001.

Special Assistant to the Under Secretary for Natural Resources and Environment. Effective November 27, 2001.

Department of Commerce

Legislative Affairs Specialist to the Director of Legislative Affairs. Effective November 1, 2001.

Senior Advisor to the Assistant Secretary for Economic Development. Effective November 1, 2001.

Special Assistant to the Director, Office of Policy and Strategic Planning. Effective November 1, 2001.

Confidential Assistant to the Assistant Secretary for Market Access and Compliance. Effective November 1, 2001.

Director of Congressional Affairs to the Under Secretary for International Trade. Effective November 6, 2001.

Chief Counsel to the Assistant Secretary for Economic Development. Effective November 15, 2001.

Public Affairs Specialist to the Assistant Secretary for Communications and Information. Effective November 15, 2001.

Public Affairs Specialist to the Assistant Secretary for Economic Development. Effective November 19, 2001.

Senior Advisor to the Assistant Secretary for Import Administration. Effective November 19, 2001.

Deputy Press Secretary to the Director, Office of Public Affairs. Effective November 19, 2001.

Senior Advisor to the Under Secretary for Technology, International Trade Administration. Effective November 26, 2001.

Public Affairs Specialist to the Press Secretary. Effective November 28, 2001.

Special Assistant to the Assistant Secretary for Market Access and

Compliance. Effective November 28, 2001.

Director, Intergovernmental Affairs to the Deputy Assistant Secretary for Program Research and Evaluation. Effective November 29, 2001.

Director, Office of White House Liaison to the Chief of Staff. Effective November 30, 2001.

Department of Defense

Special Assistant to the Deputy Under Secretary of Defense (Logistics and Material Readiness). Effective November 1, 2001.

Special Assistant to the Assistant Secretary of Defense (Legislative Affairs). Effective November 20, 2001.

Personal and Confidential Assistant to the Under Secretary of Defense (Acquisition, Technology and Logistics). Effective November 20, 2001.

Staff Specialist to the Deputy Under Secretary of Defense (Logistics and Material Readiness). Effective November 26, 2001.

Department of Education

Special Assistant to the Deputy Assistant Secretary for Regional Services. Effective November 6, 2001.

Confidential Assistant to the Director, Scheduling and Briefing Staff. Effective November 6, 2001.

Confidential Assistant to the Senior Advisor to the Secretary of Education. Effective November 6, 2001.

Special Assistant to the Chief of Staff. Effective November 6, 2001.

Confidential Assistant to the Chief of Staff, Office of the Deputy Secretary. Effective November 7, 2001.

Confidential Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective November 7, 2001.

Special Assistant to the Deputy Assistant Secretary for Regional Services. Effective November 13, 2001.

Deputy Director to the Director, Office of Bilingual Education and Minority Language Affairs. Effective November 21, 2001.

Press Secretary to the Director, Office of Public Affairs. Effective November 21, 2001.

Confidential Assistant to the Director, Scheduling and Briefing Staff. Effective November 21, 2001.

Special Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective November 21, 2001.

Special Assistant to the Director, Scheduling and Briefing Staff. Effective November 21, 2001.

Special Assistant to the Director, Office of Public Affairs. Effective November 21, 2001.

Confidential Assistant to the Director, Scheduling and Briefing Staff. Effective November 21, 2001.

Deputy Director to the Chief of Staff. Effective November 29, 2001.

Department of Energy

Special Assistant to the Principal Deputy Assistant Secretary, Office of Congressional and Intergovernmental Affairs. Effective November 5, 2001.

Legislative Counsel to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective November 19, 2001.

Senior Advisor, Legislative Affairs to the Assistant Secretary for Energy Efficiency and Renewable Energy. Effective November 20, 2001.

Deputy Director of Scheduling to the Director of Scheduling and Advance. Effective November 20, 2001.

Trip Coordinator to the Director, Office of Scheduling and Advance. Effective November 20, 2001.

Staff Assistant to the Director, Office of Scheduling and Advance. Effective November 20, 2001.

Director, Press Office to the Director, Office of Public Affairs. Effective November 20, 2001.

Staff Assistant to the Assistant Secretary for International Affairs. Effective November 28, 2001.

Department of Health and Human Services

Special Assistant to the Administrator, Human Resources and Services Administration. Effective November 1, 2001.

Congressional Liaision Specialist to the Deputy Assistant Secretary for Legislation, Office of Congressional Liaison. Effective November 1, 2001.

Executive Director, President's Advisory Commission and White House Initiative on Asian Americans and Pacific Islanders to the Assistant Secretary for Health. Effective November 6, 2001.

Confidential Assistant to the Chief Operating Officer and Deputy Administrator. Effective November 7, 2001.

Special Assistant to the Administrator, Centers for Medicare and Medicaid Services. Effective November 15, 2001.

Special Assistant to the Deputy Assistant Secretary for Legislation. Effective November 27, 2001.

Special Assistant to the Assistant Secretary for Aging. Effective November 27, 2001.

Special Assistant for International and Immigration Issues to the Assistant Secretary, Administration for Children and Families. Effective November 27, 2001.

Secretary's Regional Representative-Seattle, Washington, to the Director, Office of the Intergovernmental Affairs. Effective November 27, 2001.

Department of Housing and Urban Development

Staff Assistant to the Assistant Secretary for Housing. Effective November 15, 2001.

Deputy Assistant Secretary for International Affairs to the Assistant Secretary for Policy Development and Research. Effective November 15, 2001.

Staff Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs. Effective November 16, 2001.

Special Assistant to the Assistant Secretary for Community Planning and Development. Effective November 16, 2001.

Staff Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs. Effective November 16, 2001.

Special Assistant to the Deputy Assistant Secretary for Intergovernmental Affairs. Effective November 16, 2001.

Special Assistant to the Assistant Secretary for Fair Housing and Equal Opportunity. Effective November 19, 2001.

Department of the Interior

Associate Director—House to the Director, Office of Congressional and Legislative Affairs. Effective November 5, 2001.

Assistant Director, Legislative and Congressional Affairs to the Director, National Park Service. Effective November 29, 2001.

Department of Justice

Confidential Assistant to the Director, Office of Intergovernmental Affairs. Effective November 6, 2001.

Special Assistant to the Assistant Attorney General, Office of Justice Programs. Effective November 6, 2001.

Counsel to the Assistant Attorney General, Criminal Division. Effective November 8, 2001.

Counsel to the Assistant Attorney General, Civil Rights Division. Effective November 15, 2001.

Counsel to the Assistant Attorney General, Antitrust Division. Effective November 15, 2001.

Counsel to the Assistant Attorney General, Environmental and Natural Resources Division. Effective November 20, 2001.

Counsel to the Assistant Attorney General, Civil Rights Division. Effective November 20, 2001.

Special Assistant to the Director, Community Oriented Policing Services. Effective November 21, 2001.

Special Assistant to the Assistant Attorney General, Office of Legislative Affairs. Effective November 27, 2001.

Confidential Assistant to the Assistant Attorney General, Antitrust Division. Effective November 28, 2001.

Department of Labor

Senior Legislative Officers to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective November 1, 2001.

Special Assistant to the Assistant Secretary for Occupational Safety and Health. Effective November 1, 2001.

Special Assistant to the Chief of Staff. Effective November 7, 2001.

Special Assistant to the Assistant Secretary for Mine Safety and Health. Effective November 7, 2001.

Chief Economist to the Assistant Secretary for Policy. Effective November 8, 2001.

Staff Assistant to the Director, Office of Faith Based Initiatives. Effective November 27, 2001.

Department of State

Attorney-Advisor to the Legal Advisor. Effective November 1, 2001.

Special Assistant to the Under Secretary for Economic, Business and Agricultural Affairs. Effective November 5, 2001.

Department of Transportation

Associate Director to the Assistant Secretary for Governmental Affairs. Effective November 6, 2001.

Special Assistant to the Assistant to the Secretary and Director of Public Affairs. Effective November 19, 2001.

Special Assistant to the Assistant Secretary for Governmental Affairs. Effective November 27, 2001.

Special Assistant to the Assistant Secretary for Policy. Effective November 27, 2001.

Department of the Treasury

Senior Advisor to the Assistant Secretary (Financial Markets). Effective November 8, 2001.

Special Assistant for Advance to the Director of Scheduling. Effective November 21, 2001.

Department of Veterans Affairs

Special Assistant (Assistant White House Liaison) to the Deputy Assistant Secretary for Public Affairs. Effective November 5, 2001.

Special Assistant to the Assistant Secretary for Congressional and Legislative Affairs. Effective November 20, 2001.

Export-Import Bank of the United States

Administrative Specialist to the Executive Assistant to the President and Chairman. Effective November 15, 2001.

Federal Mine Safety and Health Review Commission

Confidential Assistant to the Chairman. Effective November 1, 2001.

General Services Administration

Special Assistant to the Chief of Staff, Public Building Service. Effective November 29, 2001.

National Aeronautics and Space Administration

Staff Support Specialist to the Associate Administrator for Public Affairs. Effective November 7, 2001.

National Transportation Safety Board

Special Counsel to the Chairman. Effective November 8, 2001.

Office of Management and Budget

Legislative Assistant to the Associate Director for Legislative Affairs. Effective November 1, 2001.

Public Affairs Officer to the Associate Director for Communications. Effective November 26, 2001.

Staff Assistant to the Deputy Director. Effective November 28, 2001.

President's Commission on White House Fellowships

Special Assistant to the Executive Director. Effective November 19, 2001.

Associate Director to the Executive Director. Effective November 20, 2001.

Securities and Exchange Commission

Director, Public Affairs to the Chairman, Securities and Exchange Commission. Effective November 13, 2001.

Confidential Assistant to the Chairman. Effective November 13, 2001.

Small Business Administration

Regional Administrator, Region VIII, Denver Colorado to the Associate Administrator for Field Operations. Effective November 5, 2001.

Regional Administrator, Region II, New York, NY to the Associate Administrator for Field Operations. Effective November 5, 2001.

Regional Administrator to the Associate Administrator for Field Operations. Effective November 5, 2001.

Regional Administrator to the Associate Administrator for Field Operations. Effective November 5, 2001.

Special Assistant to the Associate Administrator for Communications and Public Liaision. Effective November 6, 2001.

Special Assistant (Scheduling) to the Administrator. Effective November 15, 2001.

Director of International Trade to the Associate Deputy Administrator for Capital Access. Effective November 15, 2001.

Special Assistant to the Associate Administrator for Women's Business Ownership. Effective November 15, 2001.

Senior Advisor to the Associate Deputy Administrator for Government Contracting and Business Development. Effective November 15, 2001.

United States Trade and Development Agency

Special Projects Officer to the Director, Trade and Development Agency. Effective November 30, 2001.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954—1958 Comp., P.218

Office of Personnel Management,

Kay Coles James,

Director.

[FR Doc. 02–1324 Filed 1–17–02; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25362; 812–12716]

CityFed Financial Corp.; Notice of Application

January 14, 2002.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of an application for an order under sections 6(c) and 6(e) of the Investment Company Act of 1940 (''Act'') for exemption from all provisions of the Act, except sections 9, 17(a) (modified as discussed in the application), 17(d) (modified as discussed in the application), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act and the rules thereunder.

Summary of Application: The requested order would exempt the applicant, CityFed Financial Corp. (''CityFed''), from certain provisions of the Act until the earlier of one year from the date the requested order is issued or such time as CityFed would no longer be required to register as an investment company under the Act. The order would extend an exemption granted until February 6, 2002.[1]

Filing Dates: The application was filed on December 7, 2001, and amended on January 14, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing.

[1] CityFed Financial Corp., Investment Company Act Release Nos. 24825 (Jan. 11, 2001) (notice) and 24851 (Feb. 6, 2001) (order).

Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 pm on February 5, 2002, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. CityFed, 4 Young's Way, P.O. Box 3126, Nantucket, MA 02584.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0634, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. no. 202–942–8090).

Applicant's Representations

1. CityFed was a savings and loan holding company that conducted its savings and loan operations through its wholly-owned subsidiary, City Federal Savings Bank (''City Federal''). During the five-year period ending December 31, 1988, City Federal was the source of substantially all of CityFed's revenues and income. As a result of substantial losses in its mortgage banking and real estate operations, City Federal was unable to meet its regulatory capital requirements. Accordingly, on December 7, 1989, the Office of Thrift Supervision (''OTS'') placed City Federal into receivership and appointed the Resolution Trust Corporation (''RTC'') as City Federal's receiver. City Federal's deposits and substantially all of its assets and liabilities were acquired by a newly created federal mutual savings bank, City Savings, F.S.B. (''City Savings''). The OTS appointed the RTC as receiver of City Savings.

2. Once City Federal was placed into receivership, CityFed no longer conducted savings and loan operations through any subsidiary. Thus, since December 8, 1989, almost all of CityFed's assets consisted of cash that has been invested in (a) money market instruments with a maturity of one year or less; and (b) Money market mutual funds.

3. On June 2, 1994, the OTS issued a Notice of Charges (''OTS Action'') against CityFed and certain current or former directors and, in some cases, officers of CityFed and City Federal (''Individual Respondents''). The OTS Action sought restitution from and a civil money penalty against both CityFed and the Individual Respondents. Also on June 2, 1994, the OTS issued a Temporary Order to Cease and Desist (''Temporary Order'') against CityFed. The Temporary Order sought to freeze CityFed's assets by placing them in various respects under the control of the OTS. On October 26, 1994, CityFed and the OTS entered into an escrow agreement with CoreStates Bank, N.A. (now First Union National Bank (''First Union'')) (''Escrow Agreement'') pursuant to which CityFed transferred substantially all of its assets to First Union for deposit into an escrow account. The Escrow Agreement provided CityFed with $15,000 per month for operating expenses and allowed CityFed to sell and purchase securities in the escrow account.

4. On May 19, 2000, CityFed finalized with the OTS and the Federal Deposit Insurance Corporation (''FDIC''), the statutory successor to the RTC, a settlement of the OTS Action (''Settlement''). Pursuant to the Settlement, the OTS dismissed with prejudice the OTS Action and the FDIC gave full and complete releases to CityFed and the Individual Respondents. In turn, CityFed and the Individual Respondents gave full and complete releases to the OTS and the FDIC. The OTS also dissolved the Temporary Order and authorized First Union to release to CityFed all of its assets remaining in the escrow account. Although the Escrow Agreement was terminated, CityFed's assets continue to be invested in money market instruments and money market mutual funds.

5. On December 7, 1992, the RTC filed suit against CityFed and two former officers of City Federal seeking damages of $12 million dollars for failure to maintain the net worth of City Federal (''First RTC Action''). In light of the filing of the OTS Action on June 2, 1994, the RTC and CityFed agreed to dismiss without prejudice the RTC's claim against CityFed in the First RTC Action. Pursuant to the Settlement, the FDIC released CityFed from all claims in the First RTC Action.

6. The RTC also filed suit against several former directors and officers of City Federal alleging gross negligence and breach of fiduciary duty with respect to certain loans (''Second RTC Action''). The RTC sought in excess of $200 million in damages. CityFed states that all of the defendants in the Second RTC Action have settled with the RTC or the FDIC. Pursuant to the Settlement, the FDIC assigned any rights it acquired in these settlements to CityFed. Under its bylaws, CityFed may be obligated to indemnify these former officers and directors and pay their legal expenses, including settlement amounts. On the advice of counsel to a special committee of CityFed's board of directors, comprised of directors who were not named in the First or Second RTC Action, CityFed has paid a portion of the defendants' reasonable defense costs on behalf of former directors and officers in connection with the Actions. CityFed does not know whether the amounts claimed to date might change and thus is unable to determine with any accuracy the extent of its liability with respect to these indemnification claims. CityFed is in the process of making offers of settlement with respect to the claims of certain of its current and former officers and directors and employees who have previously requested indemnification from CityFed.

7. On August 7, 1995, CityFed, acting in its own right and as shareholder of City Federal, filed a civil action in the United States Court of Federal Claims seeking damages for loss of ''supervisory goodwill'' on its books as a result of various acquisitions by City Federal of troubled depository institutions. Pursuant to the Settlement, CityFed assigned to the FDIC all of CityFed's interest in its supervisory goodwill action, ceased to be a party to the case, and has no right to share in the recovery in that case, should there be one.

8. CityFed is subject to a number of loss contingencies for which it is currently unable to assess reasonably the probability or range of loss. CityFed intends to resolve all claims against it at the minimum cost possible. While CityFed's board of directors has considered from time to time whether to engage in an operating business, CityFed states that it cannot resume an operating business at the present time because the amount required to resolve its currently outstanding claims cannot be reasonably estimated and could exceed CityFed's assets. Following the Settlement, CityFed may reorganize, perhaps involving a bankruptcy proceeding. It is anticipated that CityFed's outstanding claims, including its indemnification claims, will be addressed prior to, or as part of, any reorganization.

9. CityFed states that at present there is no public market for its stock and that it is traded sporadically in the over-the-counter market. Since City Federal's receivership, the operating expenses of CityFed have consisted of the employees' salaries, office expenses, and accounting and legal expenses. CityFed currently has one full-time employee and one office. As of September 30, 2001, CityFed held cash and securities of approximately $6.2 million.

Applicant's Legal Analysis

1. Section 3(a)(1)(A) defines an investment company as any issuer who ''is or holds itself out as being engaged primarily * * * in the business of investing, reinvesting or trading in securities.'' Section 3(a)(1)(C) further defines an investment company as an issuer who is engaged in the business of investing in securities that have a value in excess of 40% of the issuer's total assets (excluding government securities and cash).

2. Section 6(c) of the Act provides that the SEC may exempt any person from any provision of the Act ''if and to the extent that such exemption is necessary or appropriate in the public interest.'' Section 6(e) provides that in connection with any SEC order exempting an investment company from any provision of section 7, certain specified provisions of the Act shall be applicable to such company, and to other persons in their transactions and relations with such company, as though such company were registered under the Act, if the SEC deems it necessary or appropriate in the public interest or for the protection of investors.

3. CityFed acknowledges that it may be deemed to fall within one of the Act's definitions of an investment company. Accordingly, CityFed requests an exemption under sections 6(c) and 6(e) from all provisions of the Act, subject to certain exceptions described below. CityFed requests an exemption until the earlier of one year from the date of the requested order or such time as it would no longer be required to register as an investment company under the Act.

4. In determining whether to grant an exemption for a transient investment company, the SEC considers such factors as whether the failure of the company to become primarily engaged in a non-investment business or excepted business or liquidate within one year was due to factors beyond its control; whether the company's officers and employees during that period tried, in good faith, to effect the company's investment of its assets in a non-investment business or excepted business or to cause the liquidation of the company; and whether the company invested in securities solely to preserve the value of its assets. CityFed believes that it meets these criteria.

5. CityFed believes that its failure to become primarily engaged in a non-investment business by February 6, 2002, is due to factors beyond its control. CityFed asserts that the amount required to resolve its currently outstanding claims cannot be reasonably estimated and could exceed its assets. If CityFed is unable to resolve these claims successfully, it states that it may seek protection from the bankruptcy courts or liquidate. CityFed also asserts that it probably will not be in a position to determine what course of action to pursue until most, if not all, of its contingent liabilities are resolved. Additionally, CityFed states that its circumstances are unlikely to change over the requested one-year period in light of the number of claims currently pending against it. Since the filing of its initial application for exemptive relief under sections 6(c) and 6(e) on October 19, 1990, CityFed has invested in money market instruments and money market mutual funds solely to preserve the value of its assets.

6. During the term of the proposed exemption, CityFed states that it will comply with sections 9, 17(a) and (d) (subject to the modifications described in condition 4, below), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act and the rules thereunder.

Applicant's Conditions

CityFed agrees that the requested order will be subject to the following conditions:

1. CityFed will not purchase or otherwise acquire any securities other than short-term U.S. government securities, certificates of deposit, commercial paper rated A–1/P–1, and shares of registered money market funds; except that CityFed may acquire equity securities of an issuer that is not an investment company as defined in section 3(a) of the 1940 Act or is relying on an exclusion from the definition of investment company under section 3(c) of the Act other than section 3(c)(1) or 3(c)(7), in connection with the acquisition of an operating business as evidenced by a resolution approved by CityFed's board of directors.

2. CityFed will not hold itself out as being engaged in the business of investing, reinvesting, owning, holding, or trading in securities.

3. CityFed's Form 10–KSB, Form 10–QSB and annual reports to shareholders will state that an exemptive order has been granted pursuant to sections 6(c) and 6(e) of the Act and that CityFed and other persons, in their transactions and relations with CityFed, are subject to sections 9, 17(a), 17(d), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act, and the rules thereunder, as if CityFed were a registered investment company, except as permitted by the order requested hereby.

4. Notwithstanding sections 17(a) and 17(d) of the Act, an affiliated person (as defined in section 2(a)(3) of the Act) of CityFed may engage in a transaction that otherwise would be prohibited by these sections with CityFed:

a. If such proposed transaction is first approved by a bankruptcy court on the basis that (i) the terms thereof, including the consideration to be paid or received, are reasonable and fair to CityFed; and (ii) The participation of CityFed in the proposed transaction will not be on a basis less advantageous to CityFed than that of other participants; and

b. In connection with each such transaction, CityFed shall inform the bankruptcy court of (i) the identity of all of its affiliated persons who are parties to, or have a direct or indirect financial interest in, the transaction; (ii) the nature of the affiliation; and (iii) the financial interests of such persons in the transaction.

For the Commission, by the Division of Investment Management, underdelegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1352 Filed 1–17–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of January 21, 2002:

A closed meeting will be held on Tuesday, January 22, 2002, at 9:30 a.m.

Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(A), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(i), 9(ii) and (10), permit

consideration of the scheduled matters at the closed meetings.

The subject matters of the closed meeting scheduled for Tuesday, January 22, 2002, will be:

—Institution and settlement of injunctive actions;
—Institution and settlement of administrative proceedings of an enforcement nature; and
—Formal orders of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: January 15, 2002.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–1456 Filed 1–16–02; 11:06 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45269; File No. SR–CBOE–2001–72]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Amending Its Fee Schedule With Respect to Certain Communications Fees

January 11, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4[2] thereunder, notice is hereby given that on December 26, 2001, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. 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 CBOE proposes to make certain changes to its fee schedule. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange represents that the purpose of this proposed rule change is to implement certain fee changes. The Exchange is proposing to increase certain monthly communications fees to recover the incremental cost of replacing the Exchange's current analog trading floor telephone system with a new digital telephone system. These fee increases were approved by the Exchange's Board of Directors pursuant to CBOE Rule 2.22 and will take effect on January 1, 2002.

The Exchange is amending the following fees: (1) The ''Exchangefone Maintenance'' monthly fee will be increased from $47.25 to $70.88; (2) the ''Lines Voice Circuits'' monthly fee will be increased from $13.12 to $19.68; (3) the ''Data Circuits at Ameritech Frame (Entrance)'' monthly fee will be increased from $13.12 to $19.68; (4) the ''Data Circuits at In-house Frame: Lines Between Ameritech and Communications Center'' monthly fee will be increased from $10.50 to $15.75; (5) the ''Data Circuits at In-house Frame: Lines Direct from Ameritech to the Trading Floor'' monthly fee will be increased from $10.50 to $15.75; (6) the ''Data Circuits at In-house Frame: Lines Between the Communications Center and the Trading Floor'' monthly fee will be increased from $10.50 to $15.75; and (7) the ''Wireless Phone Rentals'' monthly fee will be increased from $100.00 to $150.00.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[3] in general, and Section 6(b)(4) of the Act,[4] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received any written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and subparagraph (f)(2) of Rule 19b–4[6] thereunder, because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[7]

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. Copies of such filing will also be available for inspection and copying at

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] *See* 15 U.S.C. 78(b)(3)(C).

the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2001–72 and should be submitted by February 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1427 Filed 1–17–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45268; File No. SR–CHX–2001–24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Pricing of Preopening Orders for Nasdaq/NM Securities

January 11, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 14, 2001, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CHX. 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 Exchange proposes to amend Article XX, rule 37(a)(4) of the CHX Rules, which governs, among other things, pricing of preopening orders for Nasdaq/NM securities. The text of the proposed rule change is as follows. New text is italicized. Deleted text is bracketed.

RULE 37.

(a) No change to text.

1–3. No change to text.

4. Preopenings. Preopening orders in Dual Trading System issues must be accepted and filled at the primary market opening trade price. In trading halt situations occurring in the primary market, orders will be executed based upon the reopening price. Preopening orders in NASDAQ/NM securities must be accepted and filled [on a single price opening at or better than the NBBO] at or better than the first unlocked, uncrossed *bid (for a sell order or offer (for a buy order) in the Nasdaq* market. In trading halt situations, orders will be executed at or better than *the first unlocked uncrossed bid or offer in the Nasdaq market after reopening.* For purposes of this rule, (a) pre-opening orders in Dual Trading System Issues are orders that are received before a primary market opens a subject security based on a print or based on a quote and (b) preopening orders in NASDAQ/NM securities are orders received at or prior to 8:25 a.m. (Central Time) on the date of the opening.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Article XX, rule 37(a)(4) of the CHX Rules, which governs, among other things, pricing of preopening orders for Nasdaq/NM securities. The proposed rule change would eliminate reference to a single price opening for such preopening orders. The amended rule would provide that opening prices would instead be determined based on the first unlocked, uncrossed bid and offer in the Nasdaq market. This standard would apply to both preopening orders and to orders executed at the opening following a trading halt.

The rule change is being proposed in response to changing practices in the Nasdaq market relating to calculation of opening prices. The vast majority of the Exchange's competitors in the Nasdaq market now calculate opening prices in a manner consistent with the proposed rule change. The Exchange believes that this rule change is not only in line with market custom and practice, but is also responsive to customer preferences. Moreover, this rule change could incentivize specialists to provide greater price improvement intraday, thereby improving execution quality statistics, to the ultimate benefit of investors in Nasdaq/NM securities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[3] in general, and furthers the objectives of Section 6(b)(5)[4] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange represents that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–2001–24 and should be submitted by February 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1355 Filed 1–17–02; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45271; File No. SR–CHX–2001–17]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by The Chicago Stock Exchange, Incorporated Relating to Eligibility of Limit Orders for Trade Through Protection

January 11, 2002.

On August 6, 2001, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change that would amend CHX Article XX, Rule 37(b)(6) to require that a limit order be resident in the specialist's book for a time period of 0–15 seconds (as designated by the specialist) before it would be eligible for trade through protection.

The proposed rule change was published for comment in the **Federal Register** on December 5, 2001.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act[6] in that it designed to promote just and equitable principles of trade, to remove impediments to, and to perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–CHX–2001–17) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1357 Filed 1–17–02; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45115 (November 28, 2001), 66 FR 63269 (December 5, 2001).

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78s(b)(2).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45270; File No. SR–NASD–99–12]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change Establishing a Pilot Program To Establish Fees for a Volume and Issue Data Package Known as Post Data

January 11, 2002.

I. Introduction

On February 18, 1999, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASD Rule 7010, System Services, to establish a fee for a Volume and Issue Data Package (''Post Data'') provided through the *Nasdaq Trader.com* Web site. The proposal would establish one fee to be paid by subscribers, and another fee to be paid by market data vendors.

Post Data would provide three separate reports in a single package, consisting of (1) Daily share volume reports for each Nasdaq security; (2) daily issue data containing a summary of the previous day's activity for each Nasdaq issue; and (3) monthly summaries of trading volume statistics for the top 50 market participants broken down by industry sector, security, and type of trading (such as block or total). The proposed rule change will be implemented for a one-year pilot period.

On March 24, 1999, Nasdaq amended the proposal, which amendment replaced and superseded the original proposal.[3] Notice of the proposed rule change, as modified by Amendment No. 1, appeared in the **Federal Register** on April 9, 1999.[4] The Commission received three comment letters on the proposed rule change.[5]

Nasdaq also amended the proposal on May 30, 2001,[6] and again on July 10, 2001.[7] Because Amendment Nos. 2 and

[3] Nasdaq's initial proposal was to provide T+1 daily share volume reports in each Nasdaq security to market data vendors, NASD members, and non-NASD member Qualified Institutional Buyers (''QIBs'') as defined in Rule 144A under the Securities Act of 1933. 17 CFR 230.144A. In Amendment No. 1, Nasdaq revised the proposal to include daily issue summaries of the previous day's activity for every Nasdaq issue, and monthly summaries of trading volume statistics for the top 50 market participants broken down by industry sector, security, and type of trade.

[4] Securities Exchange Act Release No. 41244 (April 1, 1999), 64 FR 17429.

[5] *See* April 30, 1999 letter from Matthew W. Johnson, Managing Director, Lehman Brothers Inc., to Margaret H. McFarland, Deputy Secretary, SEC (''Lehman Letter''); April 12, 1999 letter from Stephen K. Lynner, President, AutEx Group (''AutEX''), to Jonathan G. Katz, Secretary, SEC; and June 23, 1999 letter from Stephen K. Lynner, President, AutEx, to Katherine England, Assistant Director, Division of Market Regulation (''Division''), SEC.

[6] *See* May 29, 2001 letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq. to Katherine A. England, Assistant Director, Division, SEC, and attachments (''Amendment No. 2''). Amendment No. 2 completely replaced and superseded Amendment No. 1, and proposed new fees for Post Data, as well as minor adjustments to the original proposal.

[7] *See* July 9, 2001 letter form Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Belinda Blaine, Associate Director, Division, SEC (''Amendment No. 3''). In Amendment No. 3, Nasdaq clarified that: (1) Amendment No. 2, as further amended by Amendment No. 3, replaces and supersedes the original proposal and Amendment No. 1; (2) the proposal is filed by the NASD, acting through its subsidiary, Nasdaq; (3) the footnote that defines a ''qualified institutional buyer'' should be included in the proposed rule language of NASD Rule 7010(p); and (4) modifications to Post Data during the pilot period will be limited to minor enhancements to the content of the package and will be made in accordance with Section 19(b) of the Act and Rule 19b–4 thereunder. 15 U.S.C. 78s(b)

3 proposed different fees than those proposed in the original filing and Amendment No. 1, notice of the proposed rule change, as amended since it original publication, appeared in the **Federal Register** on July 20, 2001.[8] As amended, the proposal would establish a fee of $70 per month for subscribers for each entitled user receiving the Nasdaq Volume and Issue Data Package, and $35 per month for each end user receiving the information through market data vendors. The Commission received six comment letters on the proposal,[9] one of which was retracted. This order approves the proposed rule change, as amended.

II. Summary of Comments

Four commenters asked the Commission to approve the proposal.[10] These commenters generally expressed support for the proposal because they believe Post Data will be a valuable tool that will allow them to trade more effectively.[11] By providing immediate and reliable trading data, these commenters believe Post Data will allow them to make better-informed decisions.[12] Two commenters also suggested that the proposal might reduce costs.[13] Three of commenters that supported the proposal emphasized the value in having verified information available to market participants.[14]

One commenter asked the Commission not to approve the proposal in its current form. This commenter believes the Commission should establish safeguards to ensure that preexisting commercial trade reporting services are not driven out of the market due to ''a business advantage conferred on Nasdaq by virtue of its status as a regulator.''[15] The commenter suggests that Nasdaq's pricing strategy for Post Data should be scrutinized to ensure that Nasdaq does not subsidize Post Data with revenue Nasdaq derives from performing regulatory functions such as trade reporting fees.[16]

The commenter also asserts that because Nasdaq pays nothing to collect the data used in Post Data, and in fact is paid to collect this data by virtue of the NASDA's status as a self-regulatory organization, Nasdaq should only be able to recover from vendors the costs incurred from passing the data on the vendors.[17]

The commenter further argues that, while proposal states that Nasdaq will make future enhancements to Post Data available to data vendors for redistribution, the proposal is ambiguous as to whether Nasdaq will charge vendors for the enhancements. The commenter believes that charging only the customers who received the enhancements through a private vendor would impose an impermissible burden on competition.[18]

The commenter also requests that Nasdaq affirmatively state that Nasdaq will not impose restrictions on a private vendor's right to redistribute trade data to the vendor's customers, whomever those customers might be.[19] This issue arises from Nasdaq's proposal to make Post Data available to NASD members, QIBs, and the retail customers of participating market data vendors, without defining ''retail customers.'' Nasdaq discusses elsewhere in the proposal the need to restrict access to this data to entities that are likely to have proper staff and resources to comply with security mandates and are unlikely to use the data improperly. Because these two statements in conjunction with each other create an ambiguity for the commenters, the commenter asks the Commission to require Nasdaq to disclose whether or not Nasdaq will impose limitations on vendor redistribution of Post Data's content, and if so, to describe the limitations.

Nasdaq's Response to the Comments.

Nasdaq filed its response to comments with the Commission on September 27, 2001.[20] In Nasdaq's Response letter, Nasdaq asserts that Post Data does not impose an unfair burden on competition. Nasdaq maintains that no regulatory fees will be used to subsidize Post Data. As Nasdaq stated in the proposal, the projected costs of development, enhancement, maintenance, operation, and marketing of Post Data, as well as overhead costs allocable to Post Data, should be covered by the fees assessed to market data vendors. The fees Nasdaq will assess to retail customers should cover costs associated with maintenance and administration of the Nasdaq web security infrastructure used to grant and validate access to Post Data.[21] Because vendors with established data networks will be able to obtain the data directly from Nasdaq, vendors will not incur the cost associated with the Web site. Nasdaq believes vendors therefore will be able to use the price differential to provide a superior product or complete with the price of Nasdaq's product.[22]

While one commenter[23] cited *NASD* v. *SEC*[24] in support of its position that Nasdaq is precluded from charging the fees it has proposed for Post Data, Nasdaq distinguishes the facts and circumstances of the present proposal from that in *NASD* v. *SEC.* Nasdaq notes that its proposal would establish two separate fees (one for market data vendors, and one for Nasdaq's direct subscribers), and the fees are designed to be allocated equitably among product users without subsidy from other Nasdaq revenue streams.[25] Unlike the direct subscribers in *NASD* v. *SEC,* Nasdaq asserts taht market data vendors will pay only for the costs of Post Data attributable to wholesale purchasers. Nasdaq will not require market data vendors to pay for web security costs associated with providing Post Data to Nasdaq's direct subscribers.[26]

Product Enhancements. In Nasdaq's Response letter, Nasdaq clarifies that it will make product enhancements

and 17 CFR 240.19b–4. Amendment No. 3 also provided further explanation of the basis for the proposed fees.

[8] Securities Exchange Act Release No. 44558 (July 16, 2001), 66 FR 38049.

[9] *See* July 31, 2001 letter from Dennis A. Green, Senior Vice President, Nasdaq Trading, Legg Mason, Inc. (via e-mail) (''Legg Mason letter''); August 2, 2001 letter from Matt Johnson, Head of U.S. Cash Trading, Lehman Brothers (via e-mail) (''Lehman Brothers letter''); August 9, 2001 letter from Stephen K. Lynner, President, Thomson Financial Sales and Trading Group to Jonathan G. Katz, Secretary, SEC (''Thomson Financial letter''); August 9, 2001 letter from Lene Jensen, Regional Manager, Global Data Acquisition, Thomson Financial (via e-mail); August 16, 2001 letter from Lene Jensen, Regional Manager, Global Data Acquisition, Thomson Financial (via e-mail, retracting comments filed in August 9, 2001 letter); August 16, 2001 letter from Mary McDermott-Holland, Chairman, Nasdaq Institutional Traders Council, Franklin Portfolio Associates to Jonathan G. Katz, Secretary, SEC (''NITC letter''); and August 15, 2001 letter from James P. Ryan, Vice President and Senior Counsel, Fund Business Management Group, Capital Research and Management Company, to Jonathan G. Katz, Secretary, SEC (''Capital Research letter'').

[10] Legg Mason letter; Lehman Brothers letter; Capital Research letter; and NITC letter.

[11] Capital Research letter.

[12] NITC letter; and Capital Research letter.

[13] NITC letter; and Legg Mason letter.

[14] NITC letter as 1 (''Post Data represents a tremendous step forward in providing accurate and vital trading information to market participants.''); Capital Research letter (''By providing verified trading information to market participants, Post Data will allow us to make more informed broker selection decisions.''); and Lehman Brothers letter (''The fact that this trade data will be confirmed by ACT reporting will allow customers to have an accurate portrayal of their volume data.'').

[15] Thomson Financial letter at 4.

[16] *Id.*

[17] Thomson Financial letter at 5, citing *NASD* v. *SEC,* 801 F.2d 1415 (D.C. Cir. 1986).

[18] *Id.* at 6.

[19] *Id.* at 7–8

[20] *See* undated letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Belinda Blaine, Associate Director, Division, SEC (''Nasdaq Response letter'').

[21] Nasdaq Response letter at 2.

[22] Nasdaq Response letter at 3.

[23] *See* Thomson Financial letter at 5.

[24] 801 F.2d 1415 (D.C. Cir. 1986).

[25] Nasdaq Response letter at 3.

[26] *Id.*

available to all Post Data users, whether the users are Nasdaq customers or customers of a participating market data vendor. If Nasdaq offers a free product enhancement during the pilot program, Nasdaq will make the enhancement available to all direct and indirect users at no cost, and provide notice to vendors to allow vendors an opportunity to implement programming changes if necessary.[27]

Retail Customers. Nasdaq states unequivocally that it will not limit the ability of private data vendors to redistribute the product to their respective customers. To that end, Nasdaq clarifies that it defines a ''retail'' user as a direct or indirect user—in other words, any user who receives the data, be it from a market data vendor or from Nasdaq.[28]

III. Discussion

After careful review, the Commission finds the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.[29] In particular, the Commission finds that the proposed rule change is consistent with Sections 15A(b)(5) and (6) of the Act.[30]

Section 15A(b)(5)[31] requires the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that a national securities association operates or controls. Section 15A(b)(6)[32] requires that the rules of a national securities association be designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Commission finds that the proposal is consistent with both of these Sections of the Act. Specifically, the Commission has reviewed the comment letters and Nasdaq's response to the comment letters. Nasdaq has stated it will make the Post Data product available to retail subscribers for $70 per month, and to market data vendors for $35 per month for each end user receiving the information through the data vendor. The Commission finds that the fees that Nasdaq proposes to charge for both the retail and the wholesale distribution of Post Data are equitably allocated among members and nonmembers. The differential between the retail and wholesale fees potentially will allow market data vendors the opportunity to sell the data on a retail basis at prices higher than $35 but lower than $70, and remain competitive with Nasdaq's retail price of $70. In addition, Nasdaq has clarified that the wholesale fee does not include the costs associated with the maintenance and security of the retail web-based product.

Furthermore, the Commission believes the information contained in Post Data may help to foster cooperation and coordination with persons engaged in facilitating transactions in securities, by providing consistent, reliable, and verified market data to market participants who choose to subscribe to the service or purchase the information from market data vendors. The Commission believes that investors will benefit by the timely dissemination of this reliable market data.[33] The Commission further finds that the proposal places no undue burden on competition, and in fact, may foster competition, as market data vendors obtain verified data from Post Data, provide enhancements to the data, and in turn, sell the enhanced data to retail customers.[34] Finally, the Commission is satisfied that Nasdaq has fully and properly addressed the questions raised by the commenter regarding product enhancements and the ability of vendors to redistribute the data to their respective customers.

The Commission notes that Post Data will be provided on a one-year pilot basis. The Commission expects that Nasdaq will evaluate the fees it has established for Post Data, and provide the Commission with a report of its findings before the expiration of, or extension of, the one-year pilot program.

While minor modifications to Post Data are anticipated, should Nasdaq wish to modify the contents of Post Data in any substantive way, Nasdaq must do so pursuant to Section 19(b)[35] and Rule 19b–4[36] thereunder.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[37] that the proposed rule change (SR–NASD–99–12), as amended, be and hereby is approved on a pilot basis through January 10, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[38]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1299 Filed 1–17–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45266; File No. SR–NASD–2001–88]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Relating to Computer to Computer Interface Fees

January 10, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 7, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On January 10, 2001, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change increase the fee assessed on NASD non-members that continue to use the x.25 Computer-

[27] Nasdaq Response letter at 4.

[28] *Id.*

[29] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[30] 15 U.S.C. 78o–3(b)(5) and (6).

[31] 15 U.S.C. 780–3(b)(5).

[32] 15 U.S.C. 78o–3(b)(6).

[33] In this regard, the Commission notes Nasdaq's representation that Nasdaq generally will provide the Post Data information to vendors approximately five minutes before it posts the information on the Web site for direct end-users. This time differential enables the vendor to capture and post the data on its own terminals before Nasdaq's release time.

[34] The Commission notes that this proposal relates to enhanced data that is not integral to the ability of a broker-dealer or customer to trade. *Cf. NASD* v. *SEC,* footnote 17, *supra.*

[35] 15 U.S.C. 78s.

[36] 17 CFR 240.19b–4.

[37] 15 U.S.C. 78s(b)(2).

[38] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 contains the rule text of the proposed rule filing, as well as represented that all non-members affected by the proposed rule change had been alerted about the filing and that no unlisted trading privilege exchange would be affected by the filing. *See* letter from John Yetter, Assistant General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated January 8, 2002 (''Amendment No. 1'').

to-Computer Interface (''CTCI'') to access Nasdaq services rather than transitioning to the Transmission Control Protocol/Internet Protocol (''TCP/IP'') CTCI.

The text of the proposed rule change is set forth below. New text is italicized. Deleted text is bracketed.

* * * * *

Rule 7010. System Services

(a)–(e) No change.

(f)(1)–(2) No change.

(3) The following charges shall apply for each CTCI subscriber:*

Options	Price
Option 1—Dual 56kb lines (one for redundancy) and single hub and router.	$1275/month.
Option 2—Dual 56kb lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy).	$1600/month.
Option 3—Dual T1 lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy), and dual routers (one for redundancy). Includes base bandwidth of 128kb.	$8000/month.
Disaster Recovery Option—Single 56kb line with single hub and router. (For remote disaster recovery sites only.).	$975/month.
Bandwidth Enhancement Fee (for T1 subscribers only)	$4000/month per 64kb increase above 128kb T1 base.
Installation Fee	$2000 per site for dual hubs and routers. $1000 per site for single hub and router.
Relocation Fee (for the movement of TCP/IP—Lines within a single location.	$1700 per relocation.

(g)–(q) No change.

* * * * *

In prior rule filings, Nasdaq established the fees to be charged for TCP/IP CTCI linkages, which are now reflected in NASD Rule 7010(f)(3).[4] In those filings, Nasdaq indicated that it would impose TCP/IP fees on a rolling basis on NASD non-members as they converted to TCP/IP CTCI linkages. Accordingly, Nasdaq has continued to charge the previous CTCI fee of $200 per month per CTCI circuit to NASD members that have continued to use x.25 CTCI circuits. In this filing, Nasdaq is increasing the monthly charge to $1,275 per circuit.[5] Nasdaq plans to assess the new fee during the months of February and March 2002 and to terminate remaining x.25 CTCI circuits at the end of March, although both the date for implementing the new fee and the date for terminating x.25 CTCI circuits are subject to adjustment.[6] Nasdaq has provided and will continued to provide notice to market participants of these dates through NasdaqTrader.com alerts, direct mail, and telephone calls to NASD members that have not yet converted to TCP/IP CTCI linkages, and will notify the Commission via letter if there is an change in these dates.[7]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed comments it received on the proposed rule change. The text of these statements may be examined in the places specified in Item IV below. Nasdaq has prepared summaries, set forth below in Sections A, B, and C, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq's CTCI network is a point-to-point dedicated circuit connection from the premises of brokerages and service providers of Nasdaq's Trumbull Connection processing facilities. Through CTCI, firms are able to enter trade reports to Nasdaq's Automated Confirmation Transaction Service (''ACT'') and orders to Nasdaq's Small Order Execution (''SOES'') and SuperSOES systems. CTCI also processes SelectNet transaction confirmation reports.

In response to numerous requests from market participants that Nasdaq upgrade the speed and reliability of its CTCI data transmission environment, Nasdaq began the process last year of ''sunsetting'' its CTCI x.25/bisynch network in favor of a new network that provides greater capacity and a more efficient transmission protocol. The CTCI x.25/bisynch network can only transmit data up to 19.2 kilobits per second (''kb''). The new CTCI network operates over the Enterprise Wide Network II (''EWN II'') and provides connectivity over more powerful 56kb and T1 data lines. In addition, the new CTCI network uses the industry-standard TCP/IP transmission protocol, a protocol that is robust, efficient, and well known among the technical community. In order to take advantage of the new CTCI network, users are required to upgrade their current x.25/19.2kb lines to either 56kb or T1 lines.

Although the conversion process has been underway since January of this year, as of late November, 295 x.25CTCI circuits held by 60 firms remained active. Nasdaq is urging non-members that still rely upon these outmoded connections to complete their

* As reflected in SR–NASD–00–80 and SR–NASD–00–81, x.25 CTCI circuits are being replaced with TCP/IP CTCI circuits. Pursuant to SR–NASD–2001–87 and SR–NASD–2001–88, the fee for x.25 CTCI circuits, which has remained $200 per month per circuit—is increased to $1,275 per month per circuit until the date of the termination of such circuits.

[4] *See* Securities Exchange Act Release No. 43821 (Jan. 8, 2001), 66 FR 3627 (Jan. 16, 2001); Securities Exchange Act Release No. 43815 (Jan. 8, 2001), 66 FR 3625 (Jan. 16, 2001); and Securities Exchange Act Release No. 44144 (Apr. 2, 2001), 66 FR 18332 (Apr. 6, 2001).

[5] The increase will not be imposed, however, on members that use x.25 CTCI circuits solely for the purpose of accessing the Fixed Income Pricing System, which is scheduled to be replaced by a new corporate bond trade reporting and transaction dissemination facility known as TRACE in 2002. *See* Securities Exchange Act Release No. 43873 (Jan. 23, 2001), 66 FR 8131 (Jan. 29, 2001).

[6] Nasdaq has indicated that those members utilizing the remaining x.25 CTCI circuits will be unable to link to the CTCI system at the end of March. Nasdaq does not foresee any circumstances that would cause it to adjust the date of termination of the x.25 CTCI circuits at this time. January 3, 2002 telephone conversation between John Yetter, Assistant General Counsel, Nasdaq, and John Riedel, Staff Attorney, Division, Commission.

[7] On December 12, 2001, Nasdaq issued a Head Trader alert that provided notice of the fee increase and posted the alert on the NasdaqTrader.com website. At that time, Nasdaq also began making direct contacts with customers that continue to use x.25 CTCI circuits to alert them of the change, and had contacted all non-members that might be affected by SR–NASD–2001–88 within several days. *See* Amendment No. 1, *supra* note 3.

conversions as soon as possible. Nasdaq believes that charging a higher price to non-members that have failed to convert will provide them with a financial incentive to complete their conversions in a timely fashion and thereby assist Nasdaq in achieving its goal of terminating this almost obsolete network. Moreover, as more and more users convert to TCP/IP, Nasdaq's per circuit cost of continuing to offer the x.25 CTCI connections increases. Since the x.25 CTCI network is provisioned to support over 600 circuits, Nasdaq believes that it is appropriate to pass through the expense of that network to those firms that have failed to transition. The fee increase, together with continued transition support from Nasdaq staff, will allow Nasdaq to ''sunset'' the x.25 CTCI network on March 31, 2002 (or sooner, if all x.25 CTCI subscribers have transitioned prior to that date).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the Act, including Section 15A(b)(5) of the Act,[8] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq has either solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to file number SR–NASD 2001–88 and should be submitted by February 4, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1301 Filed 1–17–02; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78o–3(b)(5).

[9] 17 CFR 200.30–(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45273; File No. SR–NASD–2001–92]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend the Expiration Date of Nasdaq's Transaction Credit Pilot Program

January 14, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 17, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 7010, System Services, to extend Nasdaq's transaction credit pilot program (''Program'') for an additional six months, through June 28, 2002, for Tape A and B reports. No other substantive changes are proposed to the Program at this time. The text of the proposed rule change is available at the Association and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to extend the Program[5] for an additional six months, through June 28, 2002, to provide a transaction credit to NASD members that exceed certain levels of trading activity in exchange-listed securities. Nasdaq's InterMarket is a quotation, communication, and execution system that allows NASD members to trade stocks listed on the New York Stock

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] The transaction credit can be applied to any and all charges imposed by NASD or its non-self-regulatory organization affiliates. Any remaining balance may be paid directly to the member.

Exchange (''NYSE'') and the American Stock Exchange (''Amex'').[6] The InterMarket competes with regional exchanges like the Chicago Stock Exchange (''CHX'') and the Cincinnati Stock Exchange (''CSE'') for retail order flow in stocks listed on the NYSE and the Amex. The Association collects trade reports from broker-dealers trading these securities in the over-the-counter (''OTC'') market and provides the trade reports to the Consolidated Tape Association (''CTA'') for inclusion in the Consolidated Tape. As a participant in the CTA Plan, the NASD is entitled to a portion of the revenue that the CTA generates by selling this market data information. NASD's share of the revenues is based on trades that it reports on behalf of these broker-dealers in NYSE-listed securities (''Tape A'') and in Amex-listed securities (''Tape B'').

The Program began in 1999.[7] Under the Program, the NASD shares a portion of these tape revenues by providing a transaction credit to NASD members who exceed certain levels of OTC trading activity in NYSE and Amex securities. The Program helps InterMarket market makers and investors lower costs associated with trading listed securities. The Program also is an important tool for Nasdaq to compete with other exchanges (particularly the CSE and the CHX) that offer similar programs[8] and thereby maintain market share in listed securities.

The Program works as follows. Nasdaq calculates two separate pools of revenue from which credits can be earned: One representing 40% of the gross revenues received by the NASD from the CTA for providing trade reports in NYSE-listed securities executed in the InterMarket for dissemination by CTA (Tape A), the other representing 40% of the gross revenue received from CTA for reporting Amex trades (Tape B).

Eligibility for transaction credits is based on concurrent quarterly trading activity. For example, an InterMarket participant that enters the market for Tape A or Tape B securities during a particular quarter and prints an average of 500 daily trades of Tape A securities during the time it is in the market, or that averages 500 Tape B prints during such quarter, would be eligible to receive transaction credits based on its trades during that quarter. Only those NASD members that continue to average an appropriate daily execution level are eligible for transaction credits and thus able to receive a pro-rata portion of the appropriate pool.[9] These thresholds permit the NASD to recover appropriate administrative costs related to NASD members that do not exceed the threshold and to provide an incentive to NASD members to actively trade in these securities.

The current Program expired December 31, 2001. Because the Program has helped Nasdaq maintain market share in listed securities, Nasdaq proposes to extend the current Program for an additional six months, through June 28, 2002.

2. Statutory Basis

Nasdaq believes the proposed rule change is consistent with Section 15A(b)(6) of the Act,[10] in that the proposal is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a national market system, and, in general to protect investors and the public interest. Nasdaq also believes that the proposed rule change is consistent with Section 15A(b)(5) of the Act[11] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[12] and subparagraph (f)(2) of Rule 19b–4 thereunder,[13] because it establishes or changes a due, fee, or other charge imposed by the Association. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit wrriten data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with espect to the proposed rule change that are filed with the Commission, and all written communications relatiang to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to file number SR–NASD–2001–92 and should be submitted by February 8, 2002.

[6] Nasdaq's InterMarket formerly was referred to as Nasdaq's Third Market. *See* Securities Exchange Act Release No. 42907 (June 7, 2000) 65 FR 37445 (June 14, 2000) (SR–NASD–00–32).

[7] *See* Securities Exchange Act Release No. 41174 (March 16, 1999), 64 FR 14034 (March 23, 1999) (SR–NASD–19–13). The SEC issued notice of subsequent extensions of the Program. *See* Securities Exchange Act Release Nos. 42095 (November 3, 1999), 64 FR 61680 (November 12, 1999) (SR–NASD–99–59); 42672 (April 12, 2000), 65 FR 21225 (April 20, 2000) (SR–NASD–00–10); 42907 (June 7, 2000), 65 FR 37455 (June 14, 2000) (SR–NASD–00–32); 43831 (January 10, 2001), 66 FR 4882 (January 18, 2001) (SR–NASD–00–72); 44098 (March 23, 2000), 66 FR 17462 (March 30, 2001) (SR–NASD–2001–15); 44734 (August 22, 2001), 66 FR 4537 (August 26, 2001) (SR–NASD–2001–42); and 44734A (August 30, 2001), 66 FR 46853 (September 7, 2001) (correction).

[8] *See* Securities Exchange Act Release Nos. 38237 (February 4, 1997), 62 FR 6592 (February 12, 1997) (SR–CHX–97–01) and 39395 (December 3, 1997), 62 FR 65113 (December 10, 1997) (SR–CSE–97–12).

[9] As explained in Nasdaq's original pilot filing, the qualification thresholds were selected based on Nasdaq's belief that such numbers represent clear examples of a member's commitment to operating in the InterMarket and completing for order flow. *See* Securities Exchange Act Release No. 41174 (March 16, 1999), 64 FR 14034 (March 23, 1999) (SR–NASD–99–13). Nasdaq continues to believe that such threshold numbers represent clear examples of a member's commitment to operating in the InterMarket.

[10] 15 U.S.C. 78o–3(b)(6).

[11] 15 U.S.C. 78o–3(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1356 Filed 1–17–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45275; File No. SR–NYSE–2002–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Extending the Pilot Regarding Shareholder Approval of Stock Option Plans Through March 11, 2002

January 14, 2002.

Pursuant to section 19 (b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 7, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On January 14, 2002, the NYSE filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend, until March 11, 2002, the effectiveness of the amendments to sections 312.01, 312.03 and 312.04 of the Exchange's Listed Company Manual with respect to the definition of a ''broadly-based'' stock option plan, which were approved by the Commission on a pilot basis (the ''Pilot'') on June 4, 1999.[4] The Pilot was subsequently amended and extended on March 30, 2001[5] and was again extended on September 28, 2001.[6]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of an basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 13, 2000, the Exchange filed a proposed rule change seeking to extend the effectiveness of the Pilot until September 30, 2003.[7] Following receipt of comments from interested parties and the SEC staff, on January 19, 2001, the Exchange amended the 2000 Extension Request to shorten the three-year extension request to one year and to amend the definition of ''broadly based'' under the Exchange's rule. While the 2000 Extension Request was under consideration, the Commission extended the Pilot to provide the Commission and the Exchange with additional time to review and evaluate comment letters.[8] On March 30, 2001, the Commission approved the 2000 Extension Request, which amended and extended the Pilot, on a pilot basis until September 30, 2001.[9] The Exchange's 2001 Extension Request became effective on September 28, 2001, on a pilot basis, and extended the Pilot until January 11, 2002 to provide additional time to evaluate the issues presented by the Pilot.[10] One comment letter was received regarding the extension of the Pilot by the 2001 Extension Request.[11]

The Exchange proposes to further extend the effectiveness of the Pilot until March 11, 2002 to provide additional time to evaluate the issues presented by the Pilot, in the light of recently adopted requirements relating to disclosure of equity compensation plan information.[12]

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act,[13] which requires, among other things, than an Exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equatable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated January 14, 2002 (''Amendment No. 1''). In Amendment No. 1, the NYSE proposed to change the requested extension period for its pilot regarding shareholder approval of stock option plans from April 30, 2002, as originally proposed, to March 11, 2002. Accordingly, as amended, the NYSE's pilot would expire on March 11, 2002.

[4] Securities Exchange Act Release No. 41479, 64 FR 31667 (June 11, 1999) (notice of filing and order granting accelerated approval, on a pilot basis, to File No. SR–NYSE–98–32) (''Original Pilot Approval Order'').

[5] Securities Exchange Act Release No. 44141, 66 FR 18334 (April 6, 2001) (order granting approval, on a pilot basis, to the File No. SR–NYSE–00–32).

[6] Securities Exchange Act Release No. 44886, 66 FR 51083 (October 5, 2001) (notice of filing and immediate effectiveness of File No. SR–NYSE–2001–37) (''2001 Extension Request'').

[7] Securities Exchange Act Release No. 43111 (August 2, 2000), 65 FR 49046 (August 10, 2000) (notice of filing of File No. SR–NYSE–00–32) (''2000 Extension Request'').

[8] *See* Securities Exchange Act Release Nos. 43329 (September 22, 2000), 65 FR 58833 (October 2, 2000) (notice of filing and immediate effectiveness of File No. SR–NYSE–00–38); 43647 (November 30, 2000), 65 FR 77407 (December 11, 2000) (notice of filing and immediate effectiveness of File No. SR–NYSE–00–52); and 44018 (February 28, 2001), 66 FR 13821 (March 7, 2001) (notice of filing and immediate effectiveness of File No. SR–NYSE–2001–04).

[9] *See* note 5 *supra.*

[10] *See* note 6 *supra.*

[11] *See* letter from Sarah A.B. Teslick, Executive Director, Council of Institutional Investors (''CII'') to Jonathan G. Katz, Secretary, Office of the Secretary, Commission, dated October 16, 2001. The CII commented that the 2001 Extension Request should have been released for public comment prior to the Commission approving another extension to the Pilot and that any future proposed extensions should be released for prior public comment, that the Pilot not be extended after January 11, 2002, that the NYSE should be required to submit a dilution standard for approval which should be in place before the 2002 proxy season, and that the Commission act on the proposed disclosure standards for stock option plans. The Commission notes that the disclosure standards were approved by it on December 21, 2001. *See infra* note 12 below.

[12] Release Nos. 33–8048 and 34–45189 (December 21, 2001), 67 FR 232 (January 2, 2002).

[13] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change, as amended, (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interests, the proposed rule change, as amended, has become effective pursuant to section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6) [15] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [16] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. The Exchange seeks to have the proposed rule change, as amended, become operative on or before January 11, 2002, in order to allow the Pilot to continue in effect on an uninterrupted basis. In addition, under Rule 19b–4(f)(6)(iii), the Exchange is required to provide the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter time as designated by the Commission. The Commission waived this five-day pre-notice requirement for this proposed rule change.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change, as amended, to extend the Pilot through March 11, 2002, become operative on January 11, 2002. The Commission notes that unless the Pilot is extended, the Pilot will expire and the provisions of sections 312.01, 312.03, and 312.04 of the Exchange's Listed Company Manual that were amended in the Pilot will revert to those in effect prior to June 4, 1999. The Commission believes that such a result could lead to confusion.

The commission recognizes that the Pilot has generated many comment letters from commenters that do not support the NYSE's definition of ''broadly-based'' stock option plans under the Pilot.[18] The Commission also notes that many commenters were critical of the NYSE's existing rules on broadly-based plans prior to the adoption of the original Pilot. As noted above, if the Pilot is not extended, the rules prior to the Pilot will go into effect. The proposed rule change, as amended, merely extends the duration of the Pilot for only a short period of time and does not deal with the substantive issues presented by the Pilot itself.

Based on these reasons, the Commission believes that it is consistent with the protection of investors and the public interest that the proposed rule change, as amended, to extend the Pilot through March 11, 2002, become operative on January 11, 2002.[19] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the File No. SR–NYSE–2002–03 and should be submitted by February 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1353 Filed 1–17–02; 8:45 am]

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[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] *Id.*

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] *See* Original Pilot Approval Order, note 4 *supra*.

[19] For purposes only of accelerating the operative date of this proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45274; File No. SR–NYSE–202–04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., to Reset the Implementation Date for Exchange Rules 134, 407A, and 411, Relating to Error Accounts Procedures

January 14, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 7, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Exchange. 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 seeks to extend the Exchange-imposed implementation date for Rules 134, 407A, and 411 (relating to members' error accounts and error account procedures) from January 7, 2002 to February 4, 2002.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission recently approved amendments to Rules 134, 407A, and 411 relating to members' error accounts and error account procedures. The Exchange had intended to implement these changes on January 7, 2002.[3] However, feedback from several members and member organizations indicated that they will need additional time to implement procedures, including automatic surveillance procedures, to fully comply with the provisions of Rules 134, 407A, and 411. Therefore, the Exchange proposes to change the implementation date from January 7, 2002 to February 4, 2002.

2. Statutory Basis

The NYSE states that the basis for the proposed rule change is the requirement under section 6(b)(5) of the Act[4] that an exchange have rules that are designated to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NYSE has designated the proposed rule change as constituting a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of the NYSE rules to which it relates,[5] which renders the proposal effective upon filing with the Commission pursuant to section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(3) thereunder.[7]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether it 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office at the NYSE. All submissions should refer to File No. SR–NYSE–2002–04, and should be submitted by February 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

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[3] *See* Securities Exchange Act Release No. 44769 (September 6, 2001), 66 FR 44710 (September 13, 2001) (approval order concerning File No. SR–NYSE–99–25).

[4] 15 U.S.C. 78f(b)(5).

[5] *See* letter from Darla C. Stuckey, NYSE, to Katherine A. England, assistant director, Division of Market Regulation, Commission, dated January 9, 2002.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(3).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45254; File Nos. SR–Phlx–00–02 and SR–Phlx–00–03]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Changes by the Philadelphia Stock Exchange, Inc. Relating to Equity Trading Permits and Notice and Order Granting Accelerated Approval to Amendments No. 3 Thereto

January 9, 2002.

I. Introduction

On January 12, 2000, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Certificate of Incorporation to add a new article authorizing the Board of Governors to issue Equity Trading Permits (''ETPs'').[3] The Exchange filed amendments to the proposed rule change on May 30, 2000[4] and July 12, 2000.[5] The proposed rule change was published for comment in the **Federal Register** on September 1, 2000.[6] On December 17, 2001, the Exchange filed Amendment No. 3 to the proposal.[7]

Also on January 12, 2000, the Exchange submitted to the Commission, pursuant to Section 19(b)(1) of the Act[8] and Rule 19b–4 thereunder,[9] a proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] SR–Phlx–00–02.

[4] *See* Letter from Carla Behnfeldt, Counsel, Phlx, to Sonia Patton, Staff Attorney, Division of Market Regulation (''Division''), Commission, dated May 25, 2000.

[5] *See* Letter from Carla Behnfeldt, Counsel, Phlx, to Sonia Patton, Staff Attorney, Division, Commission, dated July 11, 2000.

[6] *See* Securities Exchange Act Release No. 43211 (August 25, 2000), 65 FR 53251.

[7] *See* Letter from Mark I. Salvacion, Director and Counsel, Phlx, to Belinda Blaine, Associate Director, Division, Commission, dated December 14, 2001 (''Amendment No. 3 to SR–Phlx–00–02''). In Amendment No. 3, the Exchange amended the Certificate of Incorporation to: (1) Provide that permit holders may serve on, or nominate candidates for the Board of Governors or Committees; and (2) clarify that permit holders are not members of the Exchange for purposes of Delaware General Corporate Law (''DGCL'') and shall have no rights or privileges conferred upon members of a nonstock corporation solely by DGCL. In Amendment No. 3, the Exchange also represented that the Board of Governors will appoint a qualified ETP holder, or associated person thereof, to the Exchange's Business Conduct Committee at the next annual appointment of Business Conduct Committee members, presently scheduled for March 2002. Lastly, the Exchange stated that it has authorized the Board of Governors to issue only 75 permits.

[8] 15 U.S.C. 78s(b)(1).

[9] 17 CFR 240.19b–4.

rule change to adopt a rule setting forth the terms and conditions of ownership of ETPs.[10] The Exchange filed amendments to the proposed rule change on May 30, 2000 [11] and July 12, 2000.[12] The proposed rule change was published for comment in the **Federal Register** on September 1, 2000.[13] On December 17, 2001, the Exchange filed Amendment No. 3 to the proposal.[14]

The Commission received two comment letters regarding the proposals.[15] This notice and order approves both proposed rule changes, as amended, and solicits comments from interested persons on Amendment No. 3 to each proposed rule change.

II. Description of the Proposal

A. SR–Phlx–00–02

The Exchange proposes to amend its Certificate of Incorporation by adding a new Article Twenty-First (''Article Twenty-First'') that authorizes the Exchange's Board of Governors (''Board'') to issue trading permits that would allow the holders of such permits to conduct business on the Exchange. Article Twenty-First also authorizes the Board to adopt rules governing, among other things, the terms, conditions, number, and transferability of permits, the qualifications that members and non-members must meet to be issued a permit, and the dues and other charges to be paid to the Exchange in connection with the permits.[16]

Article Twenty-First permits the Board to authorize the Chairman of the Board or any Board committee to exercise any powers of the Board with respect to the permits. Article Twenty-First also provides that permit holders shall be eligible to serve on, or nominate candidates for election to, the Board or Committees thereof or other Exchange Committees referred to in the By-Law or Rules of the Exchange.[17]

Article Twenty-First is intended to give the Board the flexibility to create a means, other than the purchase or lease of an Exchange membership, for qualified persons to acquire trading rights on the Exchange. The Exchange's Certificate of Incorporation provides that the purpose of the Exchange is to ''act as and to provide a securities exchange where the [Exchange's] members and other persons authorized by it can [do business].'' [18] In Article Twenty-First, the Exchange makes clear that such ''other persons'' authorized to do business at the Exchange includes holders of trading permits authorized by the Board.

B. Phlx–00–03

Phlx Rule 23 will govern the terms and conditions of ETPs, which are intended to confer access privileges to the Exchange's equity trading floor.[19] Phlx Rule 23 establishes two classes of ETPs. Regular Equity Trading Permits (''Regular ETPs'') authorize their holders to trade equity securities on any facility of the Exchange, in any capacity permitted to members, including as a specialist. Off-Floor Equity Trading Permits (''Off-Floor ETPs'') allow holders electronic and telephonic access, but not physical access, to the Exchange floor.

Phlx Rule 23(a) provides that the two classes of ETPs may be issued by the Exchange to applicants pursuant to resolution of the Board of Governors (''Board'') for such fee as may be established from time to time by the Board. The Exchange may issue a maximum of 75 ETPs.[20]

Phlx Rule 23(b) requires ETP applications to be approved by the Exchange. The application process for applicants who are not members of the Exchange would also include an admissions determination by the Exchange's Admissions Committee. ETP applicants who are members of the Exchange when they apply for an ETP would have already received a favorable admissions determination by the Exchange's Admissions Committee. With respect to ETP applicants who are not Exchange members, the admissions process would be the same as that currently required in connection with membership applicants, and the decision to grant or deny an application for admission as an ETP holder would be made by the Admissions Committee under its established procedures.[21] Phlx Rule 23(b) also requires the applicant to sign a pledge to abide by the By-Laws and rules of the Exchange and to submit to the Exchange's disciplinary jurisdiction.

Phlx Rule 23(c) provides that, except as may be otherwise set forth in the Rule or in other rules of the Exchange or effective Commission filings, an ETP holder will have the right to transact business on the floor of the Exchange to the same extent and in the same manner, and would be deemed to have the same rights and obligations, as a member of the Exchange without options privileges.[22] It also establishes

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[10] SR–Phlx–00–03.

[11] *See* Letter from Carla Behnfeldt, Counsel, Phlx, to Sonia Patton, Staff Attorney, Division, Commission, dated May 25, 2000.

[12] *See* Letter from Carla Behnfeldt, Counsel, Phlx, to Sonia Patton, Staff Attorney, Division, Commission, dated July 11, 2000.

[13] *See* Securities Exchange Act Release No. 43212 (August 25, 2000), 65 FR 53253.

[14] *See* Letter from Mark I. Salvacion, Director and Counsel, Phlx, to Belinda Blaine, Associate Director, Division, Commission, dated December 14, 2001 (''Amendment No. 3 to SR–Phlx–00–03''). In Amendment No. 3, the Exchange: (1) Amended proposed Rule 23(a) to specify that it will issue a maximum of 75 ETPs; (2) deleted a provision in proposed Rule 23(b) which would have required that ETP holders be at least the minimum age of majority as it was inconsistent with a By-Law requirement that the those applying for exchange membership by twenty-one years of age; (3) expanded the language of proposed Rule 23(c) to clarify that ETP holders are deemed to be members for purposes of eligibility requirements to serve on the Board of Governors or Exchange Committees and for the purpose of nominating candidates for the Board; (4) amended proposed Rule 23(c) to clarify that permits issued by the Exchange are not ''Regular'' or ''Convertible'' memberships of the Exchange, and are not members for purposes of DGCL and shall have no rights or privileges conferred on members of a nonstick corporation solely by DGCL; (5) amended proposed Rule 23(e) to clarify that ETP holders shall be subject certain Exchange fees and charges, but not to annual membership dues, technology fees or capital assessments; and (6) amended proposed Rule 239i) to clarify that ETP organizations will be required to post security with the Exchange, the proceeds of which may be applied by the Exchange upon termination of any ETP in the same manner as proceeds of membership transfers under Exchange By-Law 15–3.

[15] *See* letters from Matthew D. Wayne, Vanasco, Wayne & Genelly, to Jonathan G. Katz, Secretary, Commission, dated February 25, 2000 (''Wayne Letter''), and William W. Uchimoto, Executive Vice President and General Counsel, Ashton Technology, to Jonathan G. Katz, Secretary, Commission, dated September 5, 2000 (''Ashton Letter''). These letters were sent in response to both proposed rules changes.

[16] The Commission notes and the Exchange has acknowledged that any such action undertaken pursuant to Board resolution and not proposed to be set forth in the rules of the Exchange would nonetheless be filed with the Commission to the extent required pursuant to Section 19(b) of the Act and Commission rules thereunder.

[17] *See* Amendment No. 3 to SR–Phlx–00–03, *supra* note 6.

[18] Phlx Certificate of Incorporation, Article Third (emphasis added). The Exchange notes that the Commission has previously approved the issuance by the Exchange of foreign currency options participations (''FCO Participations'') pursuant to which both Exchange members and non-members may trade foreign currency options on the Exchange. *See* Securities Exchange Act Release No. 19134 (October 14, 1982), 47 FR 46949 (October 21, 1982).

[19] The Exchange has a proposal pending with the Commission to amend its schedule of dues, fees, and charges to provide that the Exchange's existing application fee and initiation fee apply to ETPs, and to impose monthly ETP fees. *See* SR–Phlx–00–04. Finally, Stock Clearing Corporation of Philadelphia (''SCCP'') has proposed a change to its certificate of incorporation and to SCCP Rule 3 pursuant to which SCCP may treat ETP holders as Phlx members for purposes of clearing services it provides. *See* Securities Exchange Act Release No. 45255 (January 9, 2002) (SR–SCCP–00–01).

[20] *See* Amendment No. 3 to SR–Phlx–00–03, *supra* note 14.

[21] Phlx Rule 901, Denial of and Conditions to Membership, sets forth certain criteria for membership decisions which would also apply to any determination to issue an ETP to an applicant who is not already a Phlx member.

[22] The Commission has in the past approved the Exchange's issuance of Foreign Currency Options

Continued

that an ETP holder will not be entitled by virtue of the ETP to vote in any election or on any amendment to the By-Laws or on any other matter, or to petition or to be counted as part of a quorum at meetings of members. ETP holders will, however, be eligible to serve on, and nominate candidates for, the Board of Governors and Exchange committees if elected or appointed and subject to existing qualification requirements for service, to the same extent as members.[23] Because an ETP confers no equity interest in Exchange assets or property, Phlx Rule 23(c) establishes clearly that an ETP will not entitle its holder to share in any distribution of the assets or funds of the Exchange in the event of any voluntary or involuntary liquidation, dissolution, or winding up of the affairs of the Exchange, or to purchase options privileges. Finally, Phlx Rule 23(c) provides that specialist members who elect to sell or lease their memberships in favor of Regular ETPs would continue to be specialists in their allocated securities.

Phlx Rule 23(d) establishes the rights of holders of Off-Floor ETPs. An Off-Floor ETP holder will be able, if accompanied by a regular member, to visit the floor of the Exchange, but will not have the privilege of transacting business on it. Consequently, an Off-Floor ETP holder will not be eligible to apply for specialist privileges. With this exception, an Off-Floor ETP holder will have the same rights as a Regular ETP holder. In particular, an Off-Floor ETP holder will be authorized, for the purpose of trading equity securities, to maintain electronic or telephonic access to (i) the floor facilities on the equities floor of the Exchange of a member or member organization or a Regular ETP holder, (ii) the Philadelphia Stock Exchange Automated Communication and Execution System (''PACE''),[24] and (iii) such other automated trading systems of the Exchange as may be made available to members of the Exchange without options privileges.

Phlx Rule 23(e) establishes the ability of the Exchange to impose fees and charges on ETP holders. An ETP holder will be subject to the same obligations and duties (including the payment of Exchange fees and charges) imposed on Exchange members, except that ETP holders will not be charged annual membership dues, technology fees, or any capital assessments that could be imposed in the future.[25] Phlx Rule 23(e) establishes that all provisions of the Exchange's Certificate of Incorporation and By-Laws, and the rules, regulations, requirements, orders, directions and decisions adopted pursuant to them which by their terms are applicable to Exchange members will also apply to ETP holders unless their application is inconsistent with the provisions of Rule 23. Likewise, all references in such documents to ''non-members'' will not be construed to apply to ETP holders. Consistent with Phlx Rule 23(e), the Exchange intends to charge a $200 application fee for every ETP application made by members and non-members. Non-member applicants for ETPs will also be required to complete the same admissions process required by the Exchange for membership applicants, and will be charged the $1,500 initiation fee upon issuance of the ETP just as members are charged this fee upon election to membership. After an ETP is issued, its holder will be subject to the same fees as Phlx members (except as otherwise noted in Phlx Rule 23(e)) in addition to a monthly ETP fee.

Phlx Rule 23(f) makes clear that, unlike a membership, an ETP may not be transferred by lease, sale, gift, involuntary transfer, or any other means or as collateral to secure any obligation, except that an ETP may be transferred within the holder's ETP organization to (i) an individual who has applied for and been approved by the Admissions Committee as an ETP holder, or (ii) an ''inactive nominee'' registered as such with the Exchange.

Phlx Rule 23(g) provides that an individual ETP holder associated with a broker-dealer will be required to qualify such broker-dealer as an ETP firm or an ETP corporation just as a member would register it as a member firm or member corporation under current Exchange rules.[26] Except to the extent otherwise set forth in Phlx rule 23 or in other Exchange rules or effective Commission filings, an ETP organization will have the same rights and obligations as a member organization of the Exchange. The organization would cease to be an ETP organization of the Exchange upon termination of the ETP pursuant to which the ETP organization is qualified.

Phlx Rule 23(g) also requires every ETP applicant whose fees are to be paid by such ETP organization to file, along with his or her ETP application, an agreement between the ETP applicant and the ETP organization (an ''ETP Use Agreement'') providing that the ETP organization may direct the transfer of the ETP to another qualified individual within the ETP organization and that the ETP holder may not object to such transfer. The ETP Use Agreement is in some respects analogous to the A–B–C Agreement provided for in Exchange Rule 930 pursuant to which a member contributes the use of a membership to the membership organization. Like the A–B–C Agreement provided for in Rule 940, the ETP Use Agreement would restrict the use of the ETP by its holder in the event of the holder's termination of his association with the ETP organization.[27]

Phlx Rule 23(h) permits the Exchange to suspend or expel an individual ETP holder on the same basis as a member. It also permits the Exchange to amend the terms of, to discontinue offering or to terminate existing ETPs of one or more classes at any time upon thirty days written notice. Similarly, Phlx Rule 23(h) requires an ETP holder to provide the Exchange thirty days written notice prior to termination of the ETP. The Exchange is required to provide notice of an ETP's termination to the membership in the same manner it provides notice of a proposed transfer of a membership. The ETP holder will remain liable for all obligations incurred as an ETP holder until these obligations are discharged, and the Exchange is authorized to draw upon any security provided pursuant to Rule 23(i), discussed below, for the payment of such obligations at any time if they remain unpaid as of the date of termination.

Participations (''FCO Participations''). Like holders of FCO Participations, ETP holders would generally be subject to Phlx's rules and By-Laws but would not be entitled to all the rights an privileges granted to Phlx members. *See* Securities Exchange Act Release No. 19134 (Oct. 14, 1982), 47 FR 46949 (Oct. 21, 1982).

[23] ETP holders will be deemed to be ''members'' and ETP organizations will be deemed to be ''member organizations'' for the purpose of eligibility to serve on the Board or Exchange Committees, and nominate candidates for the Board. However, ETP holders shall only have such rights, privileges, and obligations as are expressly set forth in the Certificate of Incorporation, Rule 23, or resolutions of the Board. References in Exchange Rules, By-Laws or the Certificate of Incorporation to ''members'' shall includes ETP holders. *See* Amendment No. 3 to SR–Phlx–00–03, *supra* note 14.

[24] PACE is the Exchange's automatic order routing and execution system on the equity trading floor. PACE accepts orders for manual and automatic execution in accordance with the provisions of Rule 229, which governs the PACE System and defines its objectives and parameters.

[25] In particular, they will not be subject by virtue of the ETP to the Exchange's $1,500 capital funding fee. *See* Securities Exchange Act Release No. 42993 (June 29, 2000), 65 FR 42415 (July 10, 2000). Fees proposed to be assessed by the Exchange with respect to ETPs are described in SR–Phlx–00–04. *See* Amendment No. 3 to SR–Phlx–00–03, *supra* note 14.

[26] Like Exchange members, an ETP holder will be required to be associated with a registered broker-dealer.

[27] The A–B–C Agreement contains additional provisions arising from the division of equitable and legal title to membership, a concept which is inapplicable to ETPs.

Phlx Rule 23(i) requires ETP organizations to provide acceptable security for payment of any claims pursuant to By-Law 15–3 upon termination of an ETP. The proceeds of the posted security may be applied by the Exchange upon termination of any ETP in the same manner as proceeds of membership transfers under By–law 15–3.[28] The security requirement may be met, at the option of the ATP organization, by providing a letter of credit or other guaranty acceptable to the Exchange, or by depositing $50,000 with the Exchange to be held in a segregated account with all other such deposits and held by the Exchange as security. The security required is the same for each ETP organization, regardless of the number of ETPs issued to its associated persons, and is unrelated to any security requirement established by SCCP.[29] The requirement does not apply to member organizations or ETP organizations that have been in good standing at the Exchange for the previous year. Consequently, ETP organizations in good standing for one year after providing such security will be entitled to its return, subject to any prior or appending claims. Finally, Phlx Rule 23(i) makes clear that at such time as no ETP holders remain associated with the ETP organization, the Exchange shall release any remaining security following payment of claims pursuant by By-Law 15–3 and upon execution by the ETP holder and ETP organization of releases satisfactory to the Board of Governors.

The Exchange expects to first undertake the ETP offering by distributing an informational circular and an ETP Application Form to be completed and returned to the Exchange together with payment of the Exchange's application fee. In addition to the ETP Application Form, applicants who are not Exchange members will be required to supply to the Admissions Committee all information required for that Committee to make an admissions determination under its established procedures, as discussed above.

III. Summary of Comments

The Commission received two comment letters in response to the proposed rule changes.[30] One commenter expressed general support for the proposal, stating that it would place the Phlx ''in a pro-competitive position with other exchanges that have reduced the cost of access to electronic trading facilities.''[31] The other commenter, however, challenged the Phlx's authority to authorize the Board to issue trading permits without a membership vote, and stated that the purpose of the proposal was to harm persons who lease seats to members wishing to trade on the Phlx Floor (''Lessors'').[32]

The commenter argued that the Phlx Certificate of Incorporation contemplates a fixed number of membership seats, possession of which gives a person or entity access and trading rights to the Phlx trading floor. Issues relating to membership seats, including different classes of members, are governed by the Exchange's By-Laws, according to the commenter. The commenter goes on to argue that the proposed ETPs are ''de facto membership seats,'' and thus should be governed by the By-Laws, a change to which requires a membership vote, not the Certificate of Incorporation. The commenter describes the addition of a new article to the Certificate of Incorporation to create the ETPs as an attempt by the Exchange to do an end-run around its By-Laws, and avoid a full membership vote on the proposal.[33]

The Exchange, however, believes that the Certificate of Incorporation already permits ETPs, and that an amendment of the Exchange's By–Laws is not required. Further, the Exchange believes that the proposed amendment to the Certificate of Incorporation authorizes ETPs in any event and supersedes any inconsistent provision in the By-Laws as a matter of basic corporate law.

The Wayne Letter also contends that the Exchange's proposal to create ETPs is part of ''a methodical plan to destroy both Lessors and the value of PHLX membership seats.'' The commenter states that ''[t]hrough the proposed trading permits, the PHLX is attempting to divert seat rental income from Lessors directly to the Exchange,'' and that it is the intention of the Board that if the proposal is approved, persons wishing to trade on the Exchange will purchase a permit rather than lease a seat. The commenter states that the Board owes a fiduciary duty to Lessors, which prohibits it from competing directly against Lessors in this manner.

The Exchange has considered this comment and stated that its business judgment the potential benefits to the Exchange of the trading permits, including the potential for increased access and enhance competition on the trading floor and the opportunity to attract additional order flow and new business, justify any possible dilution of memberships and may, in the longer term, result in higher prices for regular memberships. The Exchange believes that ETPs are in the best interests of the Exchange and its membership as a whole (including both lessee members and lessor owners), and notes that the Exchange's stated purpose in Article Third of its Certificate of Incorporation is ''[t]o act as and to provide a securities exchange where [its] members and other persons authorized by it'' can deal in securities.

IV. Discussion

After careful review, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[34] In particular, the Commission finds that the proposed rule changes further the objectives of Sections 6(b)(2), 6(b)(3), and 6(b)(5).[35]

The Commission believes that the proposed rule changes are consistent with Section 6(b)(5) of the Act[36] and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The Commission finds that ETPs may help facilitate transactions by allowing more broker-dealers direct access to the Phlx market and attracting greater order flow consistent with Section 6(b)(2) of the Act.[37]

In addition, the Commission finds that the proposed rule change is consistent with Section 6(b)(3) of the Act.[38] The Commission notes that the Exchange's Board can issue no more than 75 ETPs,[39] which is not significant in relation to the number of regular members on the Exchange.[40] The Commission also notes that the Phlx is a member-controlled exchange, which includes 52 members using a

[28] *See* Amendment No. 3 to SR–Phlx–00–03, *supra* note 14.

[29] *See* SCCP Rule 4.

[30] *See supra* note 7.

[31] *See* Ashton Letter.

[32] *See* Wayne Letter.

[33] The commenter contends that, ''[t]he PHLX is well aware that if the full membership were presented with the issue of trading permits as a proposed amendment to the By-Laws, the membership would reject the proposal.'' *See* Wayne Letter.

[34] In approving this rule, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f). In addition, the Commission notes that its approval of this proposed rule change only extends to the applicable Exchange Act finding under Section 6(b). 15 U.S.C. 78f(b).

[35] 15 U.S.C. 78f(b)(2), (3) and (5).

[36] 15 U.S.C. 78f(b)(5).

[37] 15 U.S.C. 78f(b)(2).

[38] 15 U.S.C. 78f(b)(3).

[39] *See* Amendments No. 3 to SR–Phlx–00–02 and SR–Phlx–00–03, *supra* notes 7 and 14.

[40] There are 505 regular members of the Exchange. If the Phlx wanted to issue more than 75 ETPs, it would have to amend its Certificate of Incorporation and By-Laws to provide for fair representation of these ETPs.

membership on the equity floor, whose interests are represented on the Nominating and Election Commission and Business Conduct Commission, and that the Phlx has committed to appointing a qualified ETP holder, or associated person thereof, to the Exchange's Business Conduct Committee at the next annual appointment of Business Conduct Committee members.[41] Finally, the Commission notes that any disciplinary or trading rules affecting these members are subject to the rule filing process, which requires that proposed rules be submitted to the Commission for consideration and approval.

V. Amendment No. 3

A. SR–Phlx–00–02

The Commission finds good cause for approving Amendment No. 3 to SR–Phlx–00–02 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 3, the Exchange amended the Certificate of Incorporation to provide that the permit holders may serve on, or nominate candidates for the Board or Committees. The Amendment also added language to the Certificate of Incorporation which clarified that permit holders are not members of the Exchange for purposes of DGCL and shall have no rights or privileges conferred upon members of a nonstock corporation solely by DGCL. In addition to making changes to the language of the Certificate of Incorporation, the Exchange represented that the Board of Governors will appoint a qualified ETP holder, or associated person thereof, to the Exchange's Business Conduct Committee at the next annual appointment of Business Conduct Committee members, presently scheduled for March 2002, and that it has authorized the Board to issue only 75 permits.

The Commission finds that the Exchange's proposed changes and representations made in Amendment No. 3 further strengthen and clarify the proposed rule change and raise no new regulatory issues. The Commission believes that permitting ETP holders to serve on the Board or Committees, and nominate candidates for the Board, is appropriate and furthers the objectives of Section 6(b)(3) of the Act, which states that the rules of the exchange must assure a fair representation of its members in the selection of its directors and administration of its affairs.[42] These goals are also furthered by the Exchange's commitment to place an ETP holder on the Business Conduct Committee.

Therefore, the Commission finds that granting accelerated approval to Amendment No. 3 is appropriate and consistent with Section 19(b)(2) of the Act.[43]

B. SR–Phlx–00–03

The Commission finds good cause for approving Amendment No. 3 to SR–Phlx–00–03 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 3, the Exchange amended Rule 23(a) to provide that the Exchange may issue a maximum of 75 ETPs.

Amendment No. 3 also clarified in proposed Rule 23(c) that ETPs holders are deemed to be members for purposes of eligibility requirements to serve on the Board or Exchange Committees and for the purpose of nominating candidates for the Board. The Commission believes that permitting ETP holders to serve on, and nominate candidates for, the Board or Committees is appropriate and furthers the objectives of Section 6(b)(3) of the Act, which states that the rules of the exchange must assure a fair representation of its members in the selection of its directors and administration of its affairs.[44]

In addition, Amendment No. 3 added language to proposed Rule 23(c) to clarify that ETPs issued by the Exchange are not ''Regular Memberships'' or ''Convertible Memberships'' of the Exchange, and that ETP holders are not members of the Exchange for purposes of DGCL, and shall have no rights or privileges conferred upon members of a nonstock corporation solely by the DGCL. The amendment clarifies the status of ETPs and ETP holders.

Amendment No. 3 also added language to proposed Rule 23(i) to make clear that ETP organizations will be required to post security with the Exchange, the proceeds of which may be applied by the Exchange upon termination of any ETP in the same manner as proceeds of membership transfers under Exchange By-Law 15–3. Exchange By-Law 15–3 provides that the proceeds from the transfer of a membership shall be applied by the Exchange to satisfy existing claims against such member. Again, the Commission believes that this change is merely to clarify the procedure that will be followed in the event an ETP is terminated.

Finally, Amendment No. 3 makes technical non-substantive changes to the proposal to ensure internal consistency exists in the Exchange rules.

The Commission finds that the Exchange's proposed changes in Amendment No. 3 further strengthen and clarify the proposed rule change. Therefore, the Commission finds that granting accelerated approval to Amendment No. 3 is appropriate and consistent with Section 19(b)(2) of the Act.[45]

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 3, including whether the proposed amendments are 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 amendment that are filed with the Commission, and all written communications relating to the amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx.

All submissions should refer to File Nos. SR–Phlx–00–02 and SR–Phlx–00–03 and should be submitted by February 8, 2002.

[41] *See* Amendments No. 3 to SR–Phlx–00–02 and SR–Phlx–00–03, *supra* notes 7 and 14. The Act requires an Exchange to ''assure a fair representation of its members in the selection of its directors and administration of its affairs * * *.'' *See* Section 6(b)(3) of the Act, 15 U.S.C. 78f(b)(3). This requirement serves to ensure that an exchange is administered in a way that is equitable to all those who trade on the Exchange. In approving this proposed rule change, the Commission notes that the Exchange may not issue more than a significant number of ETPs in relationship to their 505 Regular Memberships. Also, the Commission Notes that the Exchange currently has 52 members using a membership on the equity floor. These members are eligible to serve on the Nominating and Election Committee and the Business Conduct Committee, and currently such a member serves on each Committee. The Exchange has also committed to appointing a qualified ETP holder to the Business Conduct Committee. Telephone conversation between Edith Hallahan, First Vice President and Deputy General Counsel, Phlx, and Florence Harmon, Senior Special Counsel, Division, Commission, on January 9, 2002.

[42] 15 U.S.C. 78f(b)(3).

[43] 15 U.S.C. 78f(b)(2).

[44] 15 U.S.C. 78f(b)(3).

[45] 15 U.S.C. 78s(b)(2).

VII. Conclusion

For all of the aforementioned reasons, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[46] that he proposed rule changes (SR–Phlx–00–02 and SR–Phlx–00–03), as amended, are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[47]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1300 Filed 1–17–02; 8:45 am]

BILLING CODE 8010–01–M

[46] 15 U.S.C. 78s(b)(2).

[47] 17 CFR 200.3–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before March 19, 2002.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Louis Cupp, New Markets Policy Analyst, Office of New Markets Venture Capital (NMVC) program, Small Business Administration, 409 3rd Street, SW., Suite 6000.

FOR FURTHER INFORMATION CONTACT: Louis Cupp, New Markets Policy Analyst, Office of New Markets Venture Capital (NMVC) program, 202–205–6510 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION: *Titles:* NMVC Program Application, Funding and Reporting.

Form No's: SBA Forms 2184, 2185, 2069, 468, 468 (short form), 468, (Schedule 9,10,11) 480 and 1031 Standard Forms (SF's are under OMB Control) 269, 270, 272, 424, 424A and 424B.

Description of Respondents: NMVC Program applicants and participants; SSBICs receiving grants under the NMVC program.

Annual Responses: 947.

Annual Burden: 11,538 hours.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02–1314 Filed 1–17–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 04/74–0285]

Delta Venture Partners I, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Delta Venture Partners I, L.P., 8000 Centerview Parkway, Suite 100, Cordova, TN 38018, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730 (2000)). Delta Venture Partners I, L.P. proposes to provide equity/debt security financing to Nextek, Inc., 201 Next Technology Drive, Madison, AL 35758. The financing is contemplated for plant expansion and working capital.

The financing is brought within the purview of Section 107.730(a)(1) of the Regulations because Nextek Investment Partners, L.P. and Nextek Investment Partners II, L.P., Associates of Delta Venture Partners I, L.P., currently jointly own greater than 10 percent of Nextek, Inc., and therefore Nextek, Inc., is considered an Associate of Delta Venture Partners I, L.P., as defined in Sec. 107.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: December 5, 2001.

Harry Haskins,

Acting Associate Administrator for Investment.

[FR Doc. 02–1313 Filed 1–17–02; 8:45 am]

BILLING CODE 8025–01–P

TENNESSEE VALLEY AUTHORITY

Guntersville Reservoir Land Management Plan, Jackson and Marshall Counties, Alabama and Marion County, TN

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Issuance of record of decision.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 to 1508) and TVA's procedures implementing the National Environmental Policy Act. TVA has updated its 1983 land management plan for 40,236 acres of TVA-managed land on Guntersville Reservoir in Alabama and Tennessee. TVA will use the plan to guide land use approvals, private water-use facility permitting, and resource management decisions. On September 19, 2001, the TVA Board of Directors decided to adopt the preferred alternative (Alternative B3, Blended Alternative) identified in the Final Environmental Impact Statement (EIS) and Land Management Plan, Guntersville Reservoir. A Notice of Availability of the Final EIS was published in the **Federal Register** on August 11, 2001. Under the adopted land plan, TVA has allocated undeveloped lands for public recreation and natural resource conservation, and has also been responsive to local requests for use of TVA lands for water access and community development. Of the 40,236 acres of TVA lands on the reservoir which are available for allocation, 37,662 acres would be allocated to resource conservation, sensitive resource management, TVA project operation, or dispersed recreation uses; 1,704 acres would be allocated for developed recreation uses such as marinas, campgrounds, parks, and boat ramps; 543 acres would be allocated for residential lake access, and 327 acres for industrial access or commercial uses.

FOR FURTHER INFORMATION CONTACT: Harold M. Draper, NEPA Specialist, Environmental Policy & Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C, Knoxville, Tennessee 37902–1499; telephone (865) 632–6889 or e-mail hmdraper@tva.gov.

SUPPLEMENTARY INFORMATION: Guntersville Reservoir is a 76-mile long reservoir completed in 1939. Although 109,671 acres were acquired for construction of the reservoir, 56,300 are covered by water. Subsequent transfers of land by TVA for economic, industrial, residential, or public recreation development have resulted in a current

balance of 40,236 acres of TVA public land above normal summer pool elevation of 595 mean sea level. TVA first announced its proposal to update its 1983 land management plan in 2000. Meetings were held to inform the public of the land allocation plan update and to solicit input on March 20, 2000 in South Pittsburgh, Tennessee; March 21, 2000 in Scottsboro Alabama; and March 23, 2000 in Guntersville, Alabama. These meetings were attended by 112 people. In addition, written comments were invited through a news release, newspaper notices, and a web sit notice. Subsequent to the scoping meetings, TVA determined that the development of an EIS would allow a better understanding of the impacts of the alternatives. TVA published a Notice of Intent to Prepare an EIS on December 20, 2000 (**Federal Register** Vol. 65, page 79912). During the scoping period, commenters expressed a desire for more environmental protection and discussed how they valued the scenic beauty and setting of the reservoir. In addition, 13 external proposals were received for use of TVA lands along the reservoir. These proposals were from local governments and adjacent residents requesting additional recreational or industrial access uses. TVA made an effort to identify parcels of land with sensitive resources and identified tracts that should be managed for protection of these resources. In addition, TVA used the proposals received to develop alternatives for public review in the draft EIS (DEIS), which was published in April 2001. A Notice of Availability (NOA) for the DEIS appeared in the **Federal Register** on May 4, 2001.

In addition to written materials, additional information on the proposals and other aspects of the DEIS was available to the public in three public meetings held in South Pittsburg, Tennessee (May 24, 2001), Scottsboro, Alabama (May 29, 2001) and Guntersville, Alabama (May 31, 2001). Approximately 550 comments were received on the DEIS. These comments primarily related to recommendations for proposed uses of TVA land. Numerous comments and extensive public discussions took place regarding the use of several of the parcels. These discussions were especially focused on parcel 26a, adjacent to the Conners Island Industrial Park; parcel 40, proposed for a Guntersville Airport expansion; parcel 200a, proposed for a South Sauty Creek commercial recreation development; and parcel 257 in the City of Guntersville, which attracted three competing proposals. In the Final EIS (FEIS), TVA developed an alternative that would fully or partially zone parcels of land to accommodate 11 of the 13 initial requests. In addition, TVA received public suggestions for changes on other parcels. After considering all comments, the Final EIS was completed and distributed to commenting agencies and the public. A NOA for the Final EIS was published in the **Federal Register** on August 11, 2001.

Alternatives Considered

TVA initially considered three alternatives, including no action, for allocation of Guntersville Reservoir lands. The action alternatives were characterized as Alternative B1, ''Balanced Development and Recreation,'' and Alternative B2, ''Balanced Development and Conservation.'' Alternative B1 accommodated use requests and allocation changes for 13 parcels, while Alternative B2 did not accommodate allocation changes requests and instead allocated these lands to conservation-oriented uses or retained the lands in their previous designation under the 1983 plan. In response to public comments on the DEIS, TVA developed a fourth alternative, designated Alternative B3, or ''Blended Alternative.'' This alternative was designed to provide zone allocations which partially accommodate the 13 requests, and make other adjustments in response to public comments.

Under *Alternative A, the No Action Alternative,* TVA would not revise the 1983 allocation plan. Proposed land use requests received from external applicants or internal TVA interests would be evaluated for consistency with the 1983 plan. Requested land uses that are consistent would be approved or denied based on a review of potential environmental impacts and other administrative considerations. If the request is not consistent with the designated land use, and TVA staff believe the proposal has merit, then the TVA Board of Directors would be asked to amend the plan and change the allocation.

The 1983 plan used 16 allocation categories to allocate 150 parcels (32,584 acres) of TVA land. Residential shoreline and other shoreline strips were not included in the allocations. In addition, the Murphy Hill coal gasification plant site and the Honeycomb Quarry Cave limestone quarry were not allocated. Many parcels in the 1983 plan were designated with multiple allocation tags, which means that they could be considered for a wide range of uses, with a wide range of resulting environmental consequences. Despite this uncertainty, TVA estimates that if the existing plan were used as a guide, 89 percent of reservoir lands would be used for resource protection or natural resource management, 19 percent would be used for industrial or other developed uses, and 13 percent would be used for recreation development. As explained in the EIS, the above figures total greater than 100 percent because certain parcels have multiple allocation tags under the 1983 plan.

Under *Alternative B1, Balanced Development and Recreation,* 80 percent of project lands would be allocated to environmental protection and natural resource management uses, 13 percent would be allocated for developed uses or industrial uses, 6 percent for recreation development, and 1 percent for residential access. Tracts would be allocated to accommodate a Guntersville Airport expansion, 9 new recreational development proposals, and 3 new commercial or industrial proposals.

Under *Alternative B2, Balanced Development and Conservation,* 82 percent of project lands would be allocated to environmental protection and natural resource management uses, 13 percent for developed uses or industrial uses, 4 percent for recreation development, and 1 percent for residential access. Zone allocations for recreational, commercial or industrial proposals, or the airport expansion under Alternative B1 would not be accommodated, and the tracts would stay in their existing allocation or be allocated to zone 4, natural resource conservation.

Alternative B3, Blended Alternative, was developed in response to public comments on the DEIS. Approximately 81 percent of project lands would be allocated to environmental protection and natural resource management uses, 14 percent for developed uses or industrial uses, 4 percent for recreation development, and 1 percent for residential access. Alternative B3 contains a mix of allocations from Alternatives B1 and B2 and attempts to address, respond to, or resolve suggestions made during public review of the DEIS. In some cases, parcel allocation revisions were made, or special commitments related to parcels have been included. In general, Alternative B3 differs from Alternative B1 in that approximately 600 acres would be retained in buffers or natural resource management zones. Adjacent human communities would be buffered from visual and other impacts of parcel development. Alternative B3 was

designated as the TVA preferred alternative in the FEIS.

The EIS considered the environmental consequences of the alternatives on a wide variety of environmental resources. Under any alternative, sensitive resources such as endangered and threatened federal and state-listed species, cultural resources, and wetlands would be protected. Adoption of Alternative B3 would balance the competing demands of development and conservation. Development activities would have the potential for adverse environmental impacts. However, through the inclusion of environmental safeguards to address water quality, visual buffers, and wetland protection, and through resource avoidance and parcel-specific protection measures, these impacts would be minimized.

Because the potential effects on historic properties cannot be fully determined prior to implementation of the land plan, TVA will use a phased identification and evaluation process as allowed under 36 CFR 800.4(b)(2) to fulfill its obligations under Section 106 of the National Historic Preservation Act. Letters from the Alabama and Tennessee State Historic Preservation Officers (SHPOs) dated September 7, 2001 and August 16, 2001, respectively, concur with this phased approach. Further, in view of the regional scope of this project, TVA has initiated efforts to prepare a Programmatic Agreement (PA) consistent with the regulations of the Advisory Council on Historic Preservation (ACHP) implementing the National Historic Preservation Act. The PA includes provisions for monitoring of reservoir shorelines. A PA for the implementation of reservoir land management plans in Alabama is being reviewed by all requisite parties. ACHP, TVA, the Alabama SHPO, the Eastern Band of Cherokee Indians, and the Chickasaw Nation are proposed signatories in the PA, and the Alabama Indian Affairs Commission is a concurring party. A PA is also under development for reservoir lands in the state of Tennessee, through coordination with the Tennessee SHPO, ACHP, and consulting parties. These measures ensure that the effects of the Guntersville Reservoir Land Management Plan on historic properties have been taken into account.

Response to Comments

Appendix E of the Final EIS contains summaries of and responses to the comments TVA received during the Draft EIS process. TVA received comments from 550 individuals and organizations on the DEIS. As indicated above, TVA believes that the open public process and discussion on a number of community proposals substantially enhanced its decision making. TVA also received comments on the FEIS from EPA, Alabama Historical Commission, and Tennessee Historical Commission. EPA appreciated that timber harvesting, an allowable activity in Zone 4, was redefined to include ''timber management to promote forest health.'' They requested that the ROD offer management options for unit plans. Further, EPA was concerned that Alternative B3 favored development proposals and was closer to Alternative B1 than the EPA-favored Alternative B2. EPA also provided specific comments on parcel allocations. EPA expressed concerns about industrial and commercial development such as the proposed Guntersville Airport expansion, industrial park, interchange development and industrial site, and also pointed out that marinas, boat ramps and campgrounds proposed to be allowed under Alternative B3 could have reservoir water quality impacts. For parcel 257, EPA expressed a preference to allocate the parcel to for zone 4 and stated that Alternative B3 would allow partial development of the tract by allowing the siting of a headquarters for United Cherokee Intertribal.

TVA appreciates the EPA comments and will emphasize water quality considerations during its land use and Section 26a decision making processes for facilities on Guntersville Reservoir. Although TVA has attempted to accommodate a number of development proposals, these are typically of limited area and are often for water access for adjacent private landowners. TVA will use site-specific reviews to incorporate additional environmental protection, including water quality protection measures, into these proposals. Typical forest management options for unit plans (zones 3 and 4) on Guntersville Reservoir are expected to include some, but not all of, the following types of activities:

- Pine thinning and prescribed burning to maintain healthy pine stands
- Salvage activities to control southern pine beetle infestations
- Creation of brush piles for wildlife habitat
- Daylighting of road shoulders and selected other areas by selective timber removal to create conditions favorable for grasses and forbs preferred by wildlife species, and to enhance aesthetics
- Planting of areas adjacent to the reservoir with appropriate species
- Treatment of invasive exotic species infestations
- Timber stand improvements to encourage oak regeneration and growth
- Harvesting mature pine stands and allow stands to regenerate
- Harvests of limited size over a period of years to create a mosaic of hardwood forest cover types and age classes
- Controlled burn implementation during late winter to increase advanced oak regeneration

All of these activities would be oriented toward maintenance and enhancement of forest health on public lands. Other public use management and wildlife management activities would be conducted to preserve and enhance forest ecosystem health and productivity. Each unit plan would be subjected to agency and public review, and site-specific environmental safeguards incorporated into the proposed management activities. With regard to Parcel 257, TVA did not zone this parcel to accommodate the United Cherokee Intertribal request for a headquarters and interpretive center. However, TVA did decide to allow use of a limited area for an annual tribal conference and ceremonial event (pow-wow).

In other agency comments, the Tennessee Historical Commission concurred that phased compliance is an appropriate strategy, and requested that TVA submit all historic property survey reports to the office for review and comment. In accordance with standard Section 106 compliance procedures, TVA will do this for all properties in Tennessee. The Alabama Historical Commission indicated that they preferred Alternative B2, but that they could agree with Alternative B3 provided that a phase II archaeological investigation be conducted for every site which is potentially eligible for the National Register of Historic Places. TVA will conduct archaeological and historic structure surveys to identify historic properties, and will submit phase II proposals to the Alabama Historical Commission for approval prior to testing for projects in Alabama. TVA also received two comments from adjoining landowners on the Final EIS that were not made on the draft EIS questioning some proposed allocation decisions. An adjoining landowner objected to a buffer zone that TVA proposed to establish between a recreational development zone (proposed for a campground) and a subdivision. The landowner felt that the buffer zone would be subject to abuse from uncontrolled camping and motorized recreation. A second

landowner requested that lands classified as Zone 4 because of their incorporation into a state wildlife management area be changed to zone 7 to allow residential access. Because the land in question has historically been used as part of the Mud Creek Wildlife Management Area and the wildlife management area easement with the state is proposed for extension, TVA plans to leave this property in zone 4, but to recognize the residential access rights for a 1.7-acre parcel. As part of any future conveyance to the state for wildlife management purposes, TVA would include both a general and specific reservation acknowledging these residential access rights.

Decision

The TVA Board decided to adopt the Guntersville Reservoir Land Management Plan as described in Alternative B3 on September 19, 2001. TVA believes that Alternative B3 responds to community development and recreational development needs on Guntersville Reservoir, but also recognizes and preserves the aesthetic and sensitive resources which make the reservoir unique. Like the other alternatives considered, Alternative B3 sets aside parcels containing sensitive resources and habitats in the Sensitive Resource Protection and Natural Resource Conservation categories. For lands where TVA proposes to consider development proposals, following site-specific review of development plans, Alternative B3 adopts commitments that would further minimize the potential for adverse impacts to the environment. These commitments are listed below, under Environmental Commitments.

Environmentally Preferable Alternative

TVA has concluded that Alternative B2, which would not grant recreational and industrial access requests on 13 parcels, is the environmentally preferable alternative. However, TVA's responsibilities for unified development of the Tennessee River system and adjoining properties encourage the use of portions of the reservoir lands to foster the economic development of the area. Local governments and a number of people commenting also support these projects. TVA believes that Alternative B3 helps to meet the multiple objectives of the Guntersville project, and would result in substantially better environmental protection than previous shoreline development practices. Further the environmental impacts of TVA's preferred alternative would be less than Alternative B1 and the No Action Alternative.

Environmental Commitments

The land plan envisioned in Alternative B3 advances TVA's commitment to resource stewardship and habitat protection through strong conservation approaches. Alternative B3 was formulated using environmentally protective measures. Some of these measures include use of a sensitive resource protection zone and incorporation of buffers between development proposals and adjoining landowners. In addition, TVA is adopting the following measures to minimize environmental impacts:

- Wetlands will be avoided on residential access properties on parcels 12, 69, and 22 and any portion of parcel 26a and 165 allocated for recreational development.
- Recreational development on parcels 143, 154a, 159 and 168 will be designed to avoid historic properties and designed to enhance their interpretation.
- Agricultural licensing on Parcels 26a, 45, 121, 124, 132, and 260 will include buffers to avoid impacts to the reservoir and wetlands.
- All land disturbing activities shall be conducted in accordance with Best Management Practices as defined by Section 208 of the Clean Water Act and implementing regulations to control erosion and sedimentation. Forest management activities will be conducted in accordance with practices prescribed for forestry. Best Management Practices for agriculture, including maintenance of vegetative buffers, will be included in agricultural licenses.
- Visual and water quality enhancement buffers, between 50 feet and 100 feet wide, will be provided to screen timber harvest areas from public thoroughfares and shorelines and to minimize the potential for sediments or other nonpoint source pollutants to enter Guntersville Reservoir.
- Controlled burns will be conducted in accordance with the open burning regulations of the appropriate state.
- On parcel 2, TVA will place special emphasis on visual analysis during consideration of any management activities.

With the implementation of the above environmental protection measures, TVA has determined that adverse environmental impacts of future development proposals on the reservoir would be substantially reduced. These protective measures represent all of the practicable measures to avoid or minimize environmental harm that are associated with this alternative.

As TVA implements the Guntersville Reservoir Land Management Plan, the agency will continue to work with all affected interests to promote environmentally sound stewardship of public lands.

Dated: October 29, 2001.

Kathryn J. Jackson,

Executive Vice President, River System Operations and Environment.

[FR Doc. 02–1166 Filed 1–17–02; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Jefferson and Clearfield Counties, Pennsylvania

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 Jefferson and Clearfield Counties, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: David W. Cough, P.E., Director of Operations, Federal Highway Administration, Pennsylvania Division , 228 Walnut Street, Room 536, Harrisburg, Pennsylvania 17101–1720, (717) 221–3411 or Mark S. Rozich, P.E., Project Manager, Pennsylvania Department of Transportation, District 10–0, Route 286 South, P.O. Box 429, Indiana, Pennsylvania 15701, (724) 357–2852.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation (PENNDOT), will prepare an Environmental Impact Statement (EIS) for a transportation improvement within the study area of U.S. Route 219 (eastern terminus), S.R. 0830 (western terminus), Interstate 80 (southern terminus), and the DuBois-Jefferson County Airport (northern terminus). The project will include the development of a reasonable range of alternatives that meet the project need and supporting environmental documentation and analysis to recommend a preferred alternative for implementation. A complete public involvement program is part of the project.

The purpose of the transportation improvement is to improve access to the DuBois-Jefferson County Airport and the associated Keystone Opportunity Zone (KOZ) and Foreign Trade Zone (FTZ). Based upon a needs analysis completed

in 2001, transportation improvements are needed to support the regional economic development goals planned for the area, encourage the regional intermodal needs of the area by providing safe and efficient access to the airport, and maintain consistency with the region's transportation goals and objectives as defined by the North Central Pennsylvania Regional Planning and Development Commission.

Alternatives that will be considered include: The no-build; upgrade of existing roadways within the study area; and new roadway alignment with a new interchange on Interstate 80. These alternatives will be the basis for a recommendation of alternatives to be carried forward for detailed environmental and engineering studies in the EIS. Incorporated into and studied with the various alternatives will be design variations of grade and alignment.

Public meetings have been and will continue to be held throughout the development of the EIS for the general public and agencies. A Project Mailing List, a Project Newsletter and a Project Web Site will established to inform the public of project milestones.

Periodic meetings are scheduled with the state and federal environmental agencies through an Agency Coordination Meetings (ACM) to present project as well as receive comments and concerns from the agencies on the development of the project alternatives, the assessment of impacts and the identification of mitigations measures. 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 the project.

To ensure 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 and questions concerning this proposed action and the EIS should be directed to the FHWA or PENNDOT at the addresses provided above.

(Catalogue of Federal Domestic Assistance Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program)

James A. Cheatham,

FHWA Division Administrator, Harrisburg, Pennsylvania.

[FR Doc. 02–1285 Filed 1–17–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34151]

Beaufort & Morehead Railway, Inc.—Acquisition and Operation Exemption—North Carolina Ports Railway Commission d/b/a Beaufort & Morehead Railway

Beaufort & Morehead Railway, Inc. (BMRI), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire by lease, pursuant to an agreement with its owner the North Carolina Ports Railway Commission d/b/a Beaufort & Morehead Railway (NCPRC), all of NCPRC's railroad line extending from the connection with the Norfolk Southern Railway Company (Atlantic & East Carolina Railway) at milepost 0.0 in Morehead City to milepost 0.87 at Gallants Channel near Morehead City, a distance of .87 miles in Carteret County, NC, serving the intermediate stations of Marsh Island, Radio Island and Beaufort Team Track, together with all of the NCPRC's yard and interchange tracks.[1] BMRI will be the operator of the line. BMRI certifies that its projected annual revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier, and that its projected annual revenues will not exceed $5 million.

The transaction was scheduled to be consummated on December 28, 2001.

If this notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34151, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Fritz R. Kahn, P.C., 1920 N Street, N.W., 8th Floor, Washington, DC 20036–1601.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: January 11, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–1276 Filed 1–17–02; 8:45 am]

BILLING CODE 4915–00–P

[1] *See North Carolina Ports Railway Commission d/b/a Beaufort & Morehead Railway—Acquisition and Operation Exemption—Beaufort & Morehead Railway, Inc.,* STB Finance Docket No. 33826 (STB served Dec. 2, 1999).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34125]

South Dakota Railroad Authority—Acquisition Exemption—The Burlington Northern and Santa Fe Railway Company

South Dakota Railroad Authority (SDRA), noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to acquire approximately 49.48 miles of rail line located in Brown and Marshall Counties, SD, owned by The Burlington Northern and Santa Fe Railway Company (BNSF). The line to be acquired is located between milepost 115.08 near Aberdeen, SD, and milepost 65.60 near Kidder, SD, at the South Dakota/North Dakota border. SDRA will also acquire limited operating rights to conduct rail freight service only, for the sole purpose of interchanging freight cars and equipment, over BNSF's rail line at or near Aberdeen, SD, between milepost 115.08 and milepost 118.6 of BNSF's Geneseo subdivision, and between milepost 706.1 and milepost 707.1 of BNSF's main line, for the sole purpose of SDRA or its designee interchanging rail cars and equipment at BNSF's Aberdeen Yard.[1] SDRA certifies that its projected annual revenues will not exceed those that would qualify it as a Class III carrier.

SDRA reports that an agreement for the transaction was reached and the transaction was consummated on June 15, 2001. The effective date of the exemption was December 27, 2001 (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34125 must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Bruce E.

[1] SDRA states that an operator on the track being acquired has not yet been determined.

Lindholm, Program Manager, Office of Air, Rail and Transit, 700 East Broadway Avenue, Pierre, SD 57501.

Board decisions and notices are available on our web site at *''WWW.STB.DOT.GOV.''*

Decided: January 11, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–1387 Filed 1–17–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34144]

Georgia Southwestern Railroad, Inc.—Sale and Lease Exemption Within a Corporate Family Transaction—South Carolina Central Railroad, Inc.

Georgia Southwestern Railroad Inc. (GSWR) and South Carolina Central Railroad, Inc. (SCCR), both Class III rail carriers, have jointly filed a notice of exemption under 49 CFR 1180.2(d)(3).[1] The exemption transaction involves what GSWR describes as a corporate family transaction whereby GSWR will sell to SCCR, and SCCR will lease back to GSWR, 101.27 miles of rail lines (the Lines), located in Georgia: (1) Between milepost SLB 0.38 near Columbus and milepost SLB 23 near Cusseta; (2) between Valuation Station 41+60 and Valuation Station 107+35 near Columbus; (3) between Valuation Station 0+00 and Valuation Station 41+61 near Columbus; (4) between milepost SLC 91.68 near Bainbridge and milepost SLC 160.0 near Cuthbert; and (5) between milepost 63.55 near Dawson and milepost 72.88 near Sasser. In addition, GSWR will acquire the operating rights of SCCR for 13.62 miles of rail line between milepost 86.5 at Albany and milepost 72.88 at Sasser.[2] The 13.62-mile line was converted to a trail, in accordance with an interim trail use arrangement, on October 16, 1997.

The transaction was scheduled to be consummated on or shortly after December 28, 2001, the effective date of the exemption.

This transaction is within a corporate family of the type specifically exempted from prior approval under 49 CFR 1180.2(d)(3). The parties stated that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside of the corporation family.

The purpose of the transaction is to simplify the arrangements for the operation of the Lines. SCCR will own the Lines and GSWR will operate the Lines. The proposed transaction will improve the financial viability of GSWR and SCCR and they will benefit from the purchase price and reduced operating costs, while still providing rail service.

This transaction is related to a simultaneously filed notice of exemption in STB Finance Docket No. 34057, *State of Georgia Department of Transportation—Acquisition Exemption—South Carolina Central Railroad, Inc.,* wherein the Georgia Department of Transportation (GDOT)[3] is acquiring certain railroad assets of SCCR, including the above-noted 101.27 miles of railroad lines, but not including the right to conduct common carrier freight operations over the Lines.[4]

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under section 11324 and 11325 that involve Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34144, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Gary A. Laakso, Vice President Regulatory Counsel, RailAmerica, Inc., 5300 Broken Sound Boulevard NW., Second Floor, Boca Raton, FL 33487; and Louis E. Gitomer, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our website at *''WWW.STB.DOT.GOV.''*

Decided: January 11, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–1404 Filed 1–17–02; 8:45 am]

BILLING CODE 4915–00–P

[1] GWSR and SCCR are subsidiaries of RailAmerica, Inc., a noncarrier.

[2] *See Georgia Great Southern Division, South Carolina Central Railroad Co., Inc.—Abandonment and Discontinuance Exemption—Between Albany and Dawson, in Terrell, Lee and Dougherty Counties, GA,* Docket No. AB–389 (Sub-No. 1X) (STB served Aug. 16, 1996).

[3] GDOT simultaneously filed a motion to dismiss the notice of exemption on jurisdictional grounds. That motion will be addressed by the Board in a separate decision.

[4] Concurrently with the closing of the transaction between SCCR and GSWR, SCCR will sell the Lines to GDOT, and GDOT will acquire only the physical assets. GDOT will not hold or perform common carrier service. GSWR will provide common carrier service and SCCR will retain a permanent easement to provide residual common carrier service if GSWR or an assignee of GSWR is unable to provide service over the Lines.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34057]

State of Georgia, Department of Transportation—Acquisition Exemption—South Carolina Central Railroad, Inc.

State of Georgia, Department of Transportation (GDOT), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31[1] to acquire from the South Carolina Central Railroad, Inc. (SCCR), a Class III rail carrier, but not to operate, 101.27 miles of rail lines (the Lines) located in Georgia: (1) Between milepost SLB 0.38 near Columbus and milepost SLB 23 near Cusseta; (2) between Valuation Station 41+60 and Valuation Station 107+35 near Columbus; (3) between Valuation Station 0+00 and Valuation Station 41+61 near Columbus; (4) between milepost SLC 91.68 near Bainbridge, and milepost SLC 160.0 near Cuthbert; and (5) between milepost 63.55 near Dawson and milepost 72.88 near Sasser.

GDOT, SCCR, and RailAmerica, Inc., the parent company of SCCR, have entered into an agreement whereby GDOT will acquire only the physical assets in the Lines, but not the right to conduct common carrier freight operations over the Lines. SCCR and its affiliate, Georgia Southwestern Railroad, Inc. (GSWR) have entered into a separate agreement for GSWR to sell the Lines to SCCR, and for SCCR to lease the Lines back to GSWR. That related transaction is the subject of a simultaneously filed notice of exemption in STB Finance Docket No. 34144, *Georgia Southwestern Railroad, Inc.—Sale and Lease Exemption Within*

[1] GDOT simultaneously filed a motion to dismiss the notice of exemption on jurisdictional grounds. That motion will be addressed by the Board in a separate decision.

a Corporate Family Transaction—South Carolina Central Railroad, Inc., wherein GSWR seeks to sell the Lines to SCCR and SCCR will lease the lines back to GSWR to conduct common carrier freight operations over the Lines. Concurrent with the closing of that corporate family transaction, it is expected that SCCR will sell the Lines to GDOT as described in this transaction, and SCCR will retain a permanent easement to retain the residual common carrier freight obligations over the Lines in the event that GSWR or future assignees are unable to provide common carrier service.

The transaction was scheduled to be consummated on December 28, 2001, the effective date of the exemption (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34057, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Hal Wilson, State of Georgia, Department of Transportation, Office of Intermodal Programs, 276 Memorial Drive, SW., Atlanta, GA 30303.

Board decisions and notices are available on our web site at *''WWW.STB.DOT.GOV.''*

Decided: January 11, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–1388 Filed 1–17–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, section 10(a)(2), that a meeting will be held at the U.S. Treasury Department, 15th and Pennsylvania Avenue, NW., Washington, DC on January 29, 2002, of the following debt management advisory committee:

The Bond Market Association Treasury Borrowing Advisory Committee

The agenda for the meeting provides for a technical background briefing by Treasury staff, followed by a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues, and a working session. Following the working session, the Committee will present a written report of its recommendations.

The background briefing by Treasury staff will be held at 9 a.m. Eastern time and will be open to the public. The remaining sessions and the committee's reporting session will be closed to the public, pursuant to 5 U.S.C. App. 2, section 10(d) and Public Law 103–202, section 202(c)(1)(B) (31 U.S.C. section 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of departments by 5 U.S.C. App. 2, 10(d) and vested in me by Treasury Department Order No. 101–05, that the closed portions of the meeting are concerned with discussions of the issues presented to the Committee by the Secretary and recommendations of the Committee to the Secretary, pursuant to Public Law 103–202, 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 5526(c)(3)(B). In addition, the closed portions of the meeting are concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, section 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the advisory committee, premature disclosure of the committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

The Office of Financial Markets is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552b. The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Paul Malvey, Director, Office of Market Finance at 202–622–2630.

Dated: January 14, 2002.

Brian C. Roseboro,

Assistant Secretary, Financial Markets.

[FR Doc. 02–1307 Filed 1–17–02; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0047]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed by the agency when a purchaser assumes a veteran's home in release of liability cases.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 19, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0047'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each

collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Financial Statement, VA Form 26–6807.

OMB Control Number: 2900–0047.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–6807 is used to determine an applicant's or obligor's creditworthiness. The major use of the form occurs in release of liability and substitution of entitlement cases. VA may release original veteran obligors from personal liability arising from the original guaranty of their home loans, or the making of a direct loan, provided purchaser/assumers meet the necessary requirements, among which is qualifying from a credit standpoint.

The form also can be used to determine a borrower's financial condition in connection with efforts to reinstate a seriously defaulted guaranteed, insured, or portfolio loan. It is also used to determine the eligibility of homeowners for aid under the Homeowners Assistance Program, which provides assistance by reducing losses incident to the disposal of homes when military installations at which the homeowners were employed or serving are ordered closed in whole or in part.

Affected Public: Individuals or households.

Estimated Annual Burden: 30,000 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: On Occasion.

Estimated Number of Respondents: 40,000.

Dated: January 8, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–1406 Filed 1–17–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0404]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 19, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0404.''

SUPPLEMENTARY INFORMATION: *Title:* Veteran's Application for Increased Compensation Based on Unemployability, VA Form 21–8940.

OMB Control Number: 2900–0404.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–8940 is used by veterans to file a claim for increased VA disability compensation based on unemployability. VA uses the information to determine a veteran's entitlement to unemployability benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 6, 2001, at page 35698.

Affected Public: Individuals or households.

Estimated Annual Burden: 18,000 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 24,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0404'' in any correspondence.

Dated: January 8, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–1407 Filed 1–17–02; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 67, No. 13
Friday, January 18, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N-0044]

Small Entity Compliance Guide: ''Structure/Function Claims;'' Availability

Correction

In notice document 02–451 appearing on page 1225 in the issue of Wednesday, January 9, 2002, make the following correction:

On page 1225, in the third column, in the third line, the web address is corrected to read as follows: ''http://www.cfsan.fda.gov/~dms/guidance.html''.

[FR Doc. C2–451 Filed 1–17–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF STATE

[Public Notice 3872]

Privacy Act of 1974, as Amended: New System of Records

Correction

In notice document 02–236 beginning on page 623 in the issue of Friday, January 4, 2002 make the following correction:

On page 624, in the second column, under the heading **Notification Procedure:** in the ninth line, ''202–161–8571'' should read, ''202–261–8571''.

[FR Doc. C2–236 Filed 1–17–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification or Exemption

Correction

In the issue of Tuesday, January 8, 2002, on page 953, in the third column, in the correction of notice document 01-31656, the table should read as set forth below.

Application No.	Docket No.	Applicant	Modification of exemption
3216–M		Solvay Fluorides, St. Louis, MO (See Footnote 1)	3216
8215–M		Olin Corp., Brass & Winchester, Inc., East Alton, IL (See Footnote 2).	8215
10442–M		Kennedy Space Center, Kennedy Space Center, FL (See Footnote 3).	10442
10798–M		Chemetall Foote Corporation, Kings Mountain, NC (See Footnote 4).	10798
10929–M		Bulkmatic Transport Company, Jersey City, NJ (See Footnote 5).	10929
11185–M		Medical Waste Solutions, Inc., Gary, IN (See Footnote 6)	11185
11770–M		Gas Cylinder Technologies, Inc., Tecumseh, Ontario N8N 2M4 Canada (See Footnote 7).	11770
11911–M	RSPA–97–2735	Transfer Flow, Inc., Chico, CA (See Footnote 8)	11911
11924–M	RSPA–97–2744	Wrangler Corp., A Division of Lapoint Industries, Auburn, ME (See Footnote 9).	11924
12817–M	RSPA–01–10513	Phibro-Tech, Inc., Fort Lee, NJ (See Footnote 10)	12817

[FR Doc. C1–31656 Filed 1–17–02; 8:45 am]

BILLING CODE 1505–01–D

Corrections

Federal Register
Vol. 67, No. 13
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

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[FR Doc. C2–451 Filed 1–17–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF STATE

[Public Notice 3872]

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[FR Doc. C2–236 Filed 1–17–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

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10798–M		Chemetall Foote Corporation, Kings Mountain, NC (See Footnote 4).	10798
10929–M		Bulkmatic Transport Company, Jersey City, NJ (See Footnote 5).	10929
11185–M		Medical Waste Solutions, Inc., Gary, IN (See Footnote 6)	11185
11770–M		Gas Cylinder Technologies, Inc., Tecumseh, Ontario N8N 2M4 Canada (See Footnote 7).	11770
11911–M	RSPA–97–2735	Transfer Flow, Inc., Chico, CA (See Footnote 8)	11911
11924–M	RSPA–97–2744	Wrangler Corp., A Division of Lapoint Industries, Auburn, ME (See Footnote 9).	11924
12817–M	RSPA–01–10513	Phibro-Tech, Inc., Fort Lee, NJ (See Footnote 10)	12817

[FR Doc. C1–31656 Filed 1–17–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
January 18, 2002

Part II

Department of Health and Human Services

Administration for Children and Families

Fiscal Year 2002 Training, Technical Assistance and Capacity-Building Program; Availability of Funds and Request for Applications—Fall/Winter Competition; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS 2002–05]

Fiscal Year 2002 Training, Technical Assistance and Capacity-Building Program; Availability of Funds and Request for Applications—Fall/Winter Competition

AGENCY: Office of Community Services (OCS), Administration for Children and Families (ACF), Department of Health and Human Services' (DHHS).

ACTION: Request for Applications under the Office of Community Services' Training, Technical Assistance and Capacity-Building Program—Fall/Winter Competition.

SUMMARY: The Office of Community Services announces that competing applications will be accepted for grants pursuant to the Secretary's authority under section 674(b) of the Community Services Block Grant (CSBG) Act, as amended, by the Community Opportunities, Accountability, and Training, and Educational Services (Coats) Human Services Reauthorization Act of 1998, (Pub. L. 105–285). This Fall/Winter competition for new Fiscal Year 2002 grants may be followed by an additional competition later in the Fiscal Year depending upon needs within the Community Services Network and the availability of funds. This program announcement does not describe priority areas or awards to be made later in Fiscal Year 2002 that continue multi-year obligations from previous competitions.

This program announcement consists of seven parts. Part A provides information on the legislative authority and defines terms used in the program announcement. Part B describes the purposes of the program, the priority areas that will be considered for funding, and which organizations are eligible to apply in each priority area. Part C provides details on application prerequisites, anticipated amounts of funds available in each priority area, estimated number of grants to be awarded, and other grant-related information. Part D provides information on application procedures including the availability of forms, where to submit an application, criteria for initial screening of applications, and project evaluation criteria. Part E provides guidance on the content of an application package. Part F provides instructions for completing an application. Part G details post-award requirements.

Closing Date: The closing date for submission of applications is March 19, 2002. Mailed applications shall be considered as meeting the announced deadline if they are received on or before deadline date or are postmarked on or before the deadline date. Applications received after the closing date will be classified as late and not considered for funding. Applications that are handcarried will be classified as late if they are received after 4:30 p.m., EST, on the deadline date. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing. Detailed application submission instructions, including addresses where applications must be sent are found in Part D of this program announcement.

FOR FURTHER INFORMATION CONTACT: Dr. Margaret J. Washnitzer, Director of State Assistance, Office of Community Services, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447 (202) 401–9343. This program announcement is accessible on the OCS web site for reading or downloading at: *http://www/acf/dhhs/gov/programs/ocs*.

Additional copies of this program announcement can be obtained by calling (202) 401–9343.

The Catalog of Federal Domestic Assistance number is 93.570. This Program announcement title is ''Training, Technical Assistance, and Capacity—Building Program.''

Part A—Preamble

1. Legislative Authority

Sections 674(b)(2) and 678E(b) of the Community Services Block Grant (CSBG) Act of 1981, (Pub. L. 97–35) as amended by the Coats Human Services Reauthorization Act of 1998, (Pub. L. 105–285) authorizes the Secretary of Health and Human Services to utilize a percentage of appropriated funds for: training, technical assistance, planning, evaluation, performance measurement, monitoring, to assist States in carrying out corrective actions and to correct programmatic deficiencies of eligible entities, and for reporting and data collection activities related to programs or projects carried out under the CSBG Act. The Secretary may carry out these activities through grants, contracts, or cooperative agreements. To address program quality in financial management practices, management information and reporting systems, and measurement of program results and to ensure responsiveness to identified local needs, the Secretary is required to distribute funds directly to eligible entities, or statewide or to local organizations or associations with demonstrated expertise in providing training to individuals and organizations on methods of effectively addressing the needs of low-income families and communities. The Secretary may carry out the remaining activities through appropriate entities.

The process for determining the technical assistance, training and capacity-building activities to be carried out must (a) ensure that the needs of eligible entities and programs relating to improving program quality, including financial management practices, are addressed to the maximum extent feasible; and (b) incorporate mechanisms to ensure responsiveness to local needs, including an on-going procedure for obtaining input from State and national networks of eligible entities. Thus, the CSBG Monitoring and Assessment Task Force (MATF) continues to focus on implementation of the Results-Oriented Management and Accountability (ROMA) system to address the challenges and unmet needs of States and Community Action Agencies and to increase program quality and management within the Community Services Network. The Task Force has taken a comprehensive approach to monitoring, including establishing national goals and outcome measures, and established target dates for nation-wide implementation; reviewing information and data needs relevant to these outcome measures; and assessing technical assistance and training provided toward capacity building within the Community Services Network.

2. Definitions of Terms

For purposes of the FY 2002 CSBG Training, Technical Assistance and Capacity-Building Program, the following definitions apply:

At-Risk Agencies refers to CSBG eligible entities in crises. The problem(s) to be addressed must be of a complex or pervasive nature that cannot be adequately addressed through existing local or State resources.

Capacity-building refers to activities that assist Community Action Agencies (CAAs) and other eligible entities to improve or enhance their overall or specific capability to plan, deliver, manage and evaluate programs efficiently and effectively to produce intended results for low-income individuals. This may include

upgrading internal financial management or computer systems, establishing new external linkages with other organizations, improving board functioning, adding or refining a program component or replicating techniques or programs piloted in another local community, or making other cost effective improvements.

Community in relationship to broad representation refers to any group of individuals who share common distinguishing characteristics including residency, for example, the ''low-income'' community, or the ''religious'' community or the ''professional'' community. The individual members of these ''communities'' may or may not reside in a specific neighborhood, county or school district but the local service provider may be implementing programs and strategies that will have a measurable affect on them. Community in this context is viewed within the framework of both community conditions and systems, i.e., (1) public policies, formal written and unstated norms adhered to by the general population; (2) service and support systems, economic opportunity in the labor market and capital stakeholders; (3) civic participation; and (4) an equity as it relates to the economic and social distribution of power.

Community Services Network (CSN) refers to the various organizations involved in planning and implementing programs funded through the Community Services Block Grant or providing training, technical assistance or support to them. The network includes local Community Action Agencies and other eligible entities; State CSBG offices and their national association; CAA State, regional and national associations; and related organizations which collaborate and participate with Community Action Agencies and other eligible entities in their efforts on behalf of low-income people.

Cooperative Agreement is an award instrument of financial assistance where ''substantial involvement'' is anticipated between the awarding agency and the recipient during the performance of the contemplated project or activity. ''Substantial involvement'' means that the recipient can expect Federal programmatic collaboration or participation in managing the award.

Eligible applicants for this training and technical assistance program announcement are eligible entities (see described below); States, non-profit organizations or state CAA associations who are involved in training, technical assistance planning, corrective action, evaluation and peformance measurement in order to assist States in carrying out the purposes of the CSBG program. Eligible faith-based nonprofit organizations may apply.

Eligible entity means any organization that was officially designated as a Community Action Agency (CAA) or a community action program under section 673(1) of the Community Services Block Grant Act, as amended by the Human Services Amendments of 1994 (Pub. L. 103–252), and meets all the requirements under sections 673(1)(A)(I), and 676A of the CSBG Act, as amended by the Coats Human Services Reauthorization Act of 1998. All eligible entities are current recipients of Community Services Block Grant funds, including migrant and seasonal farmworker organizations that received CSBG funding in the previous fiscal year. Faith-based organizations that are also eligible entities may apply. In cases where eligible entity status is unclear, a final determination will be made by OCS/ACF.

Hub is a Department of Health and Human Services designation for multiple regional locations.

Local service providers are local public or private non-profit agencies that receive Community Services Block Grant funds from States to provide services to, or undertake activities on behalf of, low-income people.

Nationwide refers to the scope of the technical assistance, training, data collection, or other capacity-building projects to be undertaken with grant funds. Nationwide projects must provide for the implementation of technical assistance, training or data collection for all or a significant number of States, and the local service providers who administer CSBG funds.

Outcome Measures are indicators that focus on the direct results one wants to help clients achieve.

Performance Measurement is a tool used to objectively assess how a program is accomplishing its mission through the delivery of products, services, and activities.

Program technology exchange refers to the process of sharing expert technical and programmatic information, models, strategies and approaches among the various partners in the Community Services Network. This may be done through written case studies, guides, seminars, technical assistance, and other mechanisms.

Regional Networks refers to CAA State Associations within a region.

Results-Oriented Management and Accountability (ROMA) System: ROMA is a system, which provides a framework for focusing on results for local agencies funded by the Community Services Block Grant Program. It involves setting goals and strategies for developing plans and techniques that focus on a result-oriented performance based model for management.

State means all of the 50 States and the District of Columbia. Except where specifically noted, for purposes of this program announcement, it also includes specified Territories.

State CSBG Lead Agency (SCLA) is the lead agency designated by the Governor of the State to develop the State CSBG application and to administer the CSBG Program.

Statewide refers to training and technical assistance activities and other capacity building activities undertaken with grant funds that will have significant impact, i.e. activities should impact at least 50 percent of the eligible entities in a State.

Technical assistance is an activity, generally utilizing the services of an expert (often a peer), aimed at enhancing capacity, improving programs and systems, or solving specific problems. Such services may be provided proactively to improve systems or as an intervention to solve specific problems.

Territories refer to the Commonwealth of Puerto Rico, and American Samoa for the purpose of this announcement.

Training is an educational activity or event which is designed to impart knowledge, understanding, or increase the development of skills. Such training activities may be in the form of assembled events such as workshops, seminars, conferences or programs of self-instructional activities.

Part B—Purposes/Program Priority Areas

This Training, Technical Assistance, and Capacity-Building program announcement is intended to provide funding to eligible applicants within the Community Services Network to advance achievement of the six national community action goals:

Goal 1: Low-income people become more self-sufficient.

Goal 2: The conditions in which low-income people live are improved.

Goal 3: Low-income people own a stake in their community.

Goal 4: Partnerships among supporters and providers of service to low-income people are achieved.

Goal 5: Agencies increase their capacity to achieve results.

Goal 6: Low-income people, especially vulnerable populations, achieve their potential by strengthening family and other supportive systems.

These goals were established by the Community Services Network and have been used over the past eight years to focus its work on achieving meaningful and measurable improvements in the lives of clients and communities. Establishing these goals in 1994 was an initial step in the Network's voluntary effort to develop and install a comprehensive performance-based management system, ''Results Oriented Management and Accountability,'' or ROMA. Sections 676(b)(12) and 678(E) of the CSBG Act, as amended in 1998, now mandate implementation of ROMA across the entire Community Services Network, with performance reporting from all partners in the Network beginning October 1, 2001.

This program announcement seeks to encourage the development or expansion of specific community action initiatives within the framework of the six national goals. Successful applicants will help move the Network toward improved programs, outcomes, and greater accountability through universal adoption of ROMA by Fiscal Year 2003.

The ROMA goal-related activities to be funded through this program announcement are intended to complement those now being supported by grants made in the last quarter of Fiscal Year 2001. Specifically, OCS funded a significant number of grants to States (CSBG Lead Agencies and State Community Action Associations) to carry out ROMA implementation plans developed jointly by these organizations at five regional meetings sponsored by OCS during July and August, 2001. States were encouraged at the regional meetings to focus their plans on accomplishing eight ROMA implementation ''core activities'' (four State and four local) described in OCS Information Memorandum Number 49 (February 21, 2001):

State Agencies

1. The agency has developed, in coordination with eligible entities and the State CAA association, a State-wide vision statement that speaks to the goals and purposes of community action within the State and that supports the six national ROMA goals. The agency is encouraged to participate in, and contribute to, broader State anti-poverty/community development initiatives with outcome measures and goals compatible with ROMA;

2. The agency has trained all its eligible entities (staff and boards) in outcome-based management, and that 80% of the entities use ROMA concepts to guide needs assessment, agency mission review, activity planning, resource allocations, service delivery, measuring and reporting results;

3. Eighty percent of the plans and program reports received from eligible entities in the State describe plans to achieve projected outcomes, and evaluate results based on measurable improvements of condition(s) among clients and/or communities served; and

4. .The agency submits complete, accurate, and timely annual reports to OCS on the ''measured performance of the State and the eligible entities in the State'' as required by section 678E of Public Law 105–285, the Community Services Block Grant Reauthorization Act of 1998.

Eligible Entities

1. The entity and its board complete regular assessments of the entity's overall mission, desired impact(s) and program structure, taking into account: (1) The needs of the community and its residents; (2) the relationship, or context, of the activities supported by the entity to other anti-poverty, community development services in the community; and (3) the extent to which the entity's activities contribute to the accomplishment of one or more of the six ROMA national goals;

2. Based upon the periodic assessments described above, the entity and its board has identified yearly (or multi-annually) specific improvements, or results, it plans to help achieve in the lives of individuals, families, and/or the community as a whole;

3 . The entity organizes and operates all of its programs, services, and activities toward accomplishing these improvements, or outcomes, including linking with other agencies in the community when services beyond the scope of the entity are required. All staff are helped by the entity to understand the direct or indirect relationship of their efforts to achieving specific client or community outcomes; and

4. The entity provides reports to the State that describe client and community outcomes and that capture the contribution of all entity programs, services, and activities to the achievement of those outcomes.

Model capacity building and technical assistance coordination financed through this program announcement are designed to produce both basic and advanced tools that can be used across the network to carry out these ''core activities'' that constitute ROMA implementation as required by law.

In addition to creating program information and tools for organizing community services to achieve client and community outcomes, OCS intends to underwrite intensive, one-on-one interaction among community action staff from one program to another. OCS hopes that those agencies/workers that have experimented with various approaches to program improvement will share their experiences with partner agencies through such strategies as extended on-site visits or staff exchanges.

OCS is soliciting applications for this Fiscal Year 2002 Fall/Winter competition for Training, Technical Assistance and Capacity-Building funding in the following priority and sub-priority areas:

Priority Area 1.0 Achieving Goal 1: Low-Income People Become More Self-Sufficient

Sub-Priority Areas

1.1 Strengthening the ''Self-sufficiency Continuum'' (SC)
1.2 Organizing/Coordinating Services Around Self-sufficiency: Welfare to Work (WW)
1.3 Organizing/Coordinating Services Around Self-sufficiency/ IndependentLiving Among the Aging or Disabled (SA)
1.4 Strategic Measurement and Reporting of Self-sufficiency Outcomes (SM)
1.5 The Use of Individual Development Accounts to Advance Self-sufficiency (ID)

Priority Area 2.0 Achieving Goal 2: The Conditions in Which Low-Income Individuals' Lives Are Improved

Sub-Priority Areas

2.1 Organizing/Coordinating Community Development Programs (CD)
2.2 Strategic Measurement and Reporting of Community Outcomes Across Programs/ Services (CO)

Priority Area 3.0 Achieving Goal 3: Low-Income People Own a Stake in Their Community

Sub-Priority Areas

3.1 Organizing/Coordinating Community Advocacy/Participation Programs (CM)
3.2 Community Advocacy/Participation Programs, Measurement and Reporting (CA)

Priority Area 4.0 Achieving Goal 4: Partnerships Among Supporters and Providers of Service to Low-Income People Are Achieved

Sub-Priority Areas

4.1 Coordination Strategies Between Community Action and Faith-Based Organizations to Advance ROMA Client Goals I and VI (FP)
4.2 Coordination Strategies Between Community Action and Faith-Based Organizations to Advance ROMA Community Goals II and III (FC)

Priority Area 5.0 Achieving Goal 5: Agencies Increase Their Capacity To Achieve Results

Sub-Priority Areas

5.1 ROMA Training and Technical Assistance Clearinghouse (RC)
5.2 Board Training Programs (BT)
5.3 State Agency/Association ROMA Plan Implementation (RI)
5.4 Local Capacity-Building (CB)

Priority Area 6.0 Achieving Goal 6: Low-Income People, Especially Vulnerable Populations, Achieve Their Potential by Strengthening Family and Other Supportive Systems

Sub-Priority Areas

6.1 Strengthening the Role of Fathers and Marriage in Child and Family Life (MS)
6.2 Meeting the Special Needs of Children With an Incarcerated Parent (IP)
6.3 Network Guide to Measuring Family Development Outcomes (FD)

Priority Area 1.0 Achieving Goal 1: Low-Income People Become More Self-Sufficient

OCS believes that community action has a unique opportunity to strengthen its anti-poverty, self-sufficiency successes over the next several years among the variety of populations it currently serves, including: (1) Those families who have moved from welfare to work but need additional assistance in order to continue their progress to greater self-sufficiency; (2) those families that continue to receive public assistance and need help to begin the process of moving toward self-sufficiency; and (3) the aging or disabled for whom self-sufficiency is often defined in terms of ''independent living.''

The CSBG provides flexible funding to States and eligible entities that permits these agencies to organize the variety of services they administer, financed by a number of funding sources, around the self-sufficiency needs of the clients they serve. Indeed, the ROMA ''core activities'' for eligible entities described in Information Memorandum No. 49 speak to this concept of coordinated delivery of services from programs within an eligible entity and from ''partner'' agencies in the community. Such coordination is intended to achieve robust improvements in the lives of clients that no one service can achieve alone, such as helping them move permanently from welfare to work, or sustaining movement toward self-sufficiency once training and entry-level employment have been secured. Similarly, Information Memorandum No. 49 encourages State CSBG officials to link with other programs with purposes that are congruent with the six national community action goals in order to assure that the programs, in concert, achieve life-changing outcomes among often-shared clients.

Coordinating services across programs to help clients achieve broad, life-altering goals, especially the anti-poverty work of moving families from dependence to self-sufficiency, can make community action unique and potentially more successful than other service providers. But, such coordination is somewhat difficult to achieve and has not always been considered essential to the existence or success of community action. Many State agencies and eligible entities have evolved over the years into umbrella organizations that house separate, and administratively segregated service programs, that often serve the same clients in parallel universes, by fiat not design, and that have no pattern or broader purpose to their immediate interventions.

OCS intends to fund those community action leaders at the State or local levels that have been successful in organizing programs and services, both within and outside their agencies, toward achieving client self-sufficiency, to help others within the Network reconfigure their programs, services, and outcome expectations. It will ''underwrite'' the time and expense of these leaders so that they may share their experiences with colleagues in other States or communities.

OCS also intends to fund State or eligible entities that wish to develop new self-sufficiency models of coordinated service delivery for one or more of the community action client populations.

In addition, OCS seeks the development and dissemination of model ways to track the many intermediate interventions across services and programs that ultimately combine and contribute to families achieving the broader outcome of self-sufficiency. Such a tool(s) may help State and local community action officials: (1) Plan programs and deploy resources around client-specific strategies; (2) translate discrete services or interventions into building-block inputs; (3) access the effectiveness of such interventions in terms of their intermediate impact on clients; and (4) analyze and report the impact of the ultimate coalescence of intermediate, or contributory outcomes, on a family's ability to achieve and sustain self-sufficiency.

Sub-Priority 1.1 Strengthening the ''Self-Sufficiency Continuum'' (SC)

As a result of welfare reform, millions of families have moved from public assistance to employment over the past five years. Many of these families have taken the first steps toward self-sufficiency but they are not earning ''living wages,'' or adequate income, to be truly self-supporting. OCS intends to strengthen the ''self-sufficiency continuum'' that provides purposeful and targeted assistance to these families to help them continue their movement toward ultimate economic independence.

OCS is aware that most community action agencies already provide services to the ''working poor.'' In many cases, such services may address both temporary and longer-term family needs. The services may allow family members to remain employed rather than revert to public assistance as their primary means of support. OCS encourages purposeful and targeted assistance to working families that are transitioning to self-sufficiency.

OCS will fund up to six awards, two in each of the following categories, to advance community action creation of an effective ''self-sufficiency continuum'':

(1) *Training and Technical Assistance:* OCS will underwrite the development of training and technical assistance information that identifies and describes programs within the Network that have: (a) Undertaken specific initiatives to address the needs of the working poor; (b) provided coordinated services from a variety of sources to such families to help them achieve concrete and measurable advances on the ''continuum'' toward self-sufficiency; and (c) have installed appropriate measurement strategies to capture, record, and report meaningful family movement on the ''continuum.''

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 2 (up to $20,000 each).

(2) *Outcome Measurement Strategies:* OCS will underwrite the development of approaches, such as scales or collected individual results/measures, to capture, record, and report the results of individual or coordinated services to help the working poor advance toward self-sufficiency. These tools are intended to help entities within the Network organize and document their efforts to help the working poor achieve greater self-sufficiency. The measurement tools developed through

this grant should address, all or a significant number of the following aspects of family life that contribute to overall well-being: education, child care, child and adolescent development, housing, job training, employment, food and nutrition, physical health, mental health, substance abuse, family functioning, family/community integration, transportation, and financial management.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 2 (up to $20,000 each).

(3) *Capacity-Building:* OCS will provide capacity building assistance to two eligible entities to underwrite the costs of developing a ''self-sufficiency continuum.'' The successful applicants will agree to undertake and document the steps they take to: (a) Identify the needs of the working poor within their community; (b) identify a specific group or number of families/individuals to receive coordinated and targeted assistance; (c) design a set of strategies to meet the immediate and longer-term needs of participating families/individuals that involves partnerships among relevant public and private programs both within and outside the eligible entity; (d) provide assistance strategically; and (e) capture, record, and report the results of specific and aggregated interventions on the overall movement of participating working poor individuals and families toward self-sufficiency.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 2 (up to $20,000 each).

Sub-Priority 1.2 Organizing/Coordinating Services Around Self-Sufficiency: Welfare to Work (WW)

OCS recognizes that many community action agencies help families make the transition from welfare to work using coordinated services financed from a variety of sources. OCS intends to support two forms of training, technical assistance, and capacity-building activities designed to accelerate the ability of more agencies to undertake such activities:

(1) *Guide to Organizing CAA Welfare-to-Work Self-sufficiency Programs*—OCS will support the development of a technical assistance guide on how to organize services and programs around the goal of moving clients from welfare to work. The successful applicant for funds to develop this guide must demonstrate the ability to identify and describe existing strategies within the network, at both the State and local levels, that are being used to coordinate community action planning, allocation of resources, and client services to achieve client self-sufficiency outcomes, with particular emphasis on innovative approaches to: (1) Determining the comprehensive needs of clients to achieve self-sufficiency involving CAA boards and other community resources; (2) designing and implementing coordinated service delivery strategies, including case management, to respond to those needs; (3) providing for client-focused record-keeping and measurement of immediate and longer-terms impacts of interventions on client change, including common intake procedures, client-organized information systems, electronic methods to sort information for a variety of program measurement and reporting purposes.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $30,000).

(2) *On-Site Technical Assistance*—Through both self-sufficiency demonstration programs in the late 1980's and seven years of pioneering work in performance-based management, the Network has developed a number of successful leaders in helping families move from welfare to work. While these leaders are known and available to some in the Network, OCS believes that our best self-sufficiency organizers ought to be helping a broader audience of State and local agencies.

OCS intends to fund approximately 5 State and/or local community action programs that have achieved a level of proficiency in helping clients transition from welfare to work to provide: (1) Intensive, on-site training and technical assistance at regional, State or local community action meetings; and/or (2) staff exchanges or extended staff loans among State or local programs to assist in knowledge transfer about self-sufficiency strategies.

Among the specific kinds of expertise OCS hopes to have shared through this process are: (a) Case managed approaches to family services (parents and children); (b) resource support to coordinated service delivery, including organization of staff and services; (c) client results-based staff performance; (d) client and results focus tracking, measurement, and reporting systems; (e) partnerships with other services/programs within the community; and (f) board involvement in needs assessment, program planning, implementation, and evaluation.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities.

Anticipated Grant Awards: 5 (up to $35,000 each).

Sub-Priority 1.3 Organizing/Coordinating Services Around Self-Sufficiency/Independent Living Among the Aging or Disabled (SA)

A significant number of community action agencies provide services to the aging or disabled to help them live as independently as possible for as long as possible. Because independent living among the aging or the disabled often translates into a measure of self-sufficiency, OCS intends to develop training and technical assistance resources for the Network similar to those described above for Sub-priority 1.2 (Welfare to Work):

(1) *Guide to Organizing CAA Independent Living Strategies for the Aging or Disabled*—OCS will support the development of a technical assistance guide on how to organize services and programs around the goal helping aging or disabled clients remain self-sufficient through sustaining their ability to live as independently as possible within the community. The successful applicant for funds to develop this guide must demonstrate the ability to identify and describe existing strategies within the network, at both the State and local levels, that are being used to coordinate community action planning, allocation of resources, and client services to achieve client self-sufficiency outcomes for the aging or disabled, with particular emphasis on innovative approaches to: (1) Determining the comprehensive needs of clients to achieve and sustain the appropriate level of independent living involving CAA boards and other community resources; (2) designing and implementing coordinated service delivery strategies, including case management, to respond to those needs; (3) providing for client-focused record-keeping and measurement of immediate and longer-terms impacts of interventions on client change, including common intake procedures, client-organized information systems, electronic methods to sort information for a variety of program measurement and reporting purposes.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $30,000).

(2) *On-Site Technical Assistance*—OCS intends to fund approximately 5 State and/or local community action programs that have achieved a level of proficiency in helping aging or disabled clients achieve and sustain appropriate levels of independent living within their community to provide: (1) Intensive, on-site training and technical assistance at regional, State or local community action meetings; and/or (2) staff exchanges or extended staff loans among State or local programs to assist in knowledge transfer about self-sufficiency strategies.

Among the specific kinds of expertise OCS hopes to have shared through this process are: (a) Case managed approaches to service delivery; (b) resource support to coordinated service delivery, including organization of staff and services; (c) client results-based staff performance; (d) client and results focus tracking, measurement, and reporting systems; (e) partnerships with other services/programs within the community; and (f) board involvement in needs assessment, program planning, implementation, and evaluation.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities.

Anticipated Grant Awards: 5 (up to $35,000 each).

Sub-Priority 1.4 Strategic Measurement and Reporting of Self-Sufficiency Outcomes (SM)

OCS will underwrite the development of strategic technical assistance documents that lay out the connection between discrete client interventions on the achievement of intermediate and longer-term client self-sufficiency outcomes for the three self-sufficiency populations described above: (1) The working poor (the ''Self-sufficiency Continuum); (2) families transitioning from welfare to work; and (3) the aging or disabled. These tools are intended to help entities within the Network organize and document their self-sufficiency efforts more effectively.

The measurement tools developed through this grant should address, at a minimum, the following aspects of family status/condition: Education, child care, child and adolescent development, housing, job training, employment, food and nutrition, physical health, mental health, substance abuse, family functioning, family/community integration, transportation, and financial management. The measurement strategies should lay out the interactions and interrelationships of single-focus interventions/activities on the achievement of interim results and the relationship of interim results to the broader outcome of family self-sufficiency.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 3 (up to $20,000 each, one for each population group).

Sub-Priority 1.5 The Use of Individual Development Accounts To Advance Self-Sufficiency (ID)

Individual Development Accounts (IDA's) have become a promising tool among anti-poverty programs in their efforts to promote self-sufficiency among low-income families. Some in the Community Services Network, at both the State and local levels, are experimenting with the use of IDA's to assure that adequate and sufficiently flexible funds are available to meet the multiple and changing needs of families transitioning from welfare to work.

OCS intends to underwrite the development of technical assistance information about community action use of IDA's for dissemination to the Network. The successful applicant must demonstrate an ability to gather information from the network through electronic or other means, organize and present the information in a manner that will be useful to Network colleagues at both the State and local levels.

The technical assistance document developed by the successful applicant should contain, at a minimum: (1) A brief history of IDA's within and outside the Community Services Network; (2) an overview of IDA activity within the Network, both at the State and local level in terms of needs being addressed, outcomes anticipated, and any measurements taken of results to date; (3) a description of challenges faced by those agencies experimenting with IDA's and how those challenges have been or are being addressed; and (4) A summary analysis of IDA's based on experimenter views/observations and those of the applicant.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $45,000).

Priority Area 2.0 Achieving Goal 2: The Conditions in Which Low-Income Individuals' Lives Are Improved

Almost all eligible entities report efforts to improve one or more aspects of communities in which low-income individuals and families live. Yet, finding ways to capture and report meaningful results of community action for this first of two national goals has proven difficult in the early years of ROMA implementation.

Analysis of FY 1998 ROMA reports submitted by States, the latest that has been summarized, indicates that the Network views a wide variety of programs and services as advancing Goal 2. These programs and services include: (1) Housing (purchase, repair, transitional, weatherization, energy assistance, emergency rent); (2) help to community residents (education and literacy training, emergency food/nutrition, employment, healthcare, transportation); and (3) economic development activities (encouraging small business, establishing employment opportunities).

OCS believes that the Network could benefit from assistance in sorting through not only how to capture what community action is doing to advance community development, but also on how the Network might best approach the broader issues of community redevelopment with more comprehensive strategies in the future.

OCS believes that advancement of ROMA implementation will be served by the development of technical assistance materials for use by the Network that provide new, and more detailed, information on how Network leaders in community development design and carry out programs, and on how they record and report results of their activities.

Sub-Priority Area 2.1 Organizing/Coordinating Community Development Programs (CD)

OCS will underwrite the development of a technical assistance guide for the Network that describes model approaches to community development undertaken by community action agencies. The guide will include information concerning: (1) How model community development agencies identify the broad needs to be addressed within their communities and the specific role to be played by community action; (2) how these agencies organize programs and services, and partnerships with other organizations in the community, to undertake or advance community development; and (3) what means the agencies use to track, record, and report the results of community development strategies.

OCS is particularly interested in collecting and disseminating information concerning the interrelationship of community action to various national, regional, State, or local economic development initiatives. The successful applicant for a grant to

prepare the envisioned technical assistance document on community development will pay particular attention to this issue.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $45,000).

Sub-Priority Area 2.2 Strategic Measurement and Reporting of Community Outcomes Across Programs/Services (CO)

OCS will provide funds to assist one or more partners in the Network to develop strategies for measuring the results of individual and coordinated community development activities and for reporting these results. Specifically, OCS intends to support an activity similar to that described for Sub-priority area 1.4, the creation of technical assistance materials that lay out how individual activities, such as providing micro business loans to neighborhood residents, link to other individual activities to form a broader, more comprehensive effort to achieve meaningful and measurable community development. The successful applicant for funds to create this strategic technical assistance document will be expected to conduct a thorough review of community development literature and report their findings as they may relate to community development work conducted by community action agencies.

By providing the Network with such a strategic ''mapping'' of various elements and components of community development within the context of community action, OCS will help community action continue to make a transition from providing discrete, often disjointed services within a community, to a leader/contributor to more comprehensive community development efforts, that yield more robust and lasting outcomes.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $60,000).

Priority Area 3.0 Achieving Goal 3: Low-Income People Own a Stake in their Community

Community action is unique in its ability to both advocate for, and empower, low-income individuals and families, particularly as it relates to mobilizing citizens to achieve a greater sense of authority over their lives and future. Local agencies have used a variety of approaches to both stimulate citizen involvement in community activities and to measure the extent of such involvement.

In Fiscal Year 1998, the latest year for which ROMA data from States was analyzed, most community action agencies identified the following activities as supporting the achievement of Goal 3: (1) The number of community residents that volunteer time to agency activities, and the amount of volunteer hours served; (2) client involvement in community decision making, including service on CAA, school, housing, or other kinds of citizen advisory boards; (3) participation in community events; (4) youth participation in community activities and programs; and (5) the leveraging of funds for community investments.

Sub-Priority Area 3.1 Organizing/Coordinating Community Advocacy/Participation Programs (CM)

OCS believes that the Network would benefit from the sharing of information across programs on how community action is working toward achieving Goal 3 and will support the development of a technical assistance guide to empowering low-income individuals and families in their communities. The successful applicant for this grant will demonstrate in their application the means to: (1) Identify community action programs across the nation that have a successful history of mobilizing citizen participation and advocacy; (2) collect information from these programs on the planning, organization, implementation, and results of citizen advocacy/participation efforts; (3) solicit observations from community action leaders and participating clients on how to overcome challenges and obstacles to citizen empowerment; (4) describe measures used to evaluate and report the extent and effectiveness of citizen empowerment by community action; and (5) summarize and analyze information presented by selected sites and individuals.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $45,000).

Sub-Priority Area 3.2 Community Advocacy/Participation Programs, Measurement and Reporting (CA)

OCS will provide funds to develop expanded strategies for measuring the results of individual and coordinated citizen empowerment and community advocacy activities and for reporting these results. Specifically, OCS intends to support an activity similar to that described for Sub-priority areas 1.4 and 2.2, the creation of technical assistance materials that lay out how individual activities, such as encouraging low-income community residents to become active in citizen advisory boards, link to other individual activities to form a broader, more comprehensive effort to achieve meaningful and measurable citizen involvement and empowerment. The successful applicant for funds to create this strategic technical assistance document will be expected to (1) Conduct a thorough review of citizen empowerment literature and report their findings as they may relate to the work conducted by community action agencies; (2) assess the current measurement strategies and individual measures used by community action to capture and report Goal 3 results; and (3) recommend more robust Goal 3 measures that could be used by the Network and step-by-step instructions on how to adapt the measures to the individual needs and approaches of local agencies.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $45,000).

Priority Area 4.0 Achieving Goal 4: Partnerships Among Supporters and Providers of Service to Low-Income People Are Achieved

One of the primary goals of the Administration is to encourage expansion of the number and kinds of organizations devoted to helping communities and low-income citizens achieve their potential. The Administration has organized a ''Faith-based Initiative'' that has, among other things, called for greater participation and public funding of faith-based groups providing community services as well as more coordination among the various agencies that address the needs of low-income communities, particularly community action.

OCS recognizes that the Network has a long history of forming partnerships with faith-based organizations and encourages further expansion of such collaborative efforts to achieve both client and community goals.

OCS intends to fund the development and dissemination of two technical assistance documents intended to help partners in the Network, at both the State and community levels, learn ways to enhance collaboration of community action with faith-based organizations and how such partnerships may strengthen program outcomes. In

addition, OCS will support capacity-building efforts in selected States and/or communities to form new or expanded community action and faith-based partnerships to achieve specific client or community results, and to disseminate the results of these capacity-building efforts to the Network.

Sub-Priority Area 4.1 Coordination Strategies Between Community Action and Faith-Based Organizations To Advance ROMA Client Goals I and VI (FP)

OCS will fund up to four technical assistance and capacity building efforts to promote the achievement of client-focused Goals 1 and 6 through effective collaboration of community action and faith-based organizations:

(1) *Guide to Achieving Client Outcomes Through Community Action Coordination With Faith-Based Organizations*—OCS will support the development of a technical assistance guide to help State and local community action agencies learn of ways to establish or expand partnerships with faith-based organizations to advance client-focused community action Goals 1 and 6—client/family self-sufficiency and family strengthening. Specifically, the successful applicant for the grant to develop this guide will describe in its application how it will: (1) Identify State or local partners within the Network that have a history of successful linkage/collaboration with faith-based organizations working to achieve client-focused outcomes; (2) gather information about the ways these partnerships have been achieved, including formal and informal methods for establishing and maintaining the collaboration, interchange of information, human and financial resources, client referral and case management, capturing and reporting results; (3) gather insights and analyses from participating community action and faith-based staff and clients on particular strengths and challenges of such collaboration, and (4) develop a guide based on the information described above in a manner useful to the Network.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $45,000).

(2) *Capacity-Building Grants To Promote Self-sufficiency and/or Family Strengthening Through Collaboration Between Community Action and Faith-Based Organizations*—OCS will fund between one and three States or local community action agencies, or faith-based organizations, to build new or expanded collaborations. Specifically, OCS seeks to encourage innovative means of working among secular and religious organizations to promote client/family self-sufficiency and/or to strengthen families. The successful applicant(s) will describe in their application(s): (1) Specific goal(s) they intend to advance through new or expanded partnerships between community action and faith-based organizations; (2) specific and measurable client-focused results the proposed collaboration(s) are intended to achieve and the means by which such results will be measured and reported; (3) particular contributions each organizational partner will bring to the collaboration, including special skills, human and financial resources; (4) evidence of previous success, including descriptions of other collaborations and measurable client improvements that resulted from such collaborative work, and (5) formal letters of agreement and participation among all collaborating organizations with specific descriptions of anticipated contributions of resources and time to the effort.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, and non-profit faith-based organizations.

Anticipated Grant Awards: Up to 3 ($20,000 each).

Sub-Priority Area 4.2 Coordination Strategies Between Community Action and Faith-Based Organizations To Advance ROMA Community Goals II and III (FC)

As with sub-priority area 4.1, OCS will fund up to four grants to promote the achievement of community-focused goals (community development and citizen empowerment) through new or expanded collaboration between community action and faith-based organizations. OCS will solicit applications in two categories:

(1) *Guide to Achieving Community Development/Citizen Empowerment Goals Through Collaboration Between Community Action and Faith-Based Organizations*—OCS will support the development of a technical assistance guide to help State and local community action agencies learn of ways to establish or expand partnerships with faith-based organizations to advance community development and citizen empowerment—community action national goals 2 and 3. Specifically, the successful applicant for the grant to develop this guide will describe in its application how it will: (1) Identify State or local partners within the Network that have a history of successful linkage/collaboration with faith-based organizations working to achieve community outcomes; (2) gather information about the ways these partnerships have been achieved, including formal and informal methods for establishing and maintaining the collaboration, interchange of information, human and financial resources, client referral and case management, capturing and reporting results; (3) gather insights and analyses from participating community action and faith-based staff and clients on particular strengths and challenges of such collaboration, and (4) develop a guide based on the information described above in a manner useful to the Network.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $45,000).

(2) *Capacity-Building Grants To Promote Community Development and/or Citizen Empowerment Through Collaboration Between Community Action and Faith-Based Organizations*—OCS will fund between one and three States or local community action agencies, or faith-based organizations, to build new or expanded collaborations. Specifically, OCS seeks to encourage innovative means of working among secular and religious organizations to promote community development and/or citizen empowerment. The successful applicant(s) will describe in their application(s): (1) Specific goal(s) they intend to advance through new or expanded partnerships between community action and faith-based organizations; (2) specific and measurable community and client-focused results the proposed collaboration(s) are intended to achieve and the means by which such results will be measured and reported; (3) particular contributions each organizational partner will bring to the collaboration, including special skills, human and financial resources; (4) evidence of previous success, including descriptions of other collaborations, measurable community and client improvements that resulted from such collaborative work, and (5) formal letters of agreement and participation among all collaborating organizations with specific descriptions of anticipated contributions of resources and time to the effort.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, non-profit faith-based organizations.

Anticipated Grant Awards: Up to 3 ($20,000 each).

Priority Area 5.0 Achieving Goal 5: Agencies Increase Their Capacity To Achieve Results

Over the past eight years, OCS has worked cooperatively with State CSBG agencies, State CAA associations, and local entities to move the entire Community Services Network toward renewed strength, focus, effectiveness, and accountability. The work of the Monitoring and Assessment Task Force, composed of representatives of all partners in the Network, has resulted in broad-based understanding and gradual implementation of Results Oriented Management and Accountability, or ROMA. It is through ROMA that the Network continues to assure that community action is positioned to be the anti-poverty, community development force within many hundreds of communities.

During the Summer of 2001, OCS conducted a series of regional ROMA training and technical assistance conferences with leaders from State CSBG agencies, State CAA associations, and a number of local eligible entities. At these regional sessions, OCS encouraged State agencies and associations to work together to complete ROMA implementation by the time the Community Services Block Grant program is scheduled for reauthorization in Fiscal Year 2003. Completing ROMA implementation is important for a number of reasons, not the least of which is that it will strengthen community action at a time when the Administration and Congress are placing heavy emphasis on effectiveness and accountability among all domestic assistance programs.

At the ROMA regional meetings, OCS worked with State CSBG agency and association officials to develop ROMA implementation plans. OCS identified technical assistance opportunities that are now being funded through the Fiscal Year 2001 Training, Technical Assistance and Capacity-Building Grant Announcement (published July 2, 2001, 66 FR 34996), including, among a variety of efforts: (1) Basic program administration and financial management training at a National Academy; (2) leadership training through a number of special community action-focused programs; (3) training of ROMA instructors through a ''train the trainers'' initiative; and (4) financial support to underwrite the costs of tailored training contained in various State ROMA implementation plans.

OCS intends to continue its support of the special initiative to complete ROMA implementation by Fiscal Year 2003 and to maintain the impetus for full implementation generated by the regional meetings.

Sub-Priority Area 5.1 ROMA Training and Technical Assistance Clearinghouse (RC)

OCS will underwrite the creation and operation of a ROMA Training and Technical Assistance Clearinghouse to coordinate the on-going effort to achieve universal ROMA implementation by Fiscal Year 2003. The Clearinghouse will be responsible for a variety of tasks, including:

(1) Identifying individuals and information resources within, or associated with, the Network that can help State CSBG lead agencies, State CAA associations, and local eligible entities carry out their ROMA implementation plans;

(2) Serving as a referral source for partners in the Network seeking one or more forms of basic, intermediate, or advanced technical assistance on one or more of the following ROMA implementation areas:

(a) Leadership Training and the Use of ROMA for Program Renewal;

(b) ROMA-based Needs Assessment and Strategic Planning;

(c) Development and Use of Client, Community, or Organizational Outcome Measures;

(d) Strategic Board Selection and Involvement in Agency Goal Setting and Results-Oriented Oversight;

(e) Client and/or Community-Focused Programming and Service Delivery;

(f) ROMA-Focused Staffing (training, linkage to client/community outcomes);

(g) ROMA Compatible Information Systems (collection, analysis and report of client, community and/or organizational outcomes);

(h) Use of ROMA to Expand Program Linkages within and outside of Agency;

(i) Results-Oriented Financial Management; and

(j) Ways of Using ROMA to ''Tell Our Story'' Better to State legislatures, local governing authorities, and/or the public.

(3) Collecting and disseminating technical assistance materials to the network, including use of the ROMA website, *www.ROMA1.org;* and

(4) Organizing and/or conducting ROMA implementation training and technical assistance on-site visits, meetings, and/or conferences at the request of State CSBG lead agencies, State CAA associations, or local entities.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $200,000).

Sub-Priority Area 5.2 Board Training Programs (BT)

One of the clearest and most universal needs for technical assistance identified by community action agencies that responded to the ROMA Implementation Assessment conducted in the Spring of 2001 was the strengthening of local tripartite boards. Over 92% of Assessment respondents indicated that boards need training in a variety of topics to increase their capacity to lead and evaluate agency activities and outcomes, including: (1) Board responsibilities under the law; (2) basic board functioning; (3) board role in agency needs assessment, program planning, operations and evaluation; (4) ROMA principles and uses in all aspects of agency functioning; and (5) board selection, monitoring and evaluation of agency leadership.

OCS intends to fund the development of one or more board training programs to be made available throughout the Network. OCS will entertain applications for board training program development that focus on one or more of the following:

(1) *Comprehensive Board Training Package*—OCS will fund one grant for the development of a multi-media comprehensive board training package that covers all of the following topics: (a) Board responsibilities under the law; (b) basic board functioning; (c) board role in agency needs assessment, program planning, operations and evaluation; (d) ROMA principles and uses in all aspects of agency functioning; and (e) board selection, monitoring and evaluation of agency leadership. Information developed for each of these topics will be organized by the successful applicant into training modules, to be presented in writing, on the ROMA website, and on videotape. The successful applicant will develop model results-oriented planning, programming, and reporting instruments to facilitate communication between local agency officials and board members. The successful applicant will field-test materials and training approaches with Network partners, including local agency officials and representative board members, particularly the representatives of low-income families, before training packages are completed. The successful applicant will be responsible for working through the ROMA Implementation Clearinghouse to assure timely and effective dissemination of board training information to the Network.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations local

eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $100,000).

(2) *Capacity-building Grants to States for Board Training*—OCS will fund up to four grants to consortia of State CSBG lead agencies and their respective State CAA associations to undertake board training in one or more of the topics listed above. OCS is particularly interested in building the capacity of State agencies and associations to train boards in situations that present special challenges requiring tailored and special approaches, such as: (1) Wide geographic distances within a State that makes travel to and from a central training site/program difficult or impossible for agency staff and board members; (2) geographic isolation or great distances within the catchment area of an eligible entity, especially in multi-county rural areas; (3) inability of board members to attend extended training sessions, or sessions offered during normal working hours; (4) inability of agencies or board members to finance costs associated with training, including travel, income displacement, expenses, etc; and/or (5) lack of support for board training among local agency leadership and staff.

Successful applicants for capacity-building grants under this sub-priority area will include in their applications a description of the outcomes they expect to achieve through board training and how those outcomes will be measured.

Eligible applicants: State CSBG Lead Agencies in collaboration with State CAA Associations.

Anticipated Grant Awards: 4 (up to $25,000 each).

Sub-Priority Area 5.3 State Agency/Association ROMA Plan Implementation (RI)

As indicated, OCS invited State CSBG lead agencies and State CAA associations to apply for funds under sub-priority area 1.6 in the Fiscal Year 2001 competition for training, technical assistance and capacity-building grants to carry out ROMA implementation plans developed in conjunction with the five regional meetings held during July and August, 2001. A significant number of States submitted applications under sub-priority area 1.6 and have received assistance from that competition.

OCS invites State agencies and/or associations that need financial assistance to implement ROMA by Fiscal Year 2003 in accord with plans developed over the Summer, and that were unable to apply for funding during the FY 2001 competition that closed on September 16, 2001, to submit applications under this grant announcement.

Successful applicants will describe in their application: (1) What the State has accomplished in terms of ROMA implementation to date, using the eight ROMA ''core activities'' described in Information Memorandum No. 49 (four State and four eligible entity activities) as a guide for measuring progress; (2) how the State plans to complete ROMA implementation as defined by the core activities in Information Memorandum No. 49; (3) a list of activities the State will undertake, including training and technical assistance at the State and local levels, partnerships with other programs, creation of a State vision for community action, and the creation or modification of measurement and/or reporting tools for use by the State and local community action agencies; and (4) a timetable for completing activities described.

Applications submitted for funding under sub-priority 5.3 will be evaluated using the following criteria:

(1) Criterion I: Need for Assistance (Maximum: 20 Points)

The degree to which ROMA has been implemented to date at both the State and local levels using the ''core activities'' for States and eligible entities listed in Part B of this program announcement, including progress for each of the ''core'' activities, and what needs to be done to complete implementation of the activities before 2003. The application should reference the results of the ROMA implementation assessment conducted in the Spring of 2001 among CAAs in the State as part of their description of the need for assistance.

(2) Criterion II: Work Program (Maximum: 30 Points)

The degree to which specific activities to be undertaken will facilitate completion of State and eligible entity ROMA ''core'' activities by 2003, including specific training and technical assistance to be provided to CAAs, a schedule for conducting training and technical assistance, the anticipated participants (description of the level and functions of State and CAA staff), and trainers and/or consultants to be utilized from both within the State or from other parts of the Network.

(3) Criterion III: Significant and Beneficial Impact: (Maximum: 15 Points)

The degree to which activities described in Criterion II above will result in effective implementation of ROMA by 2003. Specifically, the extent to which ROMA implementation will benefit both the operation of community action programs at the State and local level and increase the capacity of such programs to achieve measurable and substantial improvement in the lives of individuals, families, and communities served.

(4) Criterion IV: Evidence of Significant Collaborations (Maximum: 10 Points)

The extent to which the State agency has enlisted the participation of the State CAA association in the design of the grant application and how the partnership between the State and its CAA association will implement the activities under the grant. Joint applications between the State agency and CAA association for funding under this sub-priority are encouraged. In addition, the extent to which other agencies that contribute funds to community action, at the State and local levels, will be encouraged to undertake performance-based management activities and/or will support the use of ROMA to measure and report the results of such programs.

(5) Criterion V: Ability of Applicant To Perform (Maximum: 20 Points)

The extent to which the State agency, the State CAA association, and/or local CAAs have developed an understanding of ROMA and their willingness to complete implementation before 2003. Specifically, the application should describe previous training received through attendance at regional or national ROMA-focused conferences, special workshops conducted by ROMA trainers, or visits to other States/CAAs for the purpose of learning about their ROMA activities.

(6) Criterion VI: Adequacy of Budget (Maximum: 5 Points)

The resources requested are reasonable and adequate to accomplish the project. (0–3 points)

Total costs are reasonable and consistent with anticipated results. (0–2 points)

Eligible applicants: State CSBG Lead Agencies and/or State CAA Associations.

Anticipated Grant Awards: 15 (up to $30,000 each).

Sub-Priority Area 5.4 Local Capacity-Building

The purpose of this sub-priority area is to promote management efficiency and program productivity among local eligible entities. It is essential that community action agencies have the opportunity to receive ''seed'' funds to develop and share effective program/

management techniques addressing various aspects of anti-poverty work, including the implementation of ROMA. Grants under this sub-priority will be made to Community Action Agencies to promote such capacity building. Among the activities that may be supported by capacity-building grants are the development and sharing of: (1) Model needs assessment tools; (2) data processing innovations; (3) community organizing techniques; (4) use of scales to measure outcomes; (5) innovative tracking systems; (6) internal and external communication networks; (7) effective integration of information systems; and (8) successful leveraging strategies. Applicants must include a plan that describes how the results achieved under this project will be shared with the larger Community Services Network.

Eligible Applicants: Local eligible entities.

Anticipated Grant Awards: 10 (up to $20,000 each).

Priority Area 6.0 Achieving Goal 6: Low-Income People, Especially Vulnerable Populations, Achieve Their Potential by Strengthening Family and Other Supportive Systems

In their reporting of ROMA-based information, States have included a number of services, programs, and other forms of interventions under Goal 6. Indeed, the largest category of activities reported for Goal 6 by States and local community action agencies has been ''meeting emergency needs.'' Other categories reported with regularity are: (1) Housing; (2) independent living for the aging; and (3) emergency food. The category, ''Family functioning/life skills,'' ranked fifth in frequency among the 31 States and 577 local entities filing ROMA information in Fiscal Year 1998. Only 13 States and 73 local entities reported activities specifically focused on strengthening family functioning or general life skills of family members.

Because Goal 6 reflects the Administration's priority to strengthen families, particularly the role of fathers in child and family life, OCS intends to fund a number of technical assistance and capacity building activities focused on community action initiatives that seek to enhance outcomes for children and their families as a result of the presence and positive influence of fathers. OCS believes that without such an emphasis, low-income families will continue to exist with disproportionate numbers of absent fathers. Evidence indicates that the absence of participating fathers from households not only damages the economic condition and prospects for low-income families, but may also contribute to a number of negative social outcomes for children and youth that lack the guidance and emotional benefits that come from having two parents involved in their upbringing.

OCS intends to support a number of technical assistance and capacity-building activities designed to reflect and enhance the role of community action in strengthening families through the active involvement of fathers in child and family development.

In addition, OCS will support technical assistance and capacity-building activities focusing on helping strengthen families in which one or both parents are incarcerated. Finally, OCS will underwrite the development of a technical assistance guide to measuring community action efforts to strengthen families.

Sub-Priority Area 6.1 Strengthening the Role of Fathers and Marriage in Child and Family Life (MS)

OCS will fund up to four applications designed to build capacity within the Network to strengthen families through the involvement of fathers in family and child development:

(1) *Strategies for Community Action to Strengthen the Role of Fathers and Marriage in Family and Child Development*—OCS will underwrite the development of a technical assistance guide that describes ways in which community action has, or could, focus on promoting healthy marriages among low-income families and/or helping absent fathers remain involved in the lives of their children.

The successful applicant for the grant to develop this guide will demonstrate in their application the ability to: (1) Identify existing strategies within the Community Services Network that promote healthy marriages among low-income families, and/or the involvement of absent parents, especially fathers, in the creation and maintenance of stable and nurturing family environments; (2) identify possible strategies for strengthening families through healthy marriages and greater participation of absent fathers from programs/sources outside community action and assess ways the Network may adapt and adopt such strategies; (3) identify partnership opportunities with other programs, both within and outside the current administrative responsibilities of community action, that might help advance healthy marriages and the role of absent fathers in achieving family economic and functional wellbeing; and (4) develop a guide based on the information assembled in such a manner that will be useful to State and local community action officials.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $45,000).

(2) *Capacity-Building Grants to Promote the Role of Fathers in Community Action Initiatives to Strengthen Families*—OCS will fund up to three States or local eligible entities to develop special initiatives designed to strengthen family functioning outcomes due to the active involvement of fathers in family life. Specifically, the successful applicant(s) for these capacity-building grants will demonstrate in their applications the ability to: (a) Identify specific needs within the community involving the economic and social condition of fathers of low-income children and families, both present and absent from the household; (b) identify specific strategies for addressing those needs, including the development of coordinated interventions/services through partnerships with other service providers to enhance the status of affected males in their role as individuals and fathers to children in low-income families; (c) undertake special initiatives to involve fathers in the lives of their children and increase their capacity to contribute to the economic, developmental, and social wellbeing of those children; and (d) capture and report the results of such involvement on all appropriate aspects of family life (at a minimum, economic, social and developmental outcomes).

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities.

Anticipated Grant Awards: 3 (up to $30,000 each).

Sub-Priority Area 6.2 Meeting the Special Needs of Children With an Incarcerated Parent(s) (IP)

OCS will fund up to three capacity-building grants to support the development of programs at the State or local level focused on community action assistance to children with incarcerated parent(s). Successful applicants for these grants must demonstrate in their applications the ability to: (1) Identify the number and needs of such children/families within the State or community; (2) design and implement programs and partnerships with other service providers to meet the needs identified; and (3) establish specific results to be achieved by the special initiatives and provide for the measurement and reporting of results.

OCS is particularly interested in supporting programs focused on helping children with incarcerated parent(s) live in safe, stable households and receive appropriate adult guidance, nurturing, and emotional support from custodial parents, guardians, or other adult mentoring relationships. Applicants may wish to consider the special role played by faith-based organizations in providing such support and include such organizations in community action partnerships as appropriate. In addition to focusing on the needs of children with incarcerated parents, applicants are encourage to seek funding for activities designed to address the needs of incarcerated parents as they relate to their parenting responsibilities to their children while incarcerated, during periods prior to release, and post-release from imprisonment (reentry counseling and adjustment assistance, family functioning/parenting skill training, etc).

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities.

Anticipated Grant Awards: 3 (up to $30,000 each).

Sub-Priority Area 6.3 Network Guide to Measuring Family Development Outcomes (FD)

OCS will award one grant for the development of a guide to help the Network improve the measurement and reporting of family development outcomes in support of achieving Goal 6. The successful applicant for this grant will demonstrate in their application the ability to: (1) Identify model family functioning/family development measures that have been developed within and outside the Community Services Network used in social service programs; (2) correlate information about measurement tools to the kinds of programs/services provided by community action alone and in partnership with other service agencies; and (3) describe the relative benefits of various approaches to measuring family functioning/family development in terms of such factors as staff orientation/training and use, appropriateness to activities/interventions being measured, and information gathering/storage/and retrieval.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $45,000).

Part C—Application Prerequisites

1. Eligible Applicants

See individual sub-priority areas in Part B.

2. Availability of Funds

The total amount of funds currently available for new grant awards in FY 2002 under this Fall–Winter program announcement is $2,360,000. Subject to the availability of funds, an additional amount will be set aside for a Spring–Summer 2002 competition, which will include funding of various cooperative agreements and continuation grants to multi-year awards resulting from the Fiscal Year 2001 competition.

Amounts expected to be available and numbers of grants under each sub-priority area stated in Part B are as follows:

Sub-priority area	Approx. funds available for new projects	Estimated No. of new grants
1.1 Strengthening the ''Self-sufficiency Continuum'' (SC)	$120,000	6
1.2 Organizing/Coordinating Services Around Self-sufficiency: Welfare to Work (WW)	205,000	6
1.3 Organizing/Coordinating Services Around Self-sufficiency/Independent Living Among the Aging or Disabled (SA)	205,000	6
1.4 Strategic Measurement and Reporting of Self-sufficiency Outcomes (SM)	60,000	3
1.5 The Use of Individual Development Accounts to Advance Self-sufficiency (ID)	45,000	1
2.1 Organizing/Coordinating Community Development Programs (CD)	45,000	1
2.2 Strategic Measurement and Reporting of Community Outcomes Across Programs (CO)	60,000	1
3.1 Organizing/Coordinating Community Advocacy/Participation Programs (CM)	45,000	1
3.2 Community Advocacy/Participation Programs, Measurement and Reporting (CA)	45,000	1
4.1 Coordination Strategies Between Community Action and Faith-Based Organizations to Advance ROMA Client Goals 1 and 6 (FP)	105,000	4
4.2 Coordination Strategies Between Community Action and Faith-based Organizations to Advance ROMA Community Goals 2 and 3 (FC)	105,000	4
5.1 ROMA Training and Technical Assistance Clearinghouse (RC)	200,000	1
5.2 Board Training Programs (BT)	200,000	5
5.3 State Agency/Association ROMA Plan Implementation (RI)	450,000	15
5.4 Local Capacity Building (CB)	200,000	10
6.1 Strengthening the Role of Marriage and Absent Fathers in Child and Family Life (MS)	135,000	4
6.2 Meeting the Special Needs of Children With an Incarcerated Parent(s) (IP)	90,000	3
6.3 Network Guide to Measuring Family Development Outcomes (FD)	45,000	1
Total	2,360,000	73

3. Project and Budget Periods

For projects included in the FY 2002 Fall–Winter CSBG T&TA Program Announcement, the budget and project periods are 12 months.

4. Project Beneficiaries

The overall intended beneficiaries of the projects to be funded under the FY 2002 Fall–Winter CSBG T&TA Program Announcement are the various ''partners'' in the Community Services Network. Specific beneficiaries are indicated under each sub-priority area in Part B. It is the intent of OCS, through funding provided under this program announcement, to significantly strengthen the capacity of State and regional CAA associations to provide technical assistance and support to local service providers; to strengthen the capacity of State CSBG offices to collect and disseminate accurate and reliable data and to provide support for local service providers; and to enhance the capacities of local service providers themselves. The ultimate beneficiaries of improved program management, data and information collection and dissemination, and service quality of

local service providers are low-income individuals, families, and communities.

5. Sub-Contracting or Delegating Projects

OCS will not fund any project where the role of the applicant is primarily to serve as a conduit for funds to organizations other than the applicant. This prohibition does not bar the making of subgrants or subcontracting for specific services or activities needed to conduct the project. However, the applicant must have a substantive role in the implementation of the project for which funding is requested.

6. Separate Multiple Applications

Separate applications must be made for each sub-priority area. Applicants that receive more than one grant for a common budget and project period must be mindful that salaries and wages claimed for the same persons cannot collectively exceed 100 percent of the total annual salary. The sub-priority area must be clearly identified by title and number.

7. Project Evaluations

Each application must include an assessment or self evaluation.

Part D—Application Procedures

1. Availability of Forms

Applications for awards under the FY 2002 Fall–Winter CSBG T&TA Program must be submitted on Standard Forms (SF) 424, 424A, and 424B. Part F and the attachments to this program announcement contain all the instructions and forms required for submission of an application. These forms may be photocopied for use in developing the application.

Part F also contains instructions for the project narrative. The project narrative must be submitted on plain bond paper along with the SF–424 and related forms.

A copy of this program announcement is available on the Internet through the OCS web site at: *http://www.acf.dhhs.gov/programs/ocs.*

If the program announcement cannot be accessed through the OCS web site, it can be obtained by writing or telephoning the office listed under the section entitled **FOR FURTHER INFORMATION** at the beginning of this program announcement.

2. Deadlines

Refer to the section entitled ''Closing Date'' at the beginning of this program announcement for the last day on which applications should be submitted.

Mailed applications shall be considered as meeting the announced deadline if they are received on or before deadline date or postmarked on or before the deadline date and received by ACF in time for the independent review. Mailed applications must be sent to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Office of Child Support Enforcement, ''Attention: CSBG Training, Technical Assistance, and Capacity Building Program'', 370 L'Enfant Promenade, SW., Washington, DC 20447.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applications hand-carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered meeting an announced deadline if the are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m. EST, Monday through Friday, excluding Federal holidays, at the: Administration for Children and Families, Office of Grants Management, Office of Child Support Enforcement, ''Attention CSBG Training, Technical Assistance and Capacity Building Program'', 901 D Street, SW., 2nd Floor Mailroom, Washington, DC 20024.

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt. Applications, once submitted, are considered final and no additional materials will be accepted.

Late applications. Applications that do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines. ACF may extend the deadline for all applicants affected by acts of God such as floods and hurricanes, when there is widespread disruption of the mail service. A determination to extend or waive deadline requirements rest with the Chief Grants Management Officer.

3. Number of Copies Required

One signed original application and two copies should be submitted at the time of initial submission (OMB 0970–0062). Two additional copies would be appreciated to facilitate the processing of applications.

4. Designation of Sub-Priority Area

The first page of the SF–424 must contain in the lower right-hand corner a designation indicating under which sub-priority are funds are being requested.

5. Paperwork Reduction Act of 1995 (P.L. 104–13)

Public reporting burden for this collection of information is estimated to average 10 hours per response, including time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection of information.

The project description is approved under OMB Control Number 0970–0062 which expires 12/31/2001. However, a request has been submitted to OMB for an extension.

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.

6. Intergovernmental Review

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs'' and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

The following States and Territories have elected not to participate under the Executive Order process: Arkansas, California, Delaware, District of Columbia, Florida, Georgia, Illinois, Iowa, Kentucky, Maine, Maryland, Michigan, Mississippi, Missouri, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Rhode Island, South Carolina, Texas, Utah, West Virginia, Wisconsin, American Samoa, Guam. Puerto Rico, the Commonwealth of Northern Mariana Islands, and the United States Virgin Islands.

Applicants for projects to be administered by Federally recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise,

applicants should contact their Single Point of Contact (SPOC) as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that OCS can obtain and review SPOC comments as a part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424A, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those Official State process recommendations which they intend to trigger the ''accommodate or explain'' rule under 45 CFR 100.10.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Grants Management/OCSE, 4th Floor, Aerospace Center, 370 L'Enfant Promenade, SW., Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included as Attachment I to this program announcement.

7. Application Consideration

Applications that meet the screening requirements in Sections 8.a. and 8.b. below will be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to program guidelines and evaluation criteria published in this announcement.

Qualified panelist not directly responsible for programmatic management of the grant will review applications. The results of these reviews will assist OCS in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications will be ranked and generally considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since other factors deemed relevant may be considered including, but not limited to, the timely and proper completion of projects funded with OCS funds granted in the past five years; comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowance on OCS or other Federal agency grants.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

8. Criteria for Screening Applications

a. Initial Screening

All applicants will receive a written acknowledgment with an assigned identification number. This number, along with any other identifying codes, must be referenced in all subsequent communications concerning the application. If an acknowledgment is not received within three weeks after the deadline date, please notify ACF by telephone at (202) 401–5103. All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this Announcement. Only those applications meeting the following requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

(1) The application must contain a Standard Form 424 ''Application for Federal Assistance'' (SF–424), a budget (SF–424A), and signed ''Assurances'' (SF–424B) completed according to instructions published in Part F and Attachments A, B, and C of this program announcement.

(2) A budget narrative, which corresponds to the object class categories in the SF 424A for the use of Federal funds, must be included in the application.

(3) The SF–424 and the SF–424B must be signed by an official of the applicant organization who has authority to obligate the organization legally.

(4) A project narrative must also accompany the standard forms.

b. Pre-Rating Review

Applications, which pass the initial screening, will be forwarded to reviewers and/or OCS staff to verify, prior to the programmatic review, that the applications comply with this program announcement in the following areas:

(1) *Eligibility:* Applicant meets the eligibility requirements found in Part B. Applicant also must be aware that the applicant's legal name as required on the SF 424 (item 5) must match that listed as corresponding to the Employer Identification Number (Item 6).

(2) *Duration of Project:* The application contains a project that can be successfully implemented in the project period.

(3) *Target Populations:* The application clearly targets the specific outcomes and benefits of the project to State staff administering CSBG funds, CAA State or regional associations, and/or local providers of CSBG-funded services and activities. Benefits to low-income consumers of CSBG services also must be identified.

(4) *Program Focus:* The application must address the purpose of the sub-priority area under which funding is being requested.

An application may be disqualified from the competition and returned to the applicant if it does not conform to one or more of the above requirements.

c. Evaluation Criteria

Applications that pass the pre-rating review will be assessed and scored by reviewers. Each reviewer will give a numerical score to each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in this announcement.

The in-depth evaluation and review process will use the following criteria coupled with the specific requirements contained in Part B. (Applications for funding under Sub-priority 5.3, State Agency/Association ROMA Plan Implementation, will be evaluated based upon the requirements described in Part B only).

Criteria for Review and Evaluation of Applications Submitted Under This Program Announcement (Excluding Sub-Priority 5.3)

(1) Criterion I: Need for Assistance (Maximum: 20 Points)

(a) The application documents that the project addresses vital needs related to the purposes stated under the appropriate sub-priority area discussed in this program announcement (Part B) and provides statistics and other data and information in support of its contention. (0–10 points).

(b) The application provides current supporting documentation or other testimonies regarding needs from State CSBG Directors, local service providers and/or State and Regional organizations of local service providers. (0–10 points)

(2) Criterion II: Work Program (Maximum: 30 Points)

The work program is results-oriented, appropriately related to the legislative mandate and specifically related to the sub-priority area under which funds are being requested.

Applicant addresses the following: Specific outcomes to be achieved; performance targets that the project is committed to achieving, including reasons for not setting lower or higher target levels and how the project will verify the achievement of these targets; critical milestones which must be achieved if results are to be gained; organizational support, including priority this project has for the agency; past performance in similar work; and specific resources contributed to the project that are critical to success.

Applicant defines the comprehensive nature of the project and methods that will be used to ensure that the results can be used to address a statewide or nationwide project as defined by the priority area.

(3) Criterion III: Significant and Beneficial Impact: (Maximum: 15 Points)

Applicant adequately describes how the project will assure long-term program and management improvements and have advantages over other products offered to achieve the same outcomes for State CSBG offices, CAA State and/or regional associations, and/or local providers of CSBG services and activities.

The applicant indicates the types and amounts of public and/or private resources it will mobilize, how those resources will directly benefit the project, and how the project will ultimately benefit low-income individuals and families.

If proposing a project with a training and technical assistance focus, applicant indicates the number of organizations and/or staff it will impact.

If proposing a project with a data collection focus, applicant provides a description of the mechanism it will use to collect data, how it can assure collections from a significant number of States, and the number of States willing to submit data to the applicant.

If proposing to develop a symposium series or other policy-related project(s), the applicant identifies the number and types of beneficiaries.

Methods of securing participant feedback and evaluations of activities are described in the application.

(4) Criterion IV: Evidence of Significant Collaborations (Maximum 10 Points)

Applicant describes how it will involve partners in the Community Services Network in its activities. Where appropriate, applicant describes how it will interface with other related organizations.

If subcontracts are proposed, documentation of the willingness and capacity for the subcontracting organization(s) to participate is described.

(5) Criterion V: Ability of Applicant To Perform (Maximum: 20 Points)

(a) The applicant demonstrates that it has experience and a successful track record relevant to the specific activities and program area that it proposes to undertake.

If applicant is proposing to provide training and technical assistance, it details its competence in the specific program priority area and as a deliverer with expertise in the specific fields of training and technical assistance on a nationwide basis.

If applicable, information provided by the applicant also addresses related achievements and competence of each cooperating or sponsoring organization. (0–10 points)

(b) Applicant fully describes, for example in a resume, the experience and skills of the proposed project director and primary staff showing specific qualifications and professional experiences relevant to the successful implementation of the proposed project. (0–10 points)

(6) Criterion VI: Adequacy of Budget (Maximum: 5 Points)

(a) The resources requested are reasonable and adequate to accomplish the project. (0–3 points)

(b) Total costs are reasonable and consistent with anticipated results. (0–2 points)

Part E—Contents of Application and Receipt Process

1. Contents of Application

A cover letter containing an e-mail address and a facsimile (FAX) number, if available, should accompany the application. This will facilitate receipt of an acknowledgment from ACF that the application has been received. (See Part D., 8.a.)

Each application should include one original and two additional copies of the following:

a. A completed Standard Form 424 which has been signed by an official of the organization applying for the grant who has authority to obligate the organization legally. The applicant must be aware that, in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in Attachments D and E.

b.''Budget Information-Non-Construction Programs'' (SF–424A). (Attachment B)

c. A completed, signed and dated ''Assurances—Non-Construction Programs'' (SF–424B). (Attachment C)

d. Drug-free Certification. (The applicant is certifying that it will comply with this requirement by signing and submitting the SF–424.) (Attachment D)

e. Debarment Certification. (Attachment E)

f. Certification Regarding Environmental Tobacco Smoke. (The applicant is certifying that it will comply with this requirement by signing and submitting the SF–424.) (Attachment F)

g. Disclosure of Lobbying Activities, SF–LLL. Complete, sign and date form, as appropriate. (Attachment G)

h. A Project Abstract of 500 words or less. The abstract should provide a succinct description of the need, project goals, and a summary of work plan and the proposed impact. Abstract will be maintained as part of the Grantee Administration Tracking System (GATES).

i. A Project Narrative consisting of the following elements preceded by a consecutively numbered table of contents that will describe the project in the following order:

(i) Need for Assistance.

(ii) Work Program.

(iii) Significant and Beneficial Impact.

(iv) Evidence of Significant Collaborations.

(v) Ability of Applicant to Perform.

(vi) Appendices including proof of non-profit status, such as IRS determination of non-profit status, where applicable; relevant sections of by-laws, articles of incorporation, and/or statement from appropriate State CSBG office which confirms eligibility; resumes; Single Point of Contact comments, where applicable; and any partnership/collaboration agreements.

The original must bear the signature of the authorizing official representing the applicant organization.

The total number of pages for the entire application package should not exceed 35 pages, including appendices. Pages should be numbered sequentially throughout.

If appendices include photocopied materials, they must be legible.

Applications should be two-hole punched at the top center and fastened separately with a compressor slide paper fastener or a binder clip. The submission of bound applications or applications enclosed in a binder are specifically discouraged.

Applications must be submitted on white 8½ x 11-inch paper only since OCS may find it necessary to duplicate them for review purposes. They must not include colored, oversized or folded materials; organizational brochures or other promotional materials; slides; films; clips; etc. They will be discarded if included.

Part F—Instructions for Completing Application Package (Approved by the OMB Under Control Number 0970–0062)

The standard forms attached to this program announcement shall be used when submitting applications for all funds under this announcement.

It is recommended that the applicant reproduce the SF–424, (Attachment A), SF–424A (Attachment B), SF–424B (Attachment C) and that the application be typed on the copies. If an item on the SF–424 cannot be answered or does not appear to be related or relevant to the assistance requested, the applicant should write ''NA'' for ''Not applicable.''

The application should be prepared in accordance with the standard instructions in Attachments A and B corresponding to the forms, as well as the specific instructions set forth below:

1. SF–424 ''Application for Federal Assistance''

Item

1. For the purposes of this program announcement, all projects are considered ''Applications''; there are no ''Pre-Applications.''

5 and 6. The legal name of the applicant must match that listed as corresponding to the Employer Identification Number. Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (CRS/EIN) and the Payment Identifying Number, if one has been assigned, in the Block entitled ''Federal Identifier'' located at the top right hand corner of the form.

7. If the applicant is a non-profit corporation, enter ''N'' in the box and specify ''non-profit corporation'' in the space marked ''Other.'' Proof of non-profit status such as IRS determination, articles of incorporation, or by-laws, must be included as an appendix to the project narrative.

8. For the purposes of this announcement, all applications are ''New.''

9. Enter ''DHHS–ACF/OCS.''

10. The Catalog of Federal Domestic Assistance number for the OCS program covered under this announcement is ''93.570.''

11. In addition to a brief descriptive title of the project, priority area designations must be used to indicate the priority and sub-priority areas for which funds are being requested:

The title is ''Office of Community Services'' Discretionary CSBG Awards—Fiscal Year 2001 Training, Technical Assistance, and Capacity-Building Programs.''

15a. For purposes of this announcement, this amount should reflect the amount requested for the entire project period.

15b–e. These items should reflect both cash and third party in-kind contributions for the total project period.

2. SF–424A—''Budget Information-Non-Construction Programs''

See instructions accompanying the form as well as the instructions set forth below:

In completing these sections, the Federal budget entries will relate to the requested OCS Training and Technical Assistance Program funds only, and Non-Federal will include mobilized funds from all other sources—applicant, State, and other. Federal funds, other than those requested from the Training and Technical Assistance Program should be included in Non-Federal entries.

Sections A and D must contain entries for both Federal (OCS) and non-Federal (mobilized).

Section A—Budget Summary

Col. (a): Line 1—Enter ''OCS Training and Technical Assistance Program'';

Col. (b): Line 1—Enter ''93.570''.

Col. (c) and (d): Not Applicable

Col. (e)–(g): For lines 1 enter in column (e), (f) and (g) the appropriate amounts needed to support the project for the entire project period.

Line 5—Enter the figures from Line 1 for all columns completed under (e), (f), and (g).

Section B—Budget Categories

This section should contain entries for OCS funds only. For all projects, the first budget period of 12 months will be entered in Column #1. Allowability of costs is governed by applicable cost principles set forth in 45 CFR Parts 74 and 92.

A separate itemized budget justification should be included to explain fully and justify major items, as indicated below. The budget justification should immediately follow the Table of Contents.

Column 5: Enter total requirements for Federal funds by the Object Class Categories of this section.

Line 6a—Personnel: Enter the total costs of salaries and wages.

Justification: Identify the project director. Specify by title or name the percentage of time allocated to the project, the individual annual salaries and the cost to the project (both Federal and Non-Federal) of the organization's staff who will be working on the project.

Line 6b—Fringe Benefits: Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate which is entered on line 6j.

Justification: Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

Line 6c—Travel: Enter total cost of all travel by employees of the project. Do not enter costs for consultant's travel.

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, mileage rate, transportation costs and subsistence allowances.

Line 6d—Equipment: Enter the total costs of all non-expendable personal property to be acquired by the project. Equipment means tangible non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

Justification: Equipment to be purchased with Federal funds must be required to conduct the project, and the applicant organization or its subgrantees must not already have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Line 6e—Supplies: Enter the total costs of all tangible personal property (surplus) other than that included on line 6d.

Line 6h—Other: Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing and publication, computer use training costs including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Line 6j—Indirect Charges: Enter the total amount of indirect costs. This line

should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or other Federal agencies. With the exception of States and local governments, applicants should enclose a copy of the current approved rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services. For an educational institution, the indirect costs on training grants will be allowed at the lesser of the institution's actual indirect costs or 8 percent of the total direct costs.

If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately, upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent DHHS Guide for Establishing Indirect Cost Rates, and submit it to the appropriate DHHS Regional Office.

It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool cannot be budgeted or charged as direct costs to the grant.

Line 6k—Totals: The total amount shown in Section B, Column (5), should be the same as the amount shown in Section A, line 5, column (e).

Line 7—Program Income: Enter the estimated amount of income, if any is expected to be generated from this project. Separately show expected program income generated from OCS support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Column 5: Carry totals from column 1 to column 5 for all line items.

Justification: Describe the nature, source and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources

This section is to record the amounts of Non-Federal resources that will be used to support the project. Non-Federal resources refer to other than OCS funds for which the applicant has received a commitment. Provide a brief explanation, on a separate sheet, showing the type of contribution, broken out by Object Class Categories, section B.6) and whether it is cash or third party in-kind. The firm commitment of these required funds must be documented and submitted with the application.

Except in unusual situations, this documentation must be in the form of letters of commitment or letters of intent from the organization(s)/individuals from which funds will be received.

Line 8—Col. (a): Enter the project title.

Col. (b): Enter the amount of cash or donations to be made by the applicant.

Col. (c): Enter the State contribution.

Col. (d): Enter the amount of cash and third party in-kind contributions to be made from all other sources.

Col. (e): Enter the total of column (b), (c), and (d). Lines 9, 10, and 11 should be left blank.

Line 12—Carry the total of each column of line 8, (b) through (e). The amount in column (e) should be equal to the amount on section A, Line 5, and column (f).

Justification: Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs

Line 13—Enter the amount of Federal (OCS) cash needed for this grant for first year and by quarter, during the first 12-month budget period.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the total of Lines 13 and 14 for all columns.

Section E—Budget Estimates of Federal Funds Needed for Balance of the Project

To be completed by applicants applying for funds for a three year project period.

Section F—Other Budget Information

Line 21—Include narrative justification required under Section B for each object class category for the total project period.

Line 22—Enter the type of HHS or other Federal agency approved indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Attach a copy of the approved rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services. If the applicant decides not apply an indirect cost rate to the proposal, then ''this line should be left blank.''

Line 23—Provide any other explanations and continuation sheets required or deemed necessary to justify or explain the budget information.

3. SF–424B ''Assurances Non-Construction''

Applicant must sign and return the ''Assurances'' found at Attachment C with its application.

4. Project Narrative

Each narrative section of the application must address one or more of the focus areas described in Part B and follow the format outlined below:

(a) Need for Assistance.
(b) Work Program.
(c) Significant and Beneficial Impact.
(d) Evidence of Significant Collaborations.
(e) Ability of the Applicant to Perform.
(f) Adequacy of the Budget.

Part G—Post Award Information and Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award, which indicates, the amount of Federal funds approved for use in the project, the project and budget periods for which support is provided, the terms and conditions of the award, and the total project period for which support is contemplated.

In addition to the standard terms and conditions which will be applicable to grants, grantee will be subject to the provisions of 45 CFR parts 74 (non-governmental) and 92 (governmental) and OMB Circulars A–122 (nonprofit) and A–87 (governmental).

Grantees will be required to submit semi-annual program progress narrative and financial reports (SF–269) as well as a final program progress narrative report and a final financial report.

Grantees are subject to the audit requirements in 45 CFR parts 74 (non-governmental) and 92 (governmental) and OMB Circular A–133.

Section 319 of Public Law 101–121, signed into law on October 23, 1989 imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their sub-tier contractors and/or grantees) are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement, or loan. In addition, for each award action in

excess of $100,000 (or $150,000 for loans) the law requires recipients and their subtier contractors and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients or their subtier Contractors or subgrantee will pay with profits or non-appropriated funds on or after December 22, 1989, and (3) to file quarterly updates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for noncompliance. See Attachment F for certification and disclosure forms to be submitted with the applications for this program.

Public Law 103–227, Part C. Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through States or local governmental by Federal grant, contract, loan or loan guarantee. The law does not apply to facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for in-patient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application, the applicant/grantee certifies that it will comply with the requirement of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any sub-awards, which contain provisions for children's services and that all subgrantees shall certify accordingly.

Attachment H indicates the regulations that apply to all applicants/grantees under this program.

Dated: January 11, 2002.

Clarence Carter,

Director, Office of Community Services.

CSBG Training, Technical Assistance and Capacity-Building Program

List of Attachments

A—Application for Federal Assistance, SF 424

B—Budget Information—Non-Construction Programs, SF 424A

C—Assurances—Non-Construction Programs, SF 424B

D—Certification Regarding Drug-Free Work Place

E—Debarment Certification

F—Certification Regarding Environmental Tobacco Smoke

G—Disclosure of Lobbying Activities, SF–LLL

H—Listing of Regulations Applicable to All Grantees

I—Listing of State Single Points of Contact

BILLING CODE 4184–01–P

Attachment A, Page 1

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*:

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (If applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the asistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—''New'' means a new assistance award.

—''Continuation'' means an extension for an additional funding/budget period for a project with a projected completed date.

—''Revision'' means any change in the Federal Government's financial obligation or contingent liability form an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the programs under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, your should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt included delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184–01–P

Attachment B, Page 1

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Prescribed by OMB Circular A-10

Attachment B, Page 2

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 7-97) Page

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Instructions for the SF–424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0044), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send to the address provided by the sponsoring agency.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe now and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies my require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Line a–k of Section B.

Section A. Budget Summary Lines 1–4 Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity of function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in Column (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g).

For new applications, leave Column (c) and (d) blank. For each line entry on Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the total for all columns used.

Section B. Budget Categories

In the Column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–J—Show the totals of Lines 6a to 65h in each column.

Lines 6j—Show the amount of indirect cost.

Line 6k—Enter the total amounts on lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter total of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are need to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(3). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts of individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisions, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Attachment C: Assurances—Non-Construction Programs

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the

data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0040), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents relating to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for program funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd–3 and 290 ee3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93–523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§ 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. §§ 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A–133, ''Audit of States, Local Governments, and Non-Profit Organizations.''

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

Signature of Authorized Certifying Official

Applicant Organization

Title

Date Submitted

Certification Regarding Drug-Free Workplace Requirements

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal Agency may designate a central receipt point for State-wide and State Agency-wide certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central pint is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW., Washington, DC 20201.

Certification Regarding Drug-Free Workplace requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the

agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes:

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal State or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street Address, City, County, State, Zip Code)

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification numbers(s) of each affected grant.

Attachment E: Administration for Children and Families U.S. Department of Health and Human Services—Certification Regarding Debarment, Suspension and Other Responsibility Matters

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that w which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [Page 33043] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Attachment F: Certification Regarding Environmental Tobacco Smoke

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $100 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Attachment G: Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifiefs, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federeal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of

Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

BILLING CODE 4184–01–P

Attachment G, Page 2

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	**5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:** **Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

BILLING CODE 4184–01–C

Instructions for Completion of SF–LL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks ''Subawardee,'' then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., ''RFP–DE–90–001.''

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

b. Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no opersons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348–0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0046), Washington, DC 20503.

Attachment H: Department of Health and Human Services (DHHS), Administration for Children and Families (ACF), Standard Terms and Conditions—Discretionary Grants

The attached Financial Assistance Award is subject to Federal legislation and to DHHS and ACF regulations and policies. These include the following:

1. For institutions of higher education, hospitals, other non-profit organizations, and commercial (for-profit) organizations, Title 45 of the Code of Federal Regulations (45 CFR) Part 74, ''Uniform Administrative Requirements for Awards and Sub-awards to Institutions of Higher Education; Hospitals, Other Non-Profit Organizations; and Commercial Organizations; and Certain Grants and Agreements with States, Local Governments and Indian Tribal Governments.'' *http://www.access.gpo.gov/nara/cfr/waisidx_99/45cfr74_99.html.*

2. For States, local governments and Federally recognized Indian Tribes, 45 CFR Part 92, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.'' *http://www.access.gpo.gov/nara/cfr/waisidx_99/45cfr92_99.html.*

3. Other DHHS regulations codified in Title 45 of the Code of Federal Regulations: *http://www.access.gpo.gov/nara/cfr/waisidx_00/45cfrv1_00.html.*

Part 16—Procedures of the Departmental Grants Appeals Board
Part 30—Claims Collections
Part 46—Protection of Human Subjects
Part 76—Government-wide Debarment and Suspension (Non-Procurement) and Government-wide Requirements for Drug-Free Workplace (Grants)
Part 80—Nondiscrimination Under Programs Receiving Federal Assistance through the DHHS Effectuation of Title VI of the Civil Rights Acts of 1964
Part 81—Practice and Procedure of Hearings Under Part 80 of this Title
Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities receiving Federal Financial Assistance
Part 86—Nondiscrimination on the Basis of Sex in Education Programs and Activities receiving or benefiting from Federal Financial Assistance
Part 91—Nondiscrimination on the Basis of Age in DHHS Programs or Activities receiving Federal Financial Assistance
Part 93—New Restrictions on Lobbying
Part 100—Intergovernmental review of DHHS Program and Activities

4. 37 CFR Part 401—Right to Inventions made by Nonprofit Organizations and Small Business firms under Government Grants, Contracts, and Cooperative Agreements. *http://www.access.gpo.gov/nara/cfr/waisidx_00/37cfr401_00.html.*

5. The receipt organization must carry out the project according to the application as approved by the Administration for Children and Families (ACF), including the proposed work program and any amendments, all of which are incorporated by reference in these terms and conditions.

6. If this a multi-year project and it is not the final budget period, the grantee is advised that future awards for continuation of this project will be dependent upon the availability of Federal funds, satisfactory progress by the grantee, and ACF's determination that continued funding is in the best interest of the Federal government.

7. Grantees shall liquidate all obligations incurred under the award no later than 90 days after the end of the project period. The only exceptions to this rule are the basic Head Start grants with an indefinite project period. For these grants, liquidation of obligations should occur no later than 90 days after each budget period. In either case, an unobligations balance from a prior budget period does not authorize a grantee to obligate funds in excess of the total federally approved budget reflected on the FAA for the current budget period.

8. The DHHS Inspector General maintains a toll free number, 800–HHS–TIPS (800–447–8477), for receiving information concerning fraud, waste or abuse under grants and cooperative agreements. Such reports are kept confidential, and callers may decline to give their names if they choose to remain anonymous. *http://www.dhhs.gov/progorg/oei/hotline/hhshot.html.*

9. The grantee will take all necessary affirmative steps to ensure that small, minority and women-owned business firms are utilized when possible as sources of supplies, services, equipment and construction. To the extent practicable, all equipment and products purchased with funds made available through this award should be American made.

10. Failure to submit reports (i.e., financial, progress, or other required reports) on time may be the basis for withholding financial assistance payments, suspension, termination or denial or refunding. A history of such

unsatisfactory performance may result in designation of ''high-risk'' status for the recipient organization and may jeopardize potential future funding from DHHS.

11. Under Section 508 of Public Law 103–333, the following condition is applicable to all Federal awards: ''When issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds, including but not limited to State and local governments and recipient of Federal research grants shall clearly state (1) the percentage of the total costs of the program or project which will be financed with Federal money, (2) the dollar amount of Federal funds for the project or program, and (3) the percentage and dollar amount of total costs of the project or program that will be refinanced by nongovernmental sources.''

12. Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children's Act of 1994 requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantees. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for impatient drug or alcohol treatment. *http://www.ed.gov/legislation/GOALS2000/TheAct/sec1043.html.*

13. For purposes of this award each item of equipment with acquisition cost of less than $5,000 is included under supplies, is allowable as a direct cost of this project, and does not require for prior approval of the Grants Officer. Conversely, an item of equipment with an acquisition cost of $5,000 or more is NOT considered an allowable project cost without prior approval of the Grants Management Officer.

14. The Grantee shall comply with all provisions of OMB Circular A–133 (revised June 24, 1997), ''Audit of State, Local Government and Non-Profit Organizations.'' *http://www.whitehouse.gov/omb/circulars/a133/a133.html.*

Grantees that expend a total of $300,000 or more in Federal funds are required to submit an annual audit within nine months after the end of the audit period. The Reporting Package should include: (1) SF–SAC–Data Collection Form for Reporting on Audits of State, Local Governments and Non-Profit Organizations. *http://harvester.census.gov/fac/collect/formoptions.html;* (2) summary of prior audit findings; (3) auditors reports and (4) corrective action plans. Copies of this Reporting Package are to be sent to: Single Audit Clearinghouse. Bureau of the Census, 1201 East 10th Street, Jeffersonville, Indiana 47132.

15. Grantee shall comply with the particular set of Federal cost principles that applies in determining allowable cost. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs:

- The allowability of costs incurred by State, local or Federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, ''Cost Principles for States and Local Governments.'' *http://www.whitehouse.gov/omb/circulars/a087/a087.html.*
- The allowability of costs incurred by nonprofit organizations (except for those listed in Attachment C of Circular A–122) is determined in accordance with the provisions of OMB Circular A–122, ''Cost Principles for Nonprofit Organizations'' and paragraph (b) of 45 CFR, 74.27. *http://www.whitehouse.gov/omb/circulars/a122/a122.html.*
- The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, ''Cost Principles for Educational Institutions.'' *http://www.whitehouse.gov/omb/circulars/a021/a21.html.*
- The allowability of costs incurred by hospital is determined in accordance with the provisions of Appendix E of 45 CFR Part 74, ''Principles for Determining Cost Applicable to Research and Development Under Grants and Contracts with Hospitals.''
- The allowability for costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provision of the Federal Acquisition Regulation (FAR) at 48 CFR Part 31, except that independent research and development costs are unallowable. *http://www.access.gpo.gov/nara/cfr/waisidx_99/48cfr31_99.html.*

Attachment I: State Single Point of Contact Listing Maintained by OMB

In accordance with Executive Order #12372, ''Intergovernmental Review of Federal Programs,'' Section 4, ''the Office of Management and Budget (OMB) shall maintain a list of official State entities designated by the States to review and coordinate proposed Federal financial assistance and direct Federal development.'' This attached listing is the Official OMB Listing. OMB's point of contact for the SPOC list is Frederick J. Charney (202) 395–3993 or *grants@omb.eop.gov.* This listing is also published in the Catalogue of Federal Domestic Assistance biannually.

OMB State Single Point of Contact Listing*, October 5, 1999

Arizona

Joni Saad, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315, FAX: (602) 280–8144

Arkansas

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 515 W. 7th St., Room 412, Little Rock, Arkansas 72203, Telephone: (501) 682–1074, FAX: (501) 682–5206

California

Grants Coordination, State Clearinghouse, Office of Planning & Research, 1400 Tenth Street, Room 121, Sacramento, California 95814, Telephone: (916) 445–0613, FAX: (916) 323–3018

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Office of the Budget, 540 S. Dupont Highway, Suite 5, Dover, Delaware 19901, Telephone: (302) 739–3326, FAX: (302) 739–5661

District of Columbia

Charles Nichols, State Single Point of Contact, Office of Grants Mgmt. & Dev., 717 14th Street, NW., Suite 1200, Washington, DC 20005, Telephone: (202) 727–1700 (direct), (202) 727–6537 (secretary), FAX: (202) 727–1617

Florida

Florida State Clearinghouse, Department of Community Affairs, 2555 Shumard Oak Blvd., Tallahassee, Florida 32399–2100, Telephone: (850) 922–5438, FAX: (850) 414–0479, Contact: Cherie Trainor, (850) 414–5495

Georgia

Deborah Stephens, Coordinator, Georgia State Clearinghouse, 270 Washington Street, SW.—8th Floor, Atlanta, Georgia 30334, Telephone: (404) 656–3855, FAX: (404) 656–7901

Illinois

Virginia Bova, State Single Point of Contact, Illinois Department of Commerce and Community Affairs, James R. Thompson Center, 100 West Randolph, Suite 3–400, Chicago, Illinois 60601, Telephone: (312) 814–6028, FAX: (312) 814–1800

Indiana

Renee Miller, State Budget Agency, 212 State House, Indianapolis, Indiana 46204–2796, Telephone: (317) 232–2971 (directline), FAX: (317) 233–3323

Iowa

Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 242–4719, FAX: (515) 242–4809

Kentucky

Kevin J. Goldsmith, Director, Sandra Brewer, Executive Secretary, Intergovernmental Affairs, Office of the Governor, 700 Capitol Avenue, Frankfort, Kentucky 40601, Telephone: (502) 564–2611, FAX: (502) 564–0437

Maine

Joyce Benson, State Planning Office, 184 State Street, 38 State House Station, Augusta, Maine 04333, Telephone: (207) 287–3261, FAX: (207) 287–6489

Maryland

Linda Janey, Manager, Plan & Project Review, Maryland Office of Planning, 301 W. Preston Street, Room 1104, Baltimore, Maryland 21201–2365, Staff Contact: Linda Janey, Telephone: (410) 767–4490, FAX: (410) 767–4480

Michigan

Richard Pfaff, Southeast Michigan Council of Governments, 660 Plaza Drive—Suite 1900, Detroit, Michigan 48226, Telephone: (313) 961–4266, FAX: (313) 961–4869

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, 550 High Street, 303 Walters Sillers Building, Jackson, Mississippi 39201–3087, Telephone: (601) 359–6762, FAX: (601) 359–6758

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Jefferson Building, 9th Floor, Jefferson City, Missouri 65102, Telephone: (314) 751–4834, FAX: (314) 751–7819

Nevada

Department of Administration, State Clearinghouse, 209 E. Musser Street, Room 220, Carson City, Nevada 89710, Telephone: (702) 687–4065, FAX: (702) 687–3983, Contact: Heather Elliot, (702) 687–6367

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, Mike Blake, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–2155, FAX: (603) 271–1728

New Mexico

Nick Mandell, Local Government Division, Room 201, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–3640, FAX: (505) 827–4984

North Carolina

Jeanette Furney, North Carolina Department of Administration, 116 West Jones Street—Suite 5106, Raleigh, North Carolina 27603–8003, Telephone: (919) 733–7232, FAX: (919) 733–9571

North Dakota

North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone: (701) 224–2094, FAX: (701) 224–2308

Rhode Island

Kevin Nelson, Review Coordinator, Department of Administration, Division of Planning, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908–5870, Telephone: (401) 277–2656, FAX: (401) 277–2083

South Carolina

Omeagia Burgess, State Single Point of Contact, Budget and Control Board, Office of State Budget, 1122 Ladies Street—12th Floor, Columbia, South Carolina 29201, Telephone: (803) 734–0494, FAX: (803) 734–0645

Texas

Tom Adams, Governors Office, Director, Intergovernmental Coordination, P.O. Box 12428, Austin, Texas 78711, Telephone: (512) 463–1771, FAX: (512) 936–2681

Utah

Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone: (801) 538–1027, FAX: (801) 538–1547

West Virginia

Fred Cutlip, Director, Community Development Division, W. Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone: (304) 558–4010, FAX: (304) 558–3248

Wisconsin

Jeff Smith, Section Chief, Federal/State Relations, Wisconsin Department of Admninistration, 101 East Wilson Street—6th Floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266–0267, FAX: (608) 267–6931

Wyoming

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If you would like a copy of this list faxed to your office, please call our publications office at: (202) 395–9068.

*In accordance with Executive Order #12372, ''Intergovernmental Review of Federal Programs,'' this listing represents the designated State Single Points of Contact. The jurisdictions not listed no longer participate in the process BUT GRANT APPLICANTS ARE STILL ELIGIBLE TO APPLY FOR THE GRANT EVEN IF YOUR STATE, TERRITORY, COMMONWEALTH, ETC DOES NOT HAVE A ''STATE SINGLE POINT OF CONTACT.'' STATES WITHOUT ''STATE SINGLE POINTS OF CONTACT'' INCLUDE: Alabama, Alaska; American Samoa; Colorado; Connecticut; Hawaii; Idaho; Kansas; Louisiana; Massachusetts, Minnesota; Montana; Nebraska; New Jersey; New York; Ohio; Oklahoma; Oregon; Palau; Pennsylvania; South Dakota; Tennessee; Vermont, Virginia; and Washington. This list is based on the most current information provided by the States. Information on any changes or apparent errors should be provided to the Office of Management and Budget and the State in question. Changes to the list will only be made upon formal notification by the State. Also, this listing is published biannually in the Catalogue of Federal Domestic Assistance.

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January 18, 2002

Part II

Department of Health and Human Services

Administration for Children and Families

Fiscal Year 2002 Training, Technical Assistance and Capacity-Building Program; Availability of Funds and Request for Applications—Fall/Winter Competition; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS 2002–05]

Fiscal Year 2002 Training, Technical Assistance and Capacity-Building Program; Availability of Funds and Request for Applications—Fall/Winter Competition

AGENCY: Office of Community Services (OCS), Administration for Children and Families (ACF), Department of Health and Human Services' (DHHS).

ACTION: Request for Applications under the Office of Community Services' Training, Technical Assistance and Capacity-Building Program—Fall/Winter Competition.

SUMMARY: The Office of Community Services announces that competing applications will be accepted for grants pursuant to the Secretary's authority under section 674(b) of the Community Services Block Grant (CSBG) Act, as amended, by the Community Opportunities, Accountability, and Training, and Educational Services (Coats) Human Services Reauthorization Act of 1998, (Pub. L. 105–285). This Fall/Winter competition for new Fiscal Year 2002 grants may be followed by an additional competition later in the Fiscal Year depending upon needs within the Community Services Network and the availability of funds. This program announcement does not describe priority areas or awards to be made later in Fiscal Year 2002 that continue multi-year obligations from previous competitions.

This program announcement consists of seven parts. Part A provides information on the legislative authority and defines terms used in the program announcement. Part B describes the purposes of the program, the priority areas that will be considered for funding, and which organizations are eligible to apply in each priority area. Part C provides details on application prerequisites, anticipated amounts of funds available in each priority area, estimated number of grants to be awarded, and other grant-related information. Part D provides information on application procedures including the availability of forms, where to submit an application, criteria for initial screening of applications, and project evaluation criteria. Part E provides guidance on the content of an application package. Part F provides instructions for completing an application. Part G details post-award requirements.

Closing Date: The closing date for submission of applications is March 19, 2002. Mailed applications shall be considered as meeting the announced deadline if they are received on or before deadline date or are postmarked on or before the deadline date. Applications received after the closing date will be classified as late and not considered for funding. Applications that are handcarried will be classified as late if they are received after 4:30 p.m., EST, on the deadline date. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing. Detailed application submission instructions, including addresses where applications must be sent are found in Part D of this program announcement.

FOR FURTHER INFORMATION CONTACT: Dr. Margaret J. Washnitzer, Director of State Assistance, Office of Community Services, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447 (202) 401–9343. This program announcement is accessible on the OCS web site for reading or downloading at: *http://www/acf/dhhs/gov/programs/ocs*.

Additional copies of this program announcement can be obtained by calling (202) 401–9343.

The Catalog of Federal Domestic Assistance number is 93.570. This Program announcement title is ''Training, Technical Assistance, and Capacity—Building Program.''

Part A—Preamble

1. Legislative Authority

Sections 674(b)(2) and 678E(b) of the Community Services Block Grant (CSBG) Act of 1981, (Pub. L. 97–35) as amended by the Coats Human Services Reauthorization Act of 1998, (Pub. L. 105–285) authorizes the Secretary of Health and Human Services to utilize a percentage of appropriated funds for: training, technical assistance, planning, evaluation, performance measurement, monitoring, to assist States in carrying out corrective actions and to correct programmatic deficiencies of eligible entities, and for reporting and data collection activities related to programs or projects carried out under the CSBG Act. The Secretary may carry out these activities through grants, contracts, or cooperative agreements. To address program quality in financial management practices, management information and reporting systems, and measurement of program results and to ensure responsiveness to identified local needs, the Secretary is required to distribute funds directly to eligible entities, or statewide or to local organizations or associations with demonstrated expertise in providing training to individuals and organizations on methods of effectively addressing the needs of low-income families and communities. The Secretary may carry out the remaining activities through appropriate entities.

The process for determining the technical assistance, training and capacity-building activities to be carried out must (a) ensure that the needs of eligible entities and programs relating to improving program quality, including financial management practices, are addressed to the maximum extent feasible; and (b) incorporate mechanisms to ensure responsiveness to local needs, including an on-going procedure for obtaining input from State and national networks of eligible entities. Thus, the CSBG Monitoring and Assessment Task Force (MATF) continues to focus on implementation of the Results-Oriented Management and Accountability (ROMA) system to address the challenges and unmet needs of States and Community Action Agencies and to increase program quality and management within the Community Services Network. The Task Force has taken a comprehensive approach to monitoring, including establishing national goals and outcome measures, and established target dates for nation-wide implementation; reviewing information and data needs relevant to these outcome measures; and assessing technical assistance and training provided toward capacity building within the Community Services Network.

2. Definitions of Terms

For purposes of the FY 2002 CSBG Training, Technical Assistance and Capacity-Building Program, the following definitions apply:

At-Risk Agencies refers to CSBG eligible entities in crises. The problem(s) to be addressed must be of a complex or pervasive nature that cannot be adequately addressed through existing local or State resources.

Capacity-building refers to activities that assist Community Action Agencies (CAAs) and other eligible entities to improve or enhance their overall or specific capability to plan, deliver, manage and evaluate programs efficiently and effectively to produce intended results for low-income individuals. This may include

upgrading internal financial management or computer systems, establishing new external linkages with other organizations, improving board functioning, adding or refining a program component or replicating techniques or programs piloted in another local community, or making other cost effective improvements.

Community in relationship to broad representation refers to any group of individuals who share common distinguishing characteristics including residency, for example, the ''low-income'' community, or the ''religious'' community or the ''professional'' community. The individual members of these ''communities'' may or may not reside in a specific neighborhood, county or school district but the local service provider may be implementing programs and strategies that will have a measurable affect on them. Community in this context is viewed within the framework of both community conditions and systems, i.e., (1) public policies, formal written and unstated norms adhered to by the general population; (2) service and support systems, economic opportunity in the labor market and capital stakeholders; (3) civic participation; and (4) an equity as it relates to the economic and social distribution of power.

Community Services Network (CSN) refers to the various organizations involved in planning and implementing programs funded through the Community Services Block Grant or providing training, technical assistance or support to them. The network includes local Community Action Agencies and other eligible entities; State CSBG offices and their national association; CAA State, regional and national associations; and related organizations which collaborate and participate with Community Action Agencies and other eligible entities in their efforts on behalf of low-income people.

Cooperative Agreement is an award instrument of financial assistance where ''substantial involvement'' is anticipated between the awarding agency and the recipient during the performance of the contemplated project or activity. ''Substantial involvement'' means that the recipient can expect Federal programmatic collaboration or participation in managing the award.

Eligible applicants for this training and technical assistance program announcement are eligible entities (see described below); States, non-profit organizations or state CAA associations who are involved in training, technical assistance planning, corrective action, evaluation and peformance measurement in order to assist States in carrying out the purposes of the CSBG program. Eligible faith-based nonprofit organizations may apply.

Eligible entity means any organization that was officially designated as a Community Action Agency (CAA) or a community action program under section 673(1) of the Community Services Block Grant Act, as amended by the Human Services Amendments of 1994 (Pub. L. 103–252), and meets all the requirements under sections 673(1)(A)(I), and 676A of the CSBG Act, as amended by the Coats Human Services Reauthorization Act of 1998. All eligible entities are current recipients of Community Services Block Grant funds, including migrant and seasonal farmworker organizations that received CSBG funding in the previous fiscal year. Faith-based organizations that are also eligible entities may apply. In cases where eligible entity status is unclear, a final determination will be made by OCS/ACF.

Hub is a Department of Health and Human Services designation for multiple regional locations.

Local service providers are local public or private non-profit agencies that receive Community Services Block Grant funds from States to provide services to, or undertake activities on behalf of, low-income people.

Nationwide refers to the scope of the technical assistance, training, data collection, or other capacity-building projects to be undertaken with grant funds. Nationwide projects must provide for the implementation of technical assistance, training or data collection for all or a significant number of States, and the local service providers who administer CSBG funds.

Outcome Measures are indicators that focus on the direct results one wants to help clients achieve.

Performance Measurement is a tool used to objectively assess how a program is accomplishing its mission through the delivery of products, services, and activities.

Program technology exchange refers to the process of sharing expert technical and programmatic information, models, strategies and approaches among the various partners in the Community Services Network. This may be done through written case studies, guides, seminars, technical assistance, and other mechanisms.

Regional Networks refers to CAA State Associations within a region.

Results-Oriented Management and Accountability (ROMA) System: ROMA is a system, which provides a framework for focusing on results for local agencies funded by the Community Services Block Grant Program. It involves setting goals and strategies for developing plans and techniques that focus on a result-oriented performance based model for management.

State means all of the 50 States and the District of Columbia. Except where specifically noted, for purposes of this program announcement, it also includes specified Territories.

State CSBG Lead Agency (SCLA) is the lead agency designated by the Governor of the State to develop the State CSBG application and to administer the CSBG Program.

Statewide refers to training and technical assistance activities and other capacity building activities undertaken with grant funds that will have significant impact, i.e. activities should impact at least 50 percent of the eligible entities in a State.

Technical assistance is an activity, generally utilizing the services of an expert (often a peer), aimed at enhancing capacity, improving programs and systems, or solving specific problems. Such services may be provided proactively to improve systems or as an intervention to solve specific problems.

Territories refer to the Commonwealth of Puerto Rico, and American Samoa for the purpose of this announcement.

Training is an educational activity or event which is designed to impart knowledge, understanding, or increase the development of skills. Such training activities may be in the form of assembled events such as workshops, seminars, conferences or programs of self-instructional activities.

Part B—Purposes/Program Priority Areas

This Training, Technical Assistance, and Capacity-Building program announcement is intended to provide funding to eligible applicants within the Community Services Network to advance achievement of the six national community action goals:

Goal 1: Low-income people become more self-sufficient.

Goal 2: The conditions in which low-income people live are improved.

Goal 3: Low-income people own a stake in their community.

Goal 4: Partnerships among supporters and providers of service to low-income people are achieved.

Goal 5: Agencies increase their capacity to achieve results.

Goal 6: Low-income people, especially vulnerable populations, achieve their potential by strengthening family and other supportive systems.

These goals were established by the Community Services Network and have been used over the past eight years to focus its work on achieving meaningful and measurable improvements in the lives of clients and communities. Establishing these goals in 1994 was an initial step in the Network's voluntary effort to develop and install a comprehensive performance-based management system, ''Results Oriented Management and Accountability,'' or ROMA. Sections 676(b)(12) and 678(E) of the CSBG Act, as amended in 1998, now mandate implementation of ROMA across the entire Community Services Network, with performance reporting from all partners in the Network beginning October 1, 2001.

This program announcement seeks to encourage the development or expansion of specific community action initiatives within the framework of the six national goals. Successful applicants will help move the Network toward improved programs, outcomes, and greater accountability through universal adoption of ROMA by Fiscal Year 2003.

The ROMA goal-related activities to be funded through this program announcement are intended to complement those now being supported by grants made in the last quarter of Fiscal Year 2001. Specifically, OCS funded a significant number of grants to States (CSBG Lead Agencies and State Community Action Associations) to carry out ROMA implementation plans developed jointly by these organizations at five regional meetings sponsored by OCS during July and August, 2001. States were encouraged at the regional meetings to focus their plans on accomplishing eight ROMA implementation ''core activities'' (four State and four local) described in OCS Information Memorandum Number 49 (February 21, 2001):

State Agencies

1. The agency has developed, in coordination with eligible entities and the State CAA association, a State-wide vision statement that speaks to the goals and purposes of community action within the State and that supports the six national ROMA goals. The agency is encouraged to participate in, and contribute to, broader State anti-poverty/community development initiatives with outcome measures and goals compatible with ROMA;

2. The agency has trained all its eligible entities (staff and boards) in outcome-based management, and that 80% of the entities use ROMA concepts to guide needs assessment, agency mission review, activity planning, resource allocations, service delivery, measuring and reporting results;

3. Eighty percent of the plans and program reports received from eligible entities in the State describe plans to achieve projected outcomes, and evaluate results based on measurable improvements of condition(s) among clients and/or communities served; and

4. .The agency submits complete, accurate, and timely annual reports to OCS on the ''measured performance of the State and the eligible entities in the State'' as required by section 678E of Public Law 105–285, the Community Services Block Grant Reauthorization Act of 1998.

Eligible Entities

1. The entity and its board complete regular assessments of the entity's overall mission, desired impact(s) and program structure, taking into account: (1) The needs of the community and its residents; (2) the relationship, or context, of the activities supported by the entity to other anti-poverty, community development services in the community; and (3) the extent to which the entity's activities contribute to the accomplishment of one or more of the six ROMA national goals;

2. Based upon the periodic assessments described above, the entity and its board has identified yearly (or multi-annually) specific improvements, or results, it plans to help achieve in the lives of individuals, families, and/or the community as a whole;

3 . The entity organizes and operates all of its programs, services, and activities toward accomplishing these improvements, or outcomes, including linking with other agencies in the community when services beyond the scope of the entity are required. All staff are helped by the entity to understand the direct or indirect relationship of their efforts to achieving specific client or community outcomes; and

4. The entity provides reports to the State that describe client and community outcomes and that capture the contribution of all entity programs, services, and activities to the achievement of those outcomes.

Model capacity building and technical assistance coordination financed through this program announcement are designed to produce both basic and advanced tools that can be used across the network to carry out these ''core activities'' that constitute ROMA implementation as required by law.

In addition to creating program information and tools for organizing community services to achieve client and community outcomes, OCS intends to underwrite intensive, one-on-one interaction among community action staff from one program to another. OCS hopes that those agencies/workers that have experimented with various approaches to program improvement will share their experiences with partner agencies through such strategies as extended on-site visits or staff exchanges.

OCS is soliciting applications for this Fiscal Year 2002 Fall/Winter competition for Training, Technical Assistance and Capacity-Building funding in the following priority and sub-priority areas:

Priority Area 1.0 Achieving Goal 1: Low-Income People Become More Self-Sufficient

Sub-Priority Areas

1.1 Strengthening the ''Self-sufficiency Continuum'' (SC)
1.2 Organizing/Coordinating Services Around Self-sufficiency: Welfare to Work (WW)
1.3 Organizing/Coordinating Services Around Self-sufficiency/ IndependentLiving Among the Aging or Disabled (SA)
1.4 Strategic Measurement and Reporting of Self-sufficiency Outcomes (SM)
1.5 The Use of Individual Development Accounts to Advance Self-sufficiency (ID)

Priority Area 2.0 Achieving Goal 2: The Conditions in Which Low-Income Individuals' Lives Are Improved

Sub-Priority Areas

2.1 Organizing/Coordinating Community Development Programs (CD)
2.2 Strategic Measurement and Reporting of Community Outcomes Across Programs/ Services (CO)

Priority Area 3.0 Achieving Goal 3: Low-Income People Own a Stake in Their Community

Sub-Priority Areas

3.1 Organizing/Coordinating Community Advocacy/Participation Programs (CM)
3.2 Community Advocacy/Participation Programs, Measurement and Reporting (CA)

Priority Area 4.0 Achieving Goal 4: Partnerships Among Supporters and Providers of Service to Low-Income People Are Achieved

Sub-Priority Areas

4.1 Coordination Strategies Between Community Action and Faith-Based Organizations to Advance ROMA Client Goals I and VI (FP)
4.2 Coordination Strategies Between Community Action and Faith-Based Organizations to Advance ROMA Community Goals II and III (FC)

Priority Area 5.0 Achieving Goal 5: Agencies Increase Their Capacity To Achieve Results

Sub-Priority Areas

5.1 ROMA Training and Technical Assistance Clearinghouse (RC)
5.2 Board Training Programs (BT)
5.3 State Agency/Association ROMA Plan Implementation (RI)
5.4 Local Capacity-Building (CB)

Priority Area 6.0 Achieving Goal 6: Low-Income People, Especially Vulnerable Populations, Achieve Their Potential by Strengthening Family and Other Supportive Systems

Sub-Priority Areas

6.1 Strengthening the Role of Fathers and Marriage in Child and Family Life (MS)
6.2 Meeting the Special Needs of Children With an Incarcerated Parent (IP)
6.3 Network Guide to Measuring Family Development Outcomes (FD)

Priority Area 1.0 Achieving Goal 1: Low-Income People Become More Self-Sufficient

OCS believes that community action has a unique opportunity to strengthen its anti-poverty, self-sufficiency successes over the next several years among the variety of populations it currently serves, including: (1) Those families who have moved from welfare to work but need additional assistance in order to continue their progress to greater self-sufficiency; (2) those families that continue to receive public assistance and need help to begin the process of moving toward self-sufficiency; and (3) the aging or disabled for whom self-sufficiency is often defined in terms of ''independent living.''

The CSBG provides flexible funding to States and eligible entities that permits these agencies to organize the variety of services they administer, financed by a number of funding sources, around the self-sufficiency needs of the clients they serve. Indeed, the ROMA ''core activities'' for eligible entities described in Information Memorandum No. 49 speak to this concept of coordinated delivery of services from programs within an eligible entity and from ''partner'' agencies in the community. Such coordination is intended to achieve robust improvements in the lives of clients that no one service can achieve alone, such as helping them move permanently from welfare to work, or sustaining movement toward self-sufficiency once training and entry-level employment have been secured. Similarly, Information Memorandum No. 49 encourages State CSBG officials to link with other programs with purposes that are congruent with the six national community action goals in order to assure that the programs, in concert, achieve life-changing outcomes among often-shared clients.

Coordinating services across programs to help clients achieve broad, life-altering goals, especially the anti-poverty work of moving families from dependence to self-sufficiency, can make community action unique and potentially more successful than other service providers. But, such coordination is somewhat difficult to achieve and has not always been considered essential to the existence or success of community action. Many State agencies and eligible entities have evolved over the years into umbrella organizations that house separate, and administratively segregated service programs, that often serve the same clients in parallel universes, by fiat not design, and that have no pattern or broader purpose to their immediate interventions.

OCS intends to fund those community action leaders at the State or local levels that have been successful in organizing programs and services, both within and outside their agencies, toward achieving client self-sufficiency, to help others within the Network reconfigure their programs, services, and outcome expectations. It will ''underwrite'' the time and expense of these leaders so that they may share their experiences with colleagues in other States or communities.

OCS also intends to fund State or eligible entities that wish to develop new self-sufficiency models of coordinated service delivery for one or more of the community action client populations.

In addition, OCS seeks the development and dissemination of model ways to track the many intermediate interventions across services and programs that ultimately combine and contribute to families achieving the broader outcome of self-sufficiency. Such a tool(s) may help State and local community action officials: (1) Plan programs and deploy resources around client-specific strategies; (2) translate discrete services or interventions into building-block inputs; (3) access the effectiveness of such interventions in terms of their intermediate impact on clients; and (4) analyze and report the impact of the ultimate coalescence of intermediate, or contributory outcomes, on a family's ability to achieve and sustain self-sufficiency.

Sub-Priority 1.1 Strengthening the ''Self-Sufficiency Continuum'' (SC)

As a result of welfare reform, millions of families have moved from public assistance to employment over the past five years. Many of these families have taken the first steps toward self-sufficiency but they are not earning ''living wages,'' or adequate income, to be truly self-supporting. OCS intends to strengthen the ''self-sufficiency continuum'' that provides purposeful and targeted assistance to these families to help them continue their movement toward ultimate economic independence.

OCS is aware that most community action agencies already provide services to the ''working poor.'' In many cases, such services may address both temporary and longer-term family needs. The services may allow family members to remain employed rather than revert to public assistance as their primary means of support. OCS encourages purposeful and targeted assistance to working families that are transitioning to self-sufficiency.

OCS will fund up to six awards, two in each of the following categories, to advance community action creation of an effective ''self-sufficiency continuum'':

(1) *Training and Technical Assistance:* OCS will underwrite the development of training and technical assistance information that identifies and describes programs within the Network that have: (a) Undertaken specific initiatives to address the needs of the working poor; (b) provided coordinated services from a variety of sources to such families to help them achieve concrete and measurable advances on the ''continuum'' toward self-sufficiency; and (c) have installed appropriate measurement strategies to capture, record, and report meaningful family movement on the ''continuum.''

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 2 (up to $20,000 each).

(2) *Outcome Measurement Strategies:* OCS will underwrite the development of approaches, such as scales or collected individual results/measures, to capture, record, and report the results of individual or coordinated services to help the working poor advance toward self-sufficiency. These tools are intended to help entities within the Network organize and document their efforts to help the working poor achieve greater self-sufficiency. The measurement tools developed through

this grant should address, all or a significant number of the following aspects of family life that contribute to overall well-being: education, child care, child and adolescent development, housing, job training, employment, food and nutrition, physical health, mental health, substance abuse, family functioning, family/community integration, transportation, and financial management.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 2 (up to $20,000 each).

(3) *Capacity-Building:* OCS will provide capacity building assistance to two eligible entities to underwrite the costs of developing a ''self-sufficiency continuum.'' The successful applicants will agree to undertake and document the steps they take to: (a) Identify the needs of the working poor within their community; (b) identify a specific group or number of families/individuals to receive coordinated and targeted assistance; (c) design a set of strategies to meet the immediate and longer-term needs of participating families/individuals that involves partnerships among relevant public and private programs both within and outside the eligible entity; (d) provide assistance strategically; and (e) capture, record, and report the results of specific and aggregated interventions on the overall movement of participating working poor individuals and families toward self-sufficiency.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 2 (up to $20,000 each).

Sub-Priority 1.2 Organizing/Coordinating Services Around Self-Sufficiency: Welfare to Work (WW)

OCS recognizes that many community action agencies help families make the transition from welfare to work using coordinated services financed from a variety of sources. OCS intends to support two forms of training, technical assistance, and capacity-building activities designed to accelerate the ability of more agencies to undertake such activities:

(1) *Guide to Organizing CAA Welfare-to-Work Self-sufficiency Programs*—OCS will support the development of a technical assistance guide on how to organize services and programs around the goal of moving clients from welfare to work. The successful applicant for funds to develop this guide must demonstrate the ability to identify and describe existing strategies within the network, at both the State and local levels, that are being used to coordinate community action planning, allocation of resources, and client services to achieve client self-sufficiency outcomes, with particular emphasis on innovative approaches to: (1) Determining the comprehensive needs of clients to achieve self-sufficiency involving CAA boards and other community resources; (2) designing and implementing coordinated service delivery strategies, including case management, to respond to those needs; (3) providing for client-focused record-keeping and measurement of immediate and longer-terms impacts of interventions on client change, including common intake procedures, client-organized information systems, electronic methods to sort information for a variety of program measurement and reporting purposes.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $30,000).

(2) *On-Site Technical Assistance*—Through both self-sufficiency demonstration programs in the late 1980's and seven years of pioneering work in performance-based management, the Network has developed a number of successful leaders in helping families move from welfare to work. While these leaders are known and available to some in the Network, OCS believes that our best self-sufficiency organizers ought to be helping a broader audience of State and local agencies.

OCS intends to fund approximately 5 State and/or local community action programs that have achieved a level of proficiency in helping clients transition from welfare to work to provide: (1) Intensive, on-site training and technical assistance at regional, State or local community action meetings; and/or (2) staff exchanges or extended staff loans among State or local programs to assist in knowledge transfer about self-sufficiency strategies.

Among the specific kinds of expertise OCS hopes to have shared through this process are: (a) Case managed approaches to family services (parents and children); (b) resource support to coordinated service delivery, including organization of staff and services; (c) client results-based staff performance; (d) client and results focus tracking, measurement, and reporting systems; (e) partnerships with other services/programs within the community; and (f) board involvement in needs assessment, program planning, implementation, and evaluation.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities.

Anticipated Grant Awards: 5 (up to $35,000 each).

Sub-Priority 1.3 Organizing/Coordinating Services Around Self-Sufficiency/Independent Living Among the Aging or Disabled (SA)

A significant number of community action agencies provide services to the aging or disabled to help them live as independently as possible for as long as possible. Because independent living among the aging or the disabled often translates into a measure of self-sufficiency, OCS intends to develop training and technical assistance resources for the Network similar to those described above for Sub-priority 1.2 (Welfare to Work):

(1) *Guide to Organizing CAA Independent Living Strategies for the Aging or Disabled*—OCS will support the development of a technical assistance guide on how to organize services and programs around the goal helping aging or disabled clients remain self-sufficient through sustaining their ability to live as independently as possible within the community. The successful applicant for funds to develop this guide must demonstrate the ability to identify and describe existing strategies within the network, at both the State and local levels, that are being used to coordinate community action planning, allocation of resources, and client services to achieve client self-sufficiency outcomes for the aging or disabled, with particular emphasis on innovative approaches to: (1) Determining the comprehensive needs of clients to achieve and sustain the appropriate level of independent living involving CAA boards and other community resources; (2) designing and implementing coordinated service delivery strategies, including case management, to respond to those needs; (3) providing for client-focused record-keeping and measurement of immediate and longer-terms impacts of interventions on client change, including common intake procedures, client-organized information systems, electronic methods to sort information for a variety of program measurement and reporting purposes.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $30,000).

(2) *On-Site Technical Assistance*—OCS intends to fund approximately 5 State and/or local community action programs that have achieved a level of proficiency in helping aging or disabled clients achieve and sustain appropriate levels of independent living within their community to provide: (1) Intensive, on-site training and technical assistance at regional, State or local community action meetings; and/or (2) staff exchanges or extended staff loans among State or local programs to assist in knowledge transfer about self-sufficiency strategies.

Among the specific kinds of expertise OCS hopes to have shared through this process are: (a) Case managed approaches to service delivery; (b) resource support to coordinated service delivery, including organization of staff and services; (c) client results-based staff performance; (d) client and results focus tracking, measurement, and reporting systems; (e) partnerships with other services/programs within the community; and (f) board involvement in needs assessment, program planning, implementation, and evaluation.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities.

Anticipated Grant Awards: 5 (up to $35,000 each).

Sub-Priority 1.4 Strategic Measurement and Reporting of Self-Sufficiency Outcomes (SM)

OCS will underwrite the development of strategic technical assistance documents that lay out the connection between discrete client interventions on the achievement of intermediate and longer-term client self-sufficiency outcomes for the three self-sufficiency populations described above: (1) The working poor (the ''Self-sufficiency Continuum); (2) families transitioning from welfare to work; and (3) the aging or disabled. These tools are intended to help entities within the Network organize and document their self-sufficiency efforts more effectively.

The measurement tools developed through this grant should address, at a minimum, the following aspects of family status/condition: Education, child care, child and adolescent development, housing, job training, employment, food and nutrition, physical health, mental health, substance abuse, family functioning, family/community integration, transportation, and financial management. The measurement strategies should lay out the interactions and interrelationships of single-focus interventions/activities on the achievement of interim results and the relationship of interim results to the broader outcome of family self-sufficiency.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 3 (up to $20,000 each, one for each population group).

Sub-Priority 1.5 The Use of Individual Development Accounts To Advance Self-Sufficiency (ID)

Individual Development Accounts (IDA's) have become a promising tool among anti-poverty programs in their efforts to promote self-sufficiency among low-income families. Some in the Community Services Network, at both the State and local levels, are experimenting with the use of IDA's to assure that adequate and sufficiently flexible funds are available to meet the multiple and changing needs of families transitioning from welfare to work.

OCS intends to underwrite the development of technical assistance information about community action use of IDA's for dissemination to the Network. The successful applicant must demonstrate an ability to gather information from the network through electronic or other means, organize and present the information in a manner that will be useful to Network colleagues at both the State and local levels.

The technical assistance document developed by the successful applicant should contain, at a minimum: (1) A brief history of IDA's within and outside the Community Services Network; (2) an overview of IDA activity within the Network, both at the State and local level in terms of needs being addressed, outcomes anticipated, and any measurements taken of results to date; (3) a description of challenges faced by those agencies experimenting with IDA's and how those challenges have been or are being addressed; and (4) A summary analysis of IDA's based on experimenter views/observations and those of the applicant.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $45,000).

Priority Area 2.0 Achieving Goal 2: The Conditions in Which Low-Income Individuals' Lives Are Improved

Almost all eligible entities report efforts to improve one or more aspects of communities in which low-income individuals and families live. Yet, finding ways to capture and report meaningful results of community action for this first of two national goals has proven difficult in the early years of ROMA implementation.

Analysis of FY 1998 ROMA reports submitted by States, the latest that has been summarized, indicates that the Network views a wide variety of programs and services as advancing Goal 2. These programs and services include: (1) Housing (purchase, repair, transitional, weatherization, energy assistance, emergency rent); (2) help to community residents (education and literacy training, emergency food/nutrition, employment, healthcare, transportation); and (3) economic development activities (encouraging small business, establishing employment opportunities).

OCS believes that the Network could benefit from assistance in sorting through not only how to capture what community action is doing to advance community development, but also on how the Network might best approach the broader issues of community redevelopment with more comprehensive strategies in the future.

OCS believes that advancement of ROMA implementation will be served by the development of technical assistance materials for use by the Network that provide new, and more detailed, information on how Network leaders in community development design and carry out programs, and on how they record and report results of their activities.

Sub-Priority Area 2.1 Organizing/Coordinating Community Development Programs (CD)

OCS will underwrite the development of a technical assistance guide for the Network that describes model approaches to community development undertaken by community action agencies. The guide will include information concerning: (1) How model community development agencies identify the broad needs to be addressed within their communities and the specific role to be played by community action; (2) how these agencies organize programs and services, and partnerships with other organizations in the community, to undertake or advance community development; and (3) what means the agencies use to track, record, and report the results of community development strategies.

OCS is particularly interested in collecting and disseminating information concerning the interrelationship of community action to various national, regional, State, or local economic development initiatives. The successful applicant for a grant to

prepare the envisioned technical assistance document on community development will pay particular attention to this issue.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $45,000).

Sub-Priority Area 2.2 Strategic Measurement and Reporting of Community Outcomes Across Programs/Services (CO)

OCS will provide funds to assist one or more partners in the Network to develop strategies for measuring the results of individual and coordinated community development activities and for reporting these results. Specifically, OCS intends to support an activity similar to that described for Sub-priority area 1.4, the creation of technical assistance materials that lay out how individual activities, such as providing micro business loans to neighborhood residents, link to other individual activities to form a broader, more comprehensive effort to achieve meaningful and measurable community development. The successful applicant for funds to create this strategic technical assistance document will be expected to conduct a thorough review of community development literature and report their findings as they may relate to community development work conducted by community action agencies.

By providing the Network with such a strategic ''mapping'' of various elements and components of community development within the context of community action, OCS will help community action continue to make a transition from providing discrete, often disjointed services within a community, to a leader/contributor to more comprehensive community development efforts, that yield more robust and lasting outcomes.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $60,000).

Priority Area 3.0 Achieving Goal 3: Low-Income People Own a Stake in their Community

Community action is unique in its ability to both advocate for, and empower, low-income individuals and families, particularly as it relates to mobilizing citizens to achieve a greater sense of authority over their lives and future. Local agencies have used a variety of approaches to both stimulate citizen involvement in community activities and to measure the extent of such involvement.

In Fiscal Year 1998, the latest year for which ROMA data from States was analyzed, most community action agencies identified the following activities as supporting the achievement of Goal 3: (1) The number of community residents that volunteer time to agency activities, and the amount of volunteer hours served; (2) client involvement in community decision making, including service on CAA, school, housing, or other kinds of citizen advisory boards; (3) participation in community events; (4) youth participation in community activities and programs; and (5) the leveraging of funds for community investments.

Sub-Priority Area 3.1 Organizing/Coordinating Community Advocacy/Participation Programs (CM)

OCS believes that the Network would benefit from the sharing of information across programs on how community action is working toward achieving Goal 3 and will support the development of a technical assistance guide to empowering low-income individuals and families in their communities. The successful applicant for this grant will demonstrate in their application the means to: (1) Identify community action programs across the nation that have a successful history of mobilizing citizen participation and advocacy; (2) collect information from these programs on the planning, organization, implementation, and results of citizen advocacy/participation efforts; (3) solicit observations from community action leaders and participating clients on how to overcome challenges and obstacles to citizen empowerment; (4) describe measures used to evaluate and report the extent and effectiveness of citizen empowerment by community action; and (5) summarize and analyze information presented by selected sites and individuals.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $45,000).

Sub-Priority Area 3.2 Community Advocacy/Participation Programs, Measurement and Reporting (CA)

OCS will provide funds to develop expanded strategies for measuring the results of individual and coordinated citizen empowerment and community advocacy activities and for reporting these results. Specifically, OCS intends to support an activity similar to that described for Sub-priority areas 1.4 and 2.2, the creation of technical assistance materials that lay out how individual activities, such as encouraging low-income community residents to become active in citizen advisory boards, link to other individual activities to form a broader, more comprehensive effort to achieve meaningful and measurable citizen involvement and empowerment. The successful applicant for funds to create this strategic technical assistance document will be expected to (1) Conduct a thorough review of citizen empowerment literature and report their findings as they may relate to the work conducted by community action agencies; (2) assess the current measurement strategies and individual measures used by community action to capture and report Goal 3 results; and (3) recommend more robust Goal 3 measures that could be used by the Network and step-by-step instructions on how to adapt the measures to the individual needs and approaches of local agencies.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $45,000).

Priority Area 4.0 Achieving Goal 4: Partnerships Among Supporters and Providers of Service to Low-Income People Are Achieved

One of the primary goals of the Administration is to encourage expansion of the number and kinds of organizations devoted to helping communities and low-income citizens achieve their potential. The Administration has organized a ''Faith-based Initiative'' that has, among other things, called for greater participation and public funding of faith-based groups providing community services as well as more coordination among the various agencies that address the needs of low-income communities, particularly community action.

OCS recognizes that the Network has a long history of forming partnerships with faith-based organizations and encourages further expansion of such collaborative efforts to achieve both client and community goals.

OCS intends to fund the development and dissemination of two technical assistance documents intended to help partners in the Network, at both the State and community levels, learn ways to enhance collaboration of community action with faith-based organizations and how such partnerships may strengthen program outcomes. In

addition, OCS will support capacity-building efforts in selected States and/or communities to form new or expanded community action and faith-based partnerships to achieve specific client or community results, and to disseminate the results of these capacity-building efforts to the Network.

Sub-Priority Area 4.1 Coordination Strategies Between Community Action and Faith-Based Organizations To Advance ROMA Client Goals I and VI (FP)

OCS will fund up to four technical assistance and capacity building efforts to promote the achievement of client-focused Goals 1 and 6 through effective collaboration of community action and faith-based organizations:

(1) *Guide to Achieving Client Outcomes Through Community Action Coordination With Faith-Based Organizations*—OCS will support the development of a technical assistance guide to help State and local community action agencies learn of ways to establish or expand partnerships with faith-based organizations to advance client-focused community action Goals 1 and 6—client/family self-sufficiency and family strengthening. Specifically, the successful applicant for the grant to develop this guide will describe in its application how it will: (1) Identify State or local partners within the Network that have a history of successful linkage/collaboration with faith-based organizations working to achieve client-focused outcomes; (2) gather information about the ways these partnerships have been achieved, including formal and informal methods for establishing and maintaining the collaboration, interchange of information, human and financial resources, client referral and case management, capturing and reporting results; (3) gather insights and analyses from participating community action and faith-based staff and clients on particular strengths and challenges of such collaboration, and (4) develop a guide based on the information described above in a manner useful to the Network.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $45,000).

(2) *Capacity-Building Grants To Promote Self-sufficiency and/or Family Strengthening Through Collaboration Between Community Action and Faith-Based Organizations*—OCS will fund between one and three States or local community action agencies, or faith-based organizations, to build new or expanded collaborations. Specifically, OCS seeks to encourage innovative means of working among secular and religious organizations to promote client/family self-sufficiency and/or to strengthen families. The successful applicant(s) will describe in their application(s): (1) Specific goal(s) they intend to advance through new or expanded partnerships between community action and faith-based organizations; (2) specific and measurable client-focused results the proposed collaboration(s) are intended to achieve and the means by which such results will be measured and reported; (3) particular contributions each organizational partner will bring to the collaboration, including special skills, human and financial resources; (4) evidence of previous success, including descriptions of other collaborations and measurable client improvements that resulted from such collaborative work, and (5) formal letters of agreement and participation among all collaborating organizations with specific descriptions of anticipated contributions of resources and time to the effort.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, and non-profit faith-based organizations.

Anticipated Grant Awards: Up to 3 ($20,000 each).

Sub-Priority Area 4.2 Coordination Strategies Between Community Action and Faith-Based Organizations To Advance ROMA Community Goals II and III (FC)

As with sub-priority area 4.1, OCS will fund up to four grants to promote the achievement of community-focused goals (community development and citizen empowerment) through new or expanded collaboration between community action and faith-based organizations. OCS will solicit applications in two categories:

(1) *Guide to Achieving Community Development/Citizen Empowerment Goals Through Collaboration Between Community Action and Faith-Based Organizations*—OCS will support the development of a technical assistance guide to help State and local community action agencies learn of ways to establish or expand partnerships with faith-based organizations to advance community development and citizen empowerment—community action national goals 2 and 3. Specifically, the successful applicant for the grant to develop this guide will describe in its application how it will: (1) Identify State or local partners within the Network that have a history of successful linkage/collaboration with faith-based organizations working to achieve community outcomes; (2) gather information about the ways these partnerships have been achieved, including formal and informal methods for establishing and maintaining the collaboration, interchange of information, human and financial resources, client referral and case management, capturing and reporting results; (3) gather insights and analyses from participating community action and faith-based staff and clients on particular strengths and challenges of such collaboration, and (4) develop a guide based on the information described above in a manner useful to the Network.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $45,000).

(2) *Capacity-Building Grants To Promote Community Development and/or Citizen Empowerment Through Collaboration Between Community Action and Faith-Based Organizations*—OCS will fund between one and three States or local community action agencies, or faith-based organizations, to build new or expanded collaborations. Specifically, OCS seeks to encourage innovative means of working among secular and religious organizations to promote community development and/or citizen empowerment. The successful applicant(s) will describe in their application(s): (1) Specific goal(s) they intend to advance through new or expanded partnerships between community action and faith-based organizations; (2) specific and measurable community and client-focused results the proposed collaboration(s) are intended to achieve and the means by which such results will be measured and reported; (3) particular contributions each organizational partner will bring to the collaboration, including special skills, human and financial resources; (4) evidence of previous success, including descriptions of other collaborations, measurable community and client improvements that resulted from such collaborative work, and (5) formal letters of agreement and participation among all collaborating organizations with specific descriptions of anticipated contributions of resources and time to the effort.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, non-profit faith-based organizations.

Anticipated Grant Awards: Up to 3 ($20,000 each).

Priority Area 5.0 Achieving Goal 5: Agencies Increase Their Capacity To Achieve Results

Over the past eight years, OCS has worked cooperatively with State CSBG agencies, State CAA associations, and local entities to move the entire Community Services Network toward renewed strength, focus, effectiveness, and accountability. The work of the Monitoring and Assessment Task Force, composed of representatives of all partners in the Network, has resulted in broad-based understanding and gradual implementation of Results Oriented Management and Accountability, or ROMA. It is through ROMA that the Network continues to assure that community action is positioned to be the anti-poverty, community development force within many hundreds of communities.

During the Summer of 2001, OCS conducted a series of regional ROMA training and technical assistance conferences with leaders from State CSBG agencies, State CAA associations, and a number of local eligible entities. At these regional sessions, OCS encouraged State agencies and associations to work together to complete ROMA implementation by the time the Community Services Block Grant program is scheduled for reauthorization in Fiscal Year 2003. Completing ROMA implementation is important for a number of reasons, not the least of which is that it will strengthen community action at a time when the Administration and Congress are placing heavy emphasis on effectiveness and accountability among all domestic assistance programs.

At the ROMA regional meetings, OCS worked with State CSBG agency and association officials to develop ROMA implementation plans. OCS identified technical assistance opportunities that are now being funded through the Fiscal Year 2001 Training, Technical Assistance and Capacity-Building Grant Announcement (published July 2, 2001, 66 FR 34996), including, among a variety of efforts: (1) Basic program administration and financial management training at a National Academy; (2) leadership training through a number of special community action-focused programs; (3) training of ROMA instructors through a ''train the trainers'' initiative; and (4) financial support to underwrite the costs of tailored training contained in various State ROMA implementation plans.

OCS intends to continue its support of the special initiative to complete ROMA implementation by Fiscal Year 2003 and to maintain the impetus for full implementation generated by the regional meetings.

Sub-Priority Area 5.1 ROMA Training and Technical Assistance Clearinghouse (RC)

OCS will underwrite the creation and operation of a ROMA Training and Technical Assistance Clearinghouse to coordinate the on-going effort to achieve universal ROMA implementation by Fiscal Year 2003. The Clearinghouse will be responsible for a variety of tasks, including:

(1) Identifying individuals and information resources within, or associated with, the Network that can help State CSBG lead agencies, State CAA associations, and local eligible entities carry out their ROMA implementation plans;

(2) Serving as a referral source for partners in the Network seeking one or more forms of basic, intermediate, or advanced technical assistance on one or more of the following ROMA implementation areas:

(a) Leadership Training and the Use of ROMA for Program Renewal;

(b) ROMA-based Needs Assessment and Strategic Planning;

(c) Development and Use of Client, Community, or Organizational Outcome Measures;

(d) Strategic Board Selection and Involvement in Agency Goal Setting and Results-Oriented Oversight;

(e) Client and/or Community-Focused Programming and Service Delivery;

(f) ROMA-Focused Staffing (training, linkage to client/community outcomes);

(g) ROMA Compatible Information Systems (collection, analysis and report of client, community and/or organizational outcomes);

(h) Use of ROMA to Expand Program Linkages within and outside of Agency;

(i) Results-Oriented Financial Management; and

(j) Ways of Using ROMA to ''Tell Our Story'' Better to State legislatures, local governing authorities, and/or the public.

(3) Collecting and disseminating technical assistance materials to the network, including use of the ROMA website, *www.ROMA1.org;* and

(4) Organizing and/or conducting ROMA implementation training and technical assistance on-site visits, meetings, and/or conferences at the request of State CSBG lead agencies, State CAA associations, or local entities.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $200,000).

Sub-Priority Area 5.2 Board Training Programs (BT)

One of the clearest and most universal needs for technical assistance identified by community action agencies that responded to the ROMA Implementation Assessment conducted in the Spring of 2001 was the strengthening of local tripartite boards. Over 92% of Assessment respondents indicated that boards need training in a variety of topics to increase their capacity to lead and evaluate agency activities and outcomes, including: (1) Board responsibilities under the law; (2) basic board functioning; (3) board role in agency needs assessment, program planning, operations and evaluation; (4) ROMA principles and uses in all aspects of agency functioning; and (5) board selection, monitoring and evaluation of agency leadership.

OCS intends to fund the development of one or more board training programs to be made available throughout the Network. OCS will entertain applications for board training program development that focus on one or more of the following:

(1) *Comprehensive Board Training Package*—OCS will fund one grant for the development of a multi-media comprehensive board training package that covers all of the following topics: (a) Board responsibilities under the law; (b) basic board functioning; (c) board role in agency needs assessment, program planning, operations and evaluation; (d) ROMA principles and uses in all aspects of agency functioning; and (e) board selection, monitoring and evaluation of agency leadership. Information developed for each of these topics will be organized by the successful applicant into training modules, to be presented in writing, on the ROMA website, and on videotape. The successful applicant will develop model results-oriented planning, programming, and reporting instruments to facilitate communication between local agency officials and board members. The successful applicant will field-test materials and training approaches with Network partners, including local agency officials and representative board members, particularly the representatives of low-income families, before training packages are completed. The successful applicant will be responsible for working through the ROMA Implementation Clearinghouse to assure timely and effective dissemination of board training information to the Network.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations local

eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $100,000).

(2) *Capacity-building Grants to States for Board Training*—OCS will fund up to four grants to consortia of State CSBG lead agencies and their respective State CAA associations to undertake board training in one or more of the topics listed above. OCS is particularly interested in building the capacity of State agencies and associations to train boards in situations that present special challenges requiring tailored and special approaches, such as: (1) Wide geographic distances within a State that makes travel to and from a central training site/program difficult or impossible for agency staff and board members; (2) geographic isolation or great distances within the catchment area of an eligible entity, especially in multi-county rural areas; (3) inability of board members to attend extended training sessions, or sessions offered during normal working hours; (4) inability of agencies or board members to finance costs associated with training, including travel, income displacement, expenses, etc; and/or (5) lack of support for board training among local agency leadership and staff.

Successful applicants for capacity-building grants under this sub-priority area will include in their applications a description of the outcomes they expect to achieve through board training and how those outcomes will be measured.

Eligible applicants: State CSBG Lead Agencies in collaboration with State CAA Associations.

Anticipated Grant Awards: 4 (up to $25,000 each).

Sub-Priority Area 5.3 State Agency/Association ROMA Plan Implementation (RI)

As indicated, OCS invited State CSBG lead agencies and State CAA associations to apply for funds under sub-priority area 1.6 in the Fiscal Year 2001 competition for training, technical assistance and capacity-building grants to carry out ROMA implementation plans developed in conjunction with the five regional meetings held during July and August, 2001. A significant number of States submitted applications under sub-priority area 1.6 and have received assistance from that competition.

OCS invites State agencies and/or associations that need financial assistance to implement ROMA by Fiscal Year 2003 in accord with plans developed over the Summer, and that were unable to apply for funding during the FY 2001 competition that closed on September 16, 2001, to submit applications under this grant announcement.

Successful applicants will describe in their application: (1) What the State has accomplished in terms of ROMA implementation to date, using the eight ROMA ''core activities'' described in Information Memorandum No. 49 (four State and four eligible entity activities) as a guide for measuring progress; (2) how the State plans to complete ROMA implementation as defined by the core activities in Information Memorandum No. 49; (3) a list of activities the State will undertake, including training and technical assistance at the State and local levels, partnerships with other programs, creation of a State vision for community action, and the creation or modification of measurement and/or reporting tools for use by the State and local community action agencies; and (4) a timetable for completing activities described.

Applications submitted for funding under sub-priority 5.3 will be evaluated using the following criteria:

(1) Criterion I: Need for Assistance (Maximum: 20 Points)

The degree to which ROMA has been implemented to date at both the State and local levels using the ''core activities'' for States and eligible entities listed in Part B of this program announcement, including progress for each of the ''core'' activities, and what needs to be done to complete implementation of the activities before 2003. The application should reference the results of the ROMA implementation assessment conducted in the Spring of 2001 among CAAs in the State as part of their description of the need for assistance.

(2) Criterion II: Work Program (Maximum: 30 Points)

The degree to which specific activities to be undertaken will facilitate completion of State and eligible entity ROMA ''core'' activities by 2003, including specific training and technical assistance to be provided to CAAs, a schedule for conducting training and technical assistance, the anticipated participants (description of the level and functions of State and CAA staff), and trainers and/or consultants to be utilized from both within the State or from other parts of the Network.

(3) Criterion III: Significant and Beneficial Impact: (Maximum: 15 Points)

The degree to which activities described in Criterion II above will result in effective implementation of ROMA by 2003. Specifically, the extent to which ROMA implementation will benefit both the operation of community action programs at the State and local level and increase the capacity of such programs to achieve measurable and substantial improvement in the lives of individuals, families, and communities served.

(4) Criterion IV: Evidence of Significant Collaborations (Maximum: 10 Points)

The extent to which the State agency has enlisted the participation of the State CAA association in the design of the grant application and how the partnership between the State and its CAA association will implement the activities under the grant. Joint applications between the State agency and CAA association for funding under this sub-priority are encouraged. In addition, the extent to which other agencies that contribute funds to community action, at the State and local levels, will be encouraged to undertake performance-based management activities and/or will support the use of ROMA to measure and report the results of such programs.

(5) Criterion V: Ability of Applicant To Perform (Maximum: 20 Points)

The extent to which the State agency, the State CAA association, and/or local CAAs have developed an understanding of ROMA and their willingness to complete implementation before 2003. Specifically, the application should describe previous training received through attendance at regional or national ROMA-focused conferences, special workshops conducted by ROMA trainers, or visits to other States/CAAs for the purpose of learning about their ROMA activities.

(6) Criterion VI: Adequacy of Budget (Maximum: 5 Points)

The resources requested are reasonable and adequate to accomplish the project. (0–3 points)

Total costs are reasonable and consistent with anticipated results. (0–2 points)

Eligible applicants: State CSBG Lead Agencies and/or State CAA Associations.

Anticipated Grant Awards: 15 (up to $30,000 each).

Sub-Priority Area 5.4 Local Capacity-Building

The purpose of this sub-priority area is to promote management efficiency and program productivity among local eligible entities. It is essential that community action agencies have the opportunity to receive ''seed'' funds to develop and share effective program/

management techniques addressing various aspects of anti-poverty work, including the implementation of ROMA. Grants under this sub-priority will be made to Community Action Agencies to promote such capacity building. Among the activities that may be supported by capacity-building grants are the development and sharing of: (1) Model needs assessment tools; (2) data processing innovations; (3) community organizing techniques; (4) use of scales to measure outcomes; (5) innovative tracking systems; (6) internal and external communication networks; (7) effective integration of information systems; and (8) successful leveraging strategies. Applicants must include a plan that describes how the results achieved under this project will be shared with the larger Community Services Network.

Eligible Applicants: Local eligible entities.

Anticipated Grant Awards: 10 (up to $20,000 each).

Priority Area 6.0 Achieving Goal 6: Low-Income People, Especially Vulnerable Populations, Achieve Their Potential by Strengthening Family and Other Supportive Systems

In their reporting of ROMA-based information, States have included a number of services, programs, and other forms of interventions under Goal 6. Indeed, the largest category of activities reported for Goal 6 by States and local community action agencies has been ''meeting emergency needs.'' Other categories reported with regularity are: (1) Housing; (2) independent living for the aging; and (3) emergency food. The category, ''Family functioning/life skills,'' ranked fifth in frequency among the 31 States and 577 local entities filing ROMA information in Fiscal Year 1998. Only 13 States and 73 local entities reported activities specifically focused on strengthening family functioning or general life skills of family members.

Because Goal 6 reflects the Administration's priority to strengthen families, particularly the role of fathers in child and family life, OCS intends to fund a number of technical assistance and capacity building activities focused on community action initiatives that seek to enhance outcomes for children and their families as a result of the presence and positive influence of fathers. OCS believes that without such an emphasis, low-income families will continue to exist with disproportionate numbers of absent fathers. Evidence indicates that the absence of participating fathers from households not only damages the economic condition and prospects for low-income families, but may also contribute to a number of negative social outcomes for children and youth that lack the guidance and emotional benefits that come from having two parents involved in their upbringing.

OCS intends to support a number of technical assistance and capacity-building activities designed to reflect and enhance the role of community action in strengthening families through the active involvement of fathers in child and family development.

In addition, OCS will support technical assistance and capacity-building activities focusing on helping strengthen families in which one or both parents are incarcerated. Finally, OCS will underwrite the development of a technical assistance guide to measuring community action efforts to strengthen families.

Sub-Priority Area 6.1 Strengthening the Role of Fathers and Marriage in Child and Family Life (MS)

OCS will fund up to four applications designed to build capacity within the Network to strengthen families through the involvement of fathers in family and child development:

(1) *Strategies for Community Action to Strengthen the Role of Fathers and Marriage in Family and Child Development*—OCS will underwrite the development of a technical assistance guide that describes ways in which community action has, or could, focus on promoting healthy marriages among low-income families and/or helping absent fathers remain involved in the lives of their children.

The successful applicant for the grant to develop this guide will demonstrate in their application the ability to: (1) Identify existing strategies within the Community Services Network that promote healthy marriages among low-income families, and/or the involvement of absent parents, especially fathers, in the creation and maintenance of stable and nurturing family environments; (2) identify possible strategies for strengthening families through healthy marriages and greater participation of absent fathers from programs/sources outside community action and assess ways the Network may adapt and adopt such strategies; (3) identify partnership opportunities with other programs, both within and outside the current administrative responsibilities of community action, that might help advance healthy marriages and the role of absent fathers in achieving family economic and functional wellbeing; and (4) develop a guide based on the information assembled in such a manner that will be useful to State and local community action officials.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $45,000).

(2) *Capacity-Building Grants to Promote the Role of Fathers in Community Action Initiatives to Strengthen Families*—OCS will fund up to three States or local eligible entities to develop special initiatives designed to strengthen family functioning outcomes due to the active involvement of fathers in family life. Specifically, the successful applicant(s) for these capacity-building grants will demonstrate in their applications the ability to: (a) Identify specific needs within the community involving the economic and social condition of fathers of low-income children and families, both present and absent from the household; (b) identify specific strategies for addressing those needs, including the development of coordinated interventions/services through partnerships with other service providers to enhance the status of affected males in their role as individuals and fathers to children in low-income families; (c) undertake special initiatives to involve fathers in the lives of their children and increase their capacity to contribute to the economic, developmental, and social wellbeing of those children; and (d) capture and report the results of such involvement on all appropriate aspects of family life (at a minimum, economic, social and developmental outcomes).

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities.

Anticipated Grant Awards: 3 (up to $30,000 each).

Sub-Priority Area 6.2 Meeting the Special Needs of Children With an Incarcerated Parent(s) (IP)

OCS will fund up to three capacity-building grants to support the development of programs at the State or local level focused on community action assistance to children with incarcerated parent(s). Successful applicants for these grants must demonstrate in their applications the ability to: (1) Identify the number and needs of such children/families within the State or community; (2) design and implement programs and partnerships with other service providers to meet the needs identified; and (3) establish specific results to be achieved by the special initiatives and provide for the measurement and reporting of results.

OCS is particularly interested in supporting programs focused on helping children with incarcerated parent(s) live in safe, stable households and receive appropriate adult guidance, nurturing, and emotional support from custodial parents, guardians, or other adult mentoring relationships. Applicants may wish to consider the special role played by faith-based organizations in providing such support and include such organizations in community action partnerships as appropriate. In addition to focusing on the needs of children with incarcerated parents, applicants are encourage to seek funding for activities designed to address the needs of incarcerated parents as they relate to their parenting responsibilities to their children while incarcerated, during periods prior to release, and post-release from imprisonment (reentry counseling and adjustment assistance, family functioning/parenting skill training, etc).

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities.

Anticipated Grant Awards: 3 (up to $30,000 each).

Sub-Priority Area 6.3 Network Guide to Measuring Family Development Outcomes (FD)

OCS will award one grant for the development of a guide to help the Network improve the measurement and reporting of family development outcomes in support of achieving Goal 6. The successful applicant for this grant will demonstrate in their application the ability to: (1) Identify model family functioning/family development measures that have been developed within and outside the Community Services Network used in social service programs; (2) correlate information about measurement tools to the kinds of programs/services provided by community action alone and in partnership with other service agencies; and (3) describe the relative benefits of various approaches to measuring family functioning/family development in terms of such factors as staff orientation/training and use, appropriateness to activities/interventions being measured, and information gathering/storage/and retrieval.

Eligible applicants: State CSBG Lead Agencies, State CAA Associations, local eligible entities, private non-profit organizations.

Anticipated Grant Awards: 1 (up to $45,000).

Part C—Application Prerequisites

1. Eligible Applicants

See individual sub-priority areas in Part B.

2. Availability of Funds

The total amount of funds currently available for new grant awards in FY 2002 under this Fall–Winter program announcement is $2,360,000. Subject to the availability of funds, an additional amount will be set aside for a Spring–Summer 2002 competition, which will include funding of various cooperative agreements and continuation grants to multi-year awards resulting from the Fiscal Year 2001 competition.

Amounts expected to be available and numbers of grants under each sub-priority area stated in Part B are as follows:

Sub-priority area	Approx. funds available for new projects	Estimated No. of new grants
1.1 Strengthening the ''Self-sufficiency Continuum'' (SC)	$120,000	6
1.2 Organizing/Coordinating Services Around Self-sufficiency: Welfare to Work (WW)	205,000	6
1.3 Organizing/Coordinating Services Around Self-sufficiency/Independent Living Among the Aging or Disabled (SA)	205,000	6
1.4 Strategic Measurement and Reporting of Self-sufficiency Outcomes (SM)	60,000	3
1.5 The Use of Individual Development Accounts to Advance Self-sufficiency (ID)	45,000	1
2.1 Organizing/Coordinating Community Development Programs (CD)	45,000	1
2.2 Strategic Measurement and Reporting of Community Outcomes Across Programs (CO)	60,000	1
3.1 Organizing/Coordinating Community Advocacy/Participation Programs (CM)	45,000	1
3.2 Community Advocacy/Participation Programs, Measurement and Reporting (CA)	45,000	1
4.1 Coordination Strategies Between Community Action and Faith-Based Organizations to Advance ROMA Client Goals 1 and 6 (FP)	105,000	4
4.2 Coordination Strategies Between Community Action and Faith-based Organizations to Advance ROMA Community Goals 2 and 3 (FC)	105,000	4
5.1 ROMA Training and Technical Assistance Clearinghouse (RC)	200,000	1
5.2 Board Training Programs (BT)	200,000	5
5.3 State Agency/Association ROMA Plan Implementation (RI)	450,000	15
5.4 Local Capacity Building (CB)	200,000	10
6.1 Strengthening the Role of Marriage and Absent Fathers in Child and Family Life (MS)	135,000	4
6.2 Meeting the Special Needs of Children With an Incarcerated Parent(s) (IP)	90,000	3
6.3 Network Guide to Measuring Family Development Outcomes (FD)	45,000	1
Total	2,360,000	73

3. Project and Budget Periods

For projects included in the FY 2002 Fall–Winter CSBG T&TA Program Announcement, the budget and project periods are 12 months.

4. Project Beneficiaries

The overall intended beneficiaries of the projects to be funded under the FY 2002 Fall–Winter CSBG T&TA Program Announcement are the various ''partners'' in the Community Services Network. Specific beneficiaries are indicated under each sub-priority area in Part B. It is the intent of OCS, through funding provided under this program announcement, to significantly strengthen the capacity of State and regional CAA associations to provide technical assistance and support to local service providers; to strengthen the capacity of State CSBG offices to collect and disseminate accurate and reliable data and to provide support for local service providers; and to enhance the capacities of local service providers themselves. The ultimate beneficiaries of improved program management, data and information collection and dissemination, and service quality of

local service providers are low-income individuals, families, and communities.

5. Sub-Contracting or Delegating Projects

OCS will not fund any project where the role of the applicant is primarily to serve as a conduit for funds to organizations other than the applicant. This prohibition does not bar the making of subgrants or subcontracting for specific services or activities needed to conduct the project. However, the applicant must have a substantive role in the implementation of the project for which funding is requested.

6. Separate Multiple Applications

Separate applications must be made for each sub-priority area. Applicants that receive more than one grant for a common budget and project period must be mindful that salaries and wages claimed for the same persons cannot collectively exceed 100 percent of the total annual salary. The sub-priority area must be clearly identified by title and number.

7. Project Evaluations

Each application must include an assessment or self evaluation.

Part D—Application Procedures

1. Availability of Forms

Applications for awards under the FY 2002 Fall–Winter CSBG T&TA Program must be submitted on Standard Forms (SF) 424, 424A, and 424B. Part F and the attachments to this program announcement contain all the instructions and forms required for submission of an application. These forms may be photocopied for use in developing the application.

Part F also contains instructions for the project narrative. The project narrative must be submitted on plain bond paper along with the SF–424 and related forms.

A copy of this program announcement is available on the Internet through the OCS web site at: *http://www.acf.dhhs.gov/programs/ocs.*

If the program announcement cannot be accessed through the OCS web site, it can be obtained by writing or telephoning the office listed under the section entitled **FOR FURTHER INFORMATION** at the beginning of this program announcement.

2. Deadlines

Refer to the section entitled ''Closing Date'' at the beginning of this program announcement for the last day on which applications should be submitted.

Mailed applications shall be considered as meeting the announced deadline if they are received on or before deadline date or postmarked on or before the deadline date and received by ACF in time for the independent review. Mailed applications must be sent to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Office of Child Support Enforcement, ''Attention: CSBG Training, Technical Assistance, and Capacity Building Program'', 370 L'Enfant Promenade, SW., Washington, DC 20447.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applications hand-carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered meeting an announced deadline if the are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m. EST, Monday through Friday, excluding Federal holidays, at the: Administration for Children and Families, Office of Grants Management, Office of Child Support Enforcement, ''Attention CSBG Training, Technical Assistance and Capacity Building Program'', 901 D Street, SW., 2nd Floor Mailroom, Washington, DC 20024.

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt. Applications, once submitted, are considered final and no additional materials will be accepted.

Late applications. Applications that do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines. ACF may extend the deadline for all applicants affected by acts of God such as floods and hurricanes, when there is widespread disruption of the mail service. A determination to extend or waive deadline requirements rest with the Chief Grants Management Officer.

3. Number of Copies Required

One signed original application and two copies should be submitted at the time of initial submission (OMB 0970–0062). Two additional copies would be appreciated to facilitate the processing of applications.

4. Designation of Sub-Priority Area

The first page of the SF–424 must contain in the lower right-hand corner a designation indicating under which sub-priority are funds are being requested.

5. Paperwork Reduction Act of 1995 (P.L. 104–13)

Public reporting burden for this collection of information is estimated to average 10 hours per response, including time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection of information.

The project description is approved under OMB Control Number 0970–0062 which expires 12/31/2001. However, a request has been submitted to OMB for an extension.

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.

6. Intergovernmental Review

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs'' and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

The following States and Territories have elected not to participate under the Executive Order process: Arkansas, California, Delaware, District of Columbia, Florida, Georgia, Illinois, Iowa, Kentucky, Maine, Maryland, Michigan, Mississippi, Missouri, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Rhode Island, South Carolina, Texas, Utah, West Virginia, Wisconsin, American Samoa, Guam. Puerto Rico, the Commonwealth of Northern Mariana Islands, and the United States Virgin Islands.

Applicants for projects to be administered by Federally recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise,

applicants should contact their Single Point of Contact (SPOC) as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that OCS can obtain and review SPOC comments as a part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424A, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those Official State process recommendations which they intend to trigger the ''accommodate or explain'' rule under 45 CFR 100.10.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Grants Management/OCSE, 4th Floor, Aerospace Center, 370 L'Enfant Promenade, SW., Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included as Attachment I to this program announcement.

7. Application Consideration

Applications that meet the screening requirements in Sections 8.a. and 8.b. below will be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to program guidelines and evaluation criteria published in this announcement.

Qualified panelist not directly responsible for programmatic management of the grant will review applications. The results of these reviews will assist OCS in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications will be ranked and generally considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since other factors deemed relevant may be considered including, but not limited to, the timely and proper completion of projects funded with OCS funds granted in the past five years; comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowance on OCS or other Federal agency grants.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

8. Criteria for Screening Applications

a. Initial Screening

All applicants will receive a written acknowledgment with an assigned identification number. This number, along with any other identifying codes, must be referenced in all subsequent communications concerning the application. If an acknowledgment is not received within three weeks after the deadline date, please notify ACF by telephone at (202) 401–5103. All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this Announcement. Only those applications meeting the following requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

(1) The application must contain a Standard Form 424 ''Application for Federal Assistance'' (SF–424), a budget (SF–424A), and signed ''Assurances'' (SF–424B) completed according to instructions published in Part F and Attachments A, B, and C of this program announcement.

(2) A budget narrative, which corresponds to the object class categories in the SF 424A for the use of Federal funds, must be included in the application.

(3) The SF–424 and the SF–424B must be signed by an official of the applicant organization who has authority to obligate the organization legally.

(4) A project narrative must also accompany the standard forms.

b. Pre-Rating Review

Applications, which pass the initial screening, will be forwarded to reviewers and/or OCS staff to verify, prior to the programmatic review, that the applications comply with this program announcement in the following areas:

(1) *Eligibility:* Applicant meets the eligibility requirements found in Part B. Applicant also must be aware that the applicant's legal name as required on the SF 424 (item 5) must match that listed as corresponding to the Employer Identification Number (Item 6).

(2) *Duration of Project:* The application contains a project that can be successfully implemented in the project period.

(3) *Target Populations:* The application clearly targets the specific outcomes and benefits of the project to State staff administering CSBG funds, CAA State or regional associations, and/or local providers of CSBG-funded services and activities. Benefits to low-income consumers of CSBG services also must be identified.

(4) *Program Focus:* The application must address the purpose of the sub-priority area under which funding is being requested.

An application may be disqualified from the competition and returned to the applicant if it does not conform to one or more of the above requirements.

c. Evaluation Criteria

Applications that pass the pre-rating review will be assessed and scored by reviewers. Each reviewer will give a numerical score to each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in this announcement.

The in-depth evaluation and review process will use the following criteria coupled with the specific requirements contained in Part B. (Applications for funding under Sub-priority 5.3, State Agency/Association ROMA Plan Implementation, will be evaluated based upon the requirements described in Part B only).

Criteria for Review and Evaluation of Applications Submitted Under This Program Announcement (Excluding Sub-Priority 5.3)

(1) Criterion I: Need for Assistance (Maximum: 20 Points)

(a) The application documents that the project addresses vital needs related to the purposes stated under the appropriate sub-priority area discussed in this program announcement (Part B) and provides statistics and other data and information in support of its contention. (0–10 points).

(b) The application provides current supporting documentation or other testimonies regarding needs from State CSBG Directors, local service providers and/or State and Regional organizations of local service providers. (0–10 points)

(2) Criterion II: Work Program (Maximum: 30 Points)

The work program is results-oriented, appropriately related to the legislative mandate and specifically related to the sub-priority area under which funds are being requested.

Applicant addresses the following: Specific outcomes to be achieved; performance targets that the project is committed to achieving, including reasons for not setting lower or higher target levels and how the project will verify the achievement of these targets; critical milestones which must be achieved if results are to be gained; organizational support, including priority this project has for the agency; past performance in similar work; and specific resources contributed to the project that are critical to success.

Applicant defines the comprehensive nature of the project and methods that will be used to ensure that the results can be used to address a statewide or nationwide project as defined by the priority area.

(3) Criterion III: Significant and Beneficial Impact: (Maximum: 15 Points)

Applicant adequately describes how the project will assure long-term program and management improvements and have advantages over other products offered to achieve the same outcomes for State CSBG offices, CAA State and/or regional associations, and/or local providers of CSBG services and activities.

The applicant indicates the types and amounts of public and/or private resources it will mobilize, how those resources will directly benefit the project, and how the project will ultimately benefit low-income individuals and families.

If proposing a project with a training and technical assistance focus, applicant indicates the number of organizations and/or staff it will impact.

If proposing a project with a data collection focus, applicant provides a description of the mechanism it will use to collect data, how it can assure collections from a significant number of States, and the number of States willing to submit data to the applicant.

If proposing to develop a symposium series or other policy-related project(s), the applicant identifies the number and types of beneficiaries.

Methods of securing participant feedback and evaluations of activities are described in the application.

(4) Criterion IV: Evidence of Significant Collaborations (Maximum 10 Points)

Applicant describes how it will involve partners in the Community Services Network in its activities. Where appropriate, applicant describes how it will interface with other related organizations.

If subcontracts are proposed, documentation of the willingness and capacity for the subcontracting organization(s) to participate is described.

(5) Criterion V: Ability of Applicant To Perform (Maximum: 20 Points)

(a) The applicant demonstrates that it has experience and a successful track record relevant to the specific activities and program area that it proposes to undertake.

If applicant is proposing to provide training and technical assistance, it details its competence in the specific program priority area and as a deliverer with expertise in the specific fields of training and technical assistance on a nationwide basis.

If applicable, information provided by the applicant also addresses related achievements and competence of each cooperating or sponsoring organization. (0–10 points)

(b) Applicant fully describes, for example in a resume, the experience and skills of the proposed project director and primary staff showing specific qualifications and professional experiences relevant to the successful implementation of the proposed project. (0–10 points)

(6) Criterion VI: Adequacy of Budget (Maximum: 5 Points)

(a) The resources requested are reasonable and adequate to accomplish the project. (0–3 points)

(b) Total costs are reasonable and consistent with anticipated results. (0–2 points)

Part E—Contents of Application and Receipt Process

1. Contents of Application

A cover letter containing an e-mail address and a facsimile (FAX) number, if available, should accompany the application. This will facilitate receipt of an acknowledgment from ACF that the application has been received. (See Part D., 8.a.)

Each application should include one original and two additional copies of the following:

a. A completed Standard Form 424 which has been signed by an official of the organization applying for the grant who has authority to obligate the organization legally. The applicant must be aware that, in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in Attachments D and E.

b.''Budget Information-Non-Construction Programs'' (SF–424A). (Attachment B)

c. A completed, signed and dated ''Assurances—Non-Construction Programs'' (SF–424B). (Attachment C)

d. Drug-free Certification. (The applicant is certifying that it will comply with this requirement by signing and submitting the SF–424.) (Attachment D)

e. Debarment Certification. (Attachment E)

f. Certification Regarding Environmental Tobacco Smoke. (The applicant is certifying that it will comply with this requirement by signing and submitting the SF–424.) (Attachment F)

g. Disclosure of Lobbying Activities, SF–LLL. Complete, sign and date form, as appropriate. (Attachment G)

h. A Project Abstract of 500 words or less. The abstract should provide a succinct description of the need, project goals, and a summary of work plan and the proposed impact. Abstract will be maintained as part of the Grantee Administration Tracking System (GATES).

i. A Project Narrative consisting of the following elements preceded by a consecutively numbered table of contents that will describe the project in the following order:

(i) Need for Assistance.

(ii) Work Program.

(iii) Significant and Beneficial Impact.

(iv) Evidence of Significant Collaborations.

(v) Ability of Applicant to Perform.

(vi) Appendices including proof of non-profit status, such as IRS determination of non-profit status, where applicable; relevant sections of by-laws, articles of incorporation, and/or statement from appropriate State CSBG office which confirms eligibility; resumes; Single Point of Contact comments, where applicable; and any partnership/collaboration agreements.

The original must bear the signature of the authorizing official representing the applicant organization.

The total number of pages for the entire application package should not exceed 35 pages, including appendices. Pages should be numbered sequentially throughout.

If appendices include photocopied materials, they must be legible.

Applications should be two-hole punched at the top center and fastened separately with a compressor slide paper fastener or a binder clip. The submission of bound applications or applications enclosed in a binder are specifically discouraged.

Applications must be submitted on white 8½ x 11-inch paper only since OCS may find it necessary to duplicate them for review purposes. They must not include colored, oversized or folded materials; organizational brochures or other promotional materials; slides; films; clips; etc. They will be discarded if included.

Part F—Instructions for Completing Application Package (Approved by the OMB Under Control Number 0970–0062)

The standard forms attached to this program announcement shall be used when submitting applications for all funds under this announcement.

It is recommended that the applicant reproduce the SF–424, (Attachment A), SF–424A (Attachment B), SF–424B (Attachment C) and that the application be typed on the copies. If an item on the SF–424 cannot be answered or does not appear to be related or relevant to the assistance requested, the applicant should write ''NA'' for ''Not applicable.''

The application should be prepared in accordance with the standard instructions in Attachments A and B corresponding to the forms, as well as the specific instructions set forth below:

1. SF–424 ''Application for Federal Assistance''

Item

1. For the purposes of this program announcement, all projects are considered ''Applications''; there are no ''Pre-Applications.''

5 and 6. The legal name of the applicant must match that listed as corresponding to the Employer Identification Number. Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (CRS/EIN) and the Payment Identifying Number, if one has been assigned, in the Block entitled ''Federal Identifier'' located at the top right hand corner of the form.

7. If the applicant is a non-profit corporation, enter ''N'' in the box and specify ''non-profit corporation'' in the space marked ''Other.'' Proof of non-profit status such as IRS determination, articles of incorporation, or by-laws, must be included as an appendix to the project narrative.

8. For the purposes of this announcement, all applications are ''New.''

9. Enter ''DHHS–ACF/OCS.''

10. The Catalog of Federal Domestic Assistance number for the OCS program covered under this announcement is ''93.570.''

11. In addition to a brief descriptive title of the project, priority area designations must be used to indicate the priority and sub-priority areas for which funds are being requested:

The title is ''Office of Community Services'' Discretionary CSBG Awards—Fiscal Year 2001 Training, Technical Assistance, and Capacity-Building Programs.''

15a. For purposes of this announcement, this amount should reflect the amount requested for the entire project period.

15b–e. These items should reflect both cash and third party in-kind contributions for the total project period.

2. SF–424A—''Budget Information-Non-Construction Programs''

See instructions accompanying the form as well as the instructions set forth below:

In completing these sections, the Federal budget entries will relate to the requested OCS Training and Technical Assistance Program funds only, and Non-Federal will include mobilized funds from all other sources—applicant, State, and other. Federal funds, other than those requested from the Training and Technical Assistance Program should be included in Non-Federal entries.

Sections A and D must contain entries for both Federal (OCS) and non-Federal (mobilized).

Section A—Budget Summary

Col. (a): Line 1—Enter ''OCS Training and Technical Assistance Program'';

Col. (b): Line 1—Enter ''93.570''.

Col. (c) and (d): Not Applicable

Col. (e)–(g): For lines 1 enter in column (e), (f) and (g) the appropriate amounts needed to support the project for the entire project period.

Line 5—Enter the figures from Line 1 for all columns completed under (e), (f), and (g).

Section B—Budget Categories

This section should contain entries for OCS funds only. For all projects, the first budget period of 12 months will be entered in Column #1. Allowability of costs is governed by applicable cost principles set forth in 45 CFR Parts 74 and 92.

A separate itemized budget justification should be included to explain fully and justify major items, as indicated below. The budget justification should immediately follow the Table of Contents.

Column 5: Enter total requirements for Federal funds by the Object Class Categories of this section.

Line 6a—Personnel: Enter the total costs of salaries and wages.

Justification: Identify the project director. Specify by title or name the percentage of time allocated to the project, the individual annual salaries and the cost to the project (both Federal and Non-Federal) of the organization's staff who will be working on the project.

Line 6b—Fringe Benefits: Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate which is entered on line 6j.

Justification: Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

Line 6c—Travel: Enter total cost of all travel by employees of the project. Do not enter costs for consultant's travel.

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, mileage rate, transportation costs and subsistence allowances.

Line 6d—Equipment: Enter the total costs of all non-expendable personal property to be acquired by the project. Equipment means tangible non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

Justification: Equipment to be purchased with Federal funds must be required to conduct the project, and the applicant organization or its subgrantees must not already have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Line 6e—Supplies: Enter the total costs of all tangible personal property (surplus) other than that included on line 6d.

Line 6h—Other: Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing and publication, computer use training costs including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Line 6j—Indirect Charges: Enter the total amount of indirect costs. This line

should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or other Federal agencies. With the exception of States and local governments, applicants should enclose a copy of the current approved rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services. For an educational institution, the indirect costs on training grants will be allowed at the lesser of the institution's actual indirect costs or 8 percent of the total direct costs.

If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately, upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent DHHS Guide for Establishing Indirect Cost Rates, and submit it to the appropriate DHHS Regional Office.

It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool cannot be budgeted or charged as direct costs to the grant.

Line 6k—Totals: The total amount shown in Section B, Column (5), should be the same as the amount shown in Section A, line 5, column (e).

Line 7—Program Income: Enter the estimated amount of income, if any is expected to be generated from this project. Separately show expected program income generated from OCS support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Column 5: Carry totals from column 1 to column 5 for all line items.

Justification: Describe the nature, source and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources

This section is to record the amounts of Non-Federal resources that will be used to support the project. Non-Federal resources refer to other than OCS funds for which the applicant has received a commitment. Provide a brief explanation, on a separate sheet, showing the type of contribution, broken out by Object Class Categories, section B.6) and whether it is cash or third party in-kind. The firm commitment of these required funds must be documented and submitted with the application.

Except in unusual situations, this documentation must be in the form of letters of commitment or letters of intent from the organization(s)/individuals from which funds will be received.

Line 8—Col. (a): Enter the project title.

Col. (b): Enter the amount of cash or donations to be made by the applicant.

Col. (c): Enter the State contribution.

Col. (d): Enter the amount of cash and third party in-kind contributions to be made from all other sources.

Col. (e): Enter the total of column (b), (c), and (d). Lines 9, 10, and 11 should be left blank.

Line 12—Carry the total of each column of line 8, (b) through (e). The amount in column (e) should be equal to the amount on section A, Line 5, and column (f).

Justification: Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs

Line 13—Enter the amount of Federal (OCS) cash needed for this grant for first year and by quarter, during the first 12-month budget period.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the total of Lines 13 and 14 for all columns.

Section E—Budget Estimates of Federal Funds Needed for Balance of the Project

To be completed by applicants applying for funds for a three year project period.

Section F—Other Budget Information

Line 21—Include narrative justification required under Section B for each object class category for the total project period.

Line 22—Enter the type of HHS or other Federal agency approved indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Attach a copy of the approved rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services. If the applicant decides not apply an indirect cost rate to the proposal, then ''this line should be left blank.''

Line 23—Provide any other explanations and continuation sheets required or deemed necessary to justify or explain the budget information.

3. SF–424B ''Assurances Non-Construction''

Applicant must sign and return the ''Assurances'' found at Attachment C with its application.

4. Project Narrative

Each narrative section of the application must address one or more of the focus areas described in Part B and follow the format outlined below:

(a) Need for Assistance.
(b) Work Program.
(c) Significant and Beneficial Impact.
(d) Evidence of Significant Collaborations.
(e) Ability of the Applicant to Perform.
(f) Adequacy of the Budget.

Part G—Post Award Information and Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award, which indicates, the amount of Federal funds approved for use in the project, the project and budget periods for which support is provided, the terms and conditions of the award, and the total project period for which support is contemplated.

In addition to the standard terms and conditions which will be applicable to grants, grantee will be subject to the provisions of 45 CFR parts 74 (non-governmental) and 92 (governmental) and OMB Circulars A–122 (nonprofit) and A–87 (governmental).

Grantees will be required to submit semi-annual program progress narrative and financial reports (SF–269) as well as a final program progress narrative report and a final financial report.

Grantees are subject to the audit requirements in 45 CFR parts 74 (non-governmental) and 92 (governmental) and OMB Circular A–133.

Section 319 of Public Law 101–121, signed into law on October 23, 1989 imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their sub-tier contractors and/or grantees) are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement, or loan. In addition, for each award action in

excess of $100,000 (or $150,000 for loans) the law requires recipients and their subtier contractors and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients or their subtier Contractors or subgrantee will pay with profits or non-appropriated funds on or after December 22, 1989, and (3) to file quarterly updates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for noncompliance. See Attachment F for certification and disclosure forms to be submitted with the applications for this program.

Public Law 103–227, Part C. Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through States or local governmental by Federal grant, contract, loan or loan guarantee. The law does not apply to facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for in-patient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application, the applicant/grantee certifies that it will comply with the requirement of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any sub-awards, which contain provisions for children's services and that all subgrantees shall certify accordingly.

Attachment H indicates the regulations that apply to all applicants/grantees under this program.

Dated: January 11, 2002.

Clarence Carter,

Director, Office of Community Services.

CSBG Training, Technical Assistance and Capacity-Building Program

List of Attachments

A—Application for Federal Assistance, SF 424

B—Budget Information—Non-Construction Programs, SF 424A

C—Assurances—Non-Construction Programs, SF 424B

D—Certification Regarding Drug-Free Work Place

E—Debarment Certification

F—Certification Regarding Environmental Tobacco Smoke

G—Disclosure of Lobbying Activities, SF–LLL

H—Listing of Regulations Applicable to All Grantees

I—Listing of State Single Points of Contact

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Attachment A, Page 1

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*:

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Prescribed by OMB Circular A-102

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Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (If applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the asistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—''New'' means a new assistance award.

—''Continuation'' means an extension for an additional funding/budget period for a project with a projected completed date.

—''Revision'' means any change in the Federal Government's financial obligation or contingent liability form an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the programs under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, your should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt included delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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Attachment B, Page 1

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Prescribed by OMB Circular A-10

Attachment B, Page 2

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 7-97) Page

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Instructions for the SF–424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0044), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send to the address provided by the sponsoring agency.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe now and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies my require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Line a–k of Section B.

Section A. Budget Summary Lines 1–4 Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity of function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in Column (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g).

For new applications, leave Column (c) and (d) blank. For each line entry on Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the total for all columns used.

Section B. Budget Categories

In the Column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–J—Show the totals of Lines 6a to 65h in each column.

Lines 6j—Show the amount of indirect cost.

Line 6k—Enter the total amounts on lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter total of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are need to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(3). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts of individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisions, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Attachment C: Assurances—Non-Construction Programs

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the

data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0040), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents relating to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for program funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd–3 and 290 ee3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93–523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§ 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. §§ 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A–133, ''Audit of States, Local Governments, and Non-Profit Organizations.''

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

Signature of Authorized Certifying Official

Applicant Organization

Title

Date Submitted

Certification Regarding Drug-Free Workplace Requirements

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal Agency may designate a central receipt point for State-wide and State Agency-wide certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central pint is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW., Washington, DC 20201.

Certification Regarding Drug-Free Workplace requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the

agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes:

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal State or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street Address, City, County, State, Zip Code)

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification numbers(s) of each affected grant.

Attachment E: Administration for Children and Families U.S. Department of Health and Human Services—Certification Regarding Debarment, Suspension and Other Responsibility Matters

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that w which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [Page 33043] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Attachment F: Certification Regarding Environmental Tobacco Smoke

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $100 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Attachment G: Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifiefs, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federeal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of

Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

BILLING CODE 4184–01–P

Attachment G, Page 2

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	**5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:** **Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

BILLING CODE 4184–01–C

Instructions for Completion of SF–LL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks ''Subawardee,'' then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., ''RFP–DE–90–001.''

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

b. Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no opersons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348–0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0046), Washington, DC 20503.

Attachment H: Department of Health and Human Services (DHHS), Administration for Children and Families (ACF), Standard Terms and Conditions—Discretionary Grants

The attached Financial Assistance Award is subject to Federal legislation and to DHHS and ACF regulations and policies. These include the following:

1. For institutions of higher education, hospitals, other non-profit organizations, and commercial (for-profit) organizations, Title 45 of the Code of Federal Regulations (45 CFR) Part 74, ''Uniform Administrative Requirements for Awards and Sub-awards to Institutions of Higher Education; Hospitals, Other Non-Profit Organizations; and Commercial Organizations; and Certain Grants and Agreements with States, Local Governments and Indian Tribal Governments.'' *http://www.access.gpo.gov/nara/cfr/waisidx_99/45cfr74_99.html.*

2. For States, local governments and Federally recognized Indian Tribes, 45 CFR Part 92, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.'' *http://www.access.gpo.gov/nara/cfr/waisidx_99/45cfr92_99.html.*

3. Other DHHS regulations codified in Title 45 of the Code of Federal Regulations: *http://www.access.gpo.gov/nara/cfr/waisidx_00/45cfrv1_00.html.*

Part 16—Procedures of the Departmental Grants Appeals Board
Part 30—Claims Collections
Part 46—Protection of Human Subjects
Part 76—Government-wide Debarment and Suspension (Non-Procurement) and Government-wide Requirements for Drug-Free Workplace (Grants)
Part 80—Nondiscrimination Under Programs Receiving Federal Assistance through the DHHS Effectuation of Title VI of the Civil Rights Acts of 1964
Part 81—Practice and Procedure of Hearings Under Part 80 of this Title
Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities receiving Federal Financial Assistance
Part 86—Nondiscrimination on the Basis of Sex in Education Programs and Activities receiving or benefiting from Federal Financial Assistance
Part 91—Nondiscrimination on the Basis of Age in DHHS Programs or Activities receiving Federal Financial Assistance
Part 93—New Restrictions on Lobbying
Part 100—Intergovernmental review of DHHS Program and Activities

4. 37 CFR Part 401—Right to Inventions made by Nonprofit Organizations and Small Business firms under Government Grants, Contracts, and Cooperative Agreements. *http://www.access.gpo.gov/nara/cfr/waisidx_00/37cfr401_00.html.*

5. The receipt organization must carry out the project according to the application as approved by the Administration for Children and Families (ACF), including the proposed work program and any amendments, all of which are incorporated by reference in these terms and conditions.

6. If this a multi-year project and it is not the final budget period, the grantee is advised that future awards for continuation of this project will be dependent upon the availability of Federal funds, satisfactory progress by the grantee, and ACF's determination that continued funding is in the best interest of the Federal government.

7. Grantees shall liquidate all obligations incurred under the award no later than 90 days after the end of the project period. The only exceptions to this rule are the basic Head Start grants with an indefinite project period. For these grants, liquidation of obligations should occur no later than 90 days after each budget period. In either case, an unobligations balance from a prior budget period does not authorize a grantee to obligate funds in excess of the total federally approved budget reflected on the FAA for the current budget period.

8. The DHHS Inspector General maintains a toll free number, 800–HHS–TIPS (800–447–8477), for receiving information concerning fraud, waste or abuse under grants and cooperative agreements. Such reports are kept confidential, and callers may decline to give their names if they choose to remain anonymous. *http://www.dhhs.gov/progorg/oei/hotline/hhshot.html.*

9. The grantee will take all necessary affirmative steps to ensure that small, minority and women-owned business firms are utilized when possible as sources of supplies, services, equipment and construction. To the extent practicable, all equipment and products purchased with funds made available through this award should be American made.

10. Failure to submit reports (i.e., financial, progress, or other required reports) on time may be the basis for withholding financial assistance payments, suspension, termination or denial or refunding. A history of such

unsatisfactory performance may result in designation of ''high-risk'' status for the recipient organization and may jeopardize potential future funding from DHHS.

11. Under Section 508 of Public Law 103–333, the following condition is applicable to all Federal awards: ''When issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds, including but not limited to State and local governments and recipient of Federal research grants shall clearly state (1) the percentage of the total costs of the program or project which will be financed with Federal money, (2) the dollar amount of Federal funds for the project or program, and (3) the percentage and dollar amount of total costs of the project or program that will be refinanced by nongovernmental sources.''

12. Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children's Act of 1994 requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantees. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for impatient drug or alcohol treatment. *http://www.ed.gov/legislation/GOALS2000/TheAct/sec1043.html.*

13. For purposes of this award each item of equipment with acquisition cost of less than $5,000 is included under supplies, is allowable as a direct cost of this project, and does not require for prior approval of the Grants Officer. Conversely, an item of equipment with an acquisition cost of $5,000 or more is NOT considered an allowable project cost without prior approval of the Grants Management Officer.

14. The Grantee shall comply with all provisions of OMB Circular A–133 (revised June 24, 1997), ''Audit of State, Local Government and Non-Profit Organizations.'' *http://www.whitehouse.gov/omb/circulars/a133/a133.html.*

Grantees that expend a total of $300,000 or more in Federal funds are required to submit an annual audit within nine months after the end of the audit period. The Reporting Package should include: (1) SF–SAC–Data Collection Form for Reporting on Audits of State, Local Governments and Non-Profit Organizations. *http://harvester.census.gov/fac/collect/formoptions.html;* (2) summary of prior audit findings; (3) auditors reports and (4) corrective action plans. Copies of this Reporting Package are to be sent to: Single Audit Clearinghouse. Bureau of the Census, 1201 East 10th Street, Jeffersonville, Indiana 47132.

15. Grantee shall comply with the particular set of Federal cost principles that applies in determining allowable cost. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs:

- The allowability of costs incurred by State, local or Federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, ''Cost Principles for States and Local Governments.'' *http://www.whitehouse.gov/omb/circulars/a087/a087.html.*
- The allowability of costs incurred by nonprofit organizations (except for those listed in Attachment C of Circular A–122) is determined in accordance with the provisions of OMB Circular A–122, ''Cost Principles for Nonprofit Organizations'' and paragraph (b) of 45 CFR, 74.27. *http://www.whitehouse.gov/omb/circulars/a122/a122.html.*
- The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, ''Cost Principles for Educational Institutions.'' *http://www.whitehouse.gov/omb/circulars/a021/a21.html.*
- The allowability of costs incurred by hospital is determined in accordance with the provisions of Appendix E of 45 CFR Part 74, ''Principles for Determining Cost Applicable to Research and Development Under Grants and Contracts with Hospitals.''
- The allowability for costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provision of the Federal Acquisition Regulation (FAR) at 48 CFR Part 31, except that independent research and development costs are unallowable. *http://www.access.gpo.gov/nara/cfr/waisidx_99/48cfr31_99.html.*

Attachment I: State Single Point of Contact Listing Maintained by OMB

In accordance with Executive Order #12372, ''Intergovernmental Review of Federal Programs,'' Section 4, ''the Office of Management and Budget (OMB) shall maintain a list of official State entities designated by the States to review and coordinate proposed Federal financial assistance and direct Federal development.'' This attached listing is the Official OMB Listing. OMB's point of contact for the SPOC list is Frederick J. Charney (202) 395–3993 or *grants@omb.eop.gov.* This listing is also published in the Catalogue of Federal Domestic Assistance biannually.

OMB State Single Point of Contact Listing*, October 5, 1999

Arizona

Joni Saad, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315, FAX: (602) 280–8144

Arkansas

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 515 W. 7th St., Room 412, Little Rock, Arkansas 72203, Telephone: (501) 682–1074, FAX: (501) 682–5206

California

Grants Coordination, State Clearinghouse, Office of Planning & Research, 1400 Tenth Street, Room 121, Sacramento, California 95814, Telephone: (916) 445–0613, FAX: (916) 323–3018

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Office of the Budget, 540 S. Dupont Highway, Suite 5, Dover, Delaware 19901, Telephone: (302) 739–3326, FAX: (302) 739–5661

District of Columbia

Charles Nichols, State Single Point of Contact, Office of Grants Mgmt. & Dev., 717 14th Street, NW., Suite 1200, Washington, DC 20005, Telephone: (202) 727–1700 (direct), (202) 727–6537 (secretary), FAX: (202) 727–1617

Florida

Florida State Clearinghouse, Department of Community Affairs, 2555 Shumard Oak Blvd., Tallahassee, Florida 32399–2100, Telephone: (850) 922–5438, FAX: (850) 414–0479, Contact: Cherie Trainor, (850) 414–5495

Georgia

Deborah Stephens, Coordinator, Georgia State Clearinghouse, 270 Washington Street, SW.—8th Floor, Atlanta, Georgia 30334, Telephone: (404) 656–3855, FAX: (404) 656–7901

Illinois

Virginia Bova, State Single Point of Contact, Illinois Department of Commerce and Community Affairs, James R. Thompson Center, 100 West Randolph, Suite 3–400, Chicago, Illinois 60601, Telephone: (312) 814–6028, FAX: (312) 814–1800

Indiana

Renee Miller, State Budget Agency, 212 State House, Indianapolis, Indiana 46204–2796, Telephone: (317) 232–2971 (directline), FAX: (317) 233–3323

Iowa

Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 242–4719, FAX: (515) 242–4809

Kentucky

Kevin J. Goldsmith, Director, Sandra Brewer, Executive Secretary, Intergovernmental Affairs, Office of the Governor, 700 Capitol Avenue, Frankfort, Kentucky 40601, Telephone: (502) 564–2611, FAX: (502) 564–0437

Maine

Joyce Benson, State Planning Office, 184 State Street, 38 State House Station, Augusta, Maine 04333, Telephone: (207) 287–3261, FAX: (207) 287–6489

Maryland

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Michigan

Richard Pfaff, Southeast Michigan Council of Governments, 660 Plaza Drive—Suite 1900, Detroit, Michigan 48226, Telephone: (313) 961–4266, FAX: (313) 961–4869

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, 550 High Street, 303 Walters Sillers Building, Jackson, Mississippi 39201–3087, Telephone: (601) 359–6762, FAX: (601) 359–6758

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Jefferson Building, 9th Floor, Jefferson City, Missouri 65102, Telephone: (314) 751–4834, FAX: (314) 751–7819

Nevada

Department of Administration, State Clearinghouse, 209 E. Musser Street, Room 220, Carson City, Nevada 89710, Telephone: (702) 687–4065, FAX: (702) 687–3983, Contact: Heather Elliot, (702) 687–6367

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, Mike Blake, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–2155, FAX: (603) 271–1728

New Mexico

Nick Mandell, Local Government Division, Room 201, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–3640, FAX: (505) 827–4984

North Carolina

Jeanette Furney, North Carolina Department of Administration, 116 West Jones Street—Suite 5106, Raleigh, North Carolina 27603–8003, Telephone: (919) 733–7232, FAX: (919) 733–9571

North Dakota

North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone: (701) 224–2094, FAX: (701) 224–2308

Rhode Island

Kevin Nelson, Review Coordinator, Department of Administration, Division of Planning, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908–5870, Telephone: (401) 277–2656, FAX: (401) 277–2083

South Carolina

Omeagia Burgess, State Single Point of Contact, Budget and Control Board, Office of State Budget, 1122 Ladies Street—12th Floor, Columbia, South Carolina 29201, Telephone: (803) 734–0494, FAX: (803) 734–0645

Texas

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Utah

Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone: (801) 538–1027, FAX: (801) 538–1547

West Virginia

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Wisconsin

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Wyoming

Sandy Ross, State Single Point of Contact, Department of Administration and Information, 2001 Capitol Avenue, Room 214, Cheyenne, WY 82002, Telephone: (307) 777–5492, FAX: (307) 777–3696

Territories

Guam

Joseph Rivera, Acting Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96932, Telephone: (671) 475–9411 or 9412, FAX: (671) 472–2825

Puerto Rico

Jose Caballero-Mercado, Chairman, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119, Telephone: (787) 727–4444, FAX: (787) 724–3270

North Mariana Islands

Mr. Alvaro A. Santos, Executive Officer, Office of Management and Budget, Office of the Governor, Saipan, MP 96950, Telephone: (670) 664–2256, FAX: (670) 664–2272, Contact person: Ms. Jacoba T. Seman, Federal Programs Coordinator, Telephone: (670) 664–2289, FAX: (670) 664–2272

Virgin Islands

Nellon Bowry, Director, Office of Management and Budget, #41 Norregade Emancipation Garden, Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct all questions and correspondence about intergovernmental review to: Linda Clarke, Telephone: (809) 774–0750, FAX: (809) 776–0069.

If you would like a copy of this list faxed to your office, please call our publications office at: (202) 395–9068.

*In accordance with Executive Order #12372, ''Intergovernmental Review of Federal Programs,'' this listing represents the designated State Single Points of Contact. The jurisdictions not listed no longer participate in the process BUT GRANT APPLICANTS ARE STILL ELIGIBLE TO APPLY FOR THE GRANT EVEN IF YOUR STATE, TERRITORY, COMMONWEALTH, ETC DOES NOT HAVE A ''STATE SINGLE POINT OF CONTACT.'' STATES WITHOUT ''STATE SINGLE POINTS OF CONTACT'' INCLUDE: Alabama, Alaska; American Samoa; Colorado; Connecticut; Hawaii; Idaho; Kansas; Louisiana; Massachusetts, Minnesota; Montana; Nebraska; New Jersey; New York; Ohio; Oklahoma; Oregon; Palau; Pennsylvania; South Dakota; Tennessee; Vermont, Virginia; and Washington. This list is based on the most current information provided by the States. Information on any changes or apparent errors should be provided to the Office of Management and Budget and the State in question. Changes to the list will only be made upon formal notification by the State. Also, this listing is published biannually in the Catalogue of Federal Domestic Assistance.

[FR Doc. 02–1236 Filed 1–17–02; 8:45 am]

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Federal Register

Friday,
January 18, 2002

Part III

Department of Education

34 CFR Chapter II

Office of Elementary and Secondary Education; Title I of the Elementary and Secondary Education Act of 1965 as amended (ESEA); Improving the Academic Achievement of the Disadvantaged; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Chapter II

Office of Elementary and Secondary Education; Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA); Improving the Academic Achievement of the Disadvantaged

AGENCY: Department of Education.

ACTION: Request for advice and recommendations on regulatory issues.

SUMMARY: The Secretary of Education (Secretary) is soliciting advice and recommendations from interested parties prior to publishing proposed regulations to implement programs under Title I of the Elementary and Secondary Education Act of 1965, as recently amended. Programs under Title I are designed to help disadvantaged children meet high academic standards. They include programs operated by local educational agencies in high-poverty schools (Part A), Reading First (Part B, Subpart 1), Early Reading First (Part B, Subpart 2), Even Start family literacy programs (Part B, Subpart 3), programs for migratory children (Part C), prevention and intervention programs for children and youth who are neglected, delinquent, or at risk of dropping out (Part D), Comprehensive School Reform (Part F), Advanced Placement Programs (Part G), and School Dropout Prevention (Part H). The Secretary invites advice and recommendations concerning issues for which regulations may be helpful to clarify statutory ambiguities or to provide appropriate flexibility.

DATES: We must receive your written comments on or before February 19, 2002.

ADDRESSES: Address all comments to Susan B. Neuman, Assistant Secretary for Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3W331, Washington, DC 20202. If you prefer to send your comments through the Internet, use the following address: *TitleIrulemaking@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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FOR FURTHER INFORMATION CONTACT: See the **SUPPLEMENTARY INFORMATION** section for further information contacts.

SUPPLEMENTARY INFORMATION:

For Further Information Contact: For programs under Part A, Susan Wilhelm, Telephone (202) 260–0982; for programs under Part B, Subparts 2 and 3, Patricia McKee, Telephone (202) 260–0991; for programs under Part D, Gary Rutkin, Telephone (202) 260–4412: Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3W230, Washington, DC 20202–6132.

For programs under Part B, Subpart 1, Chris Doherty, Office of Elementary and Secondary Education, 400 Maryland Avenue, SW, Room 3W311, Washington, DC 20202–6132. Telephone: (202) 401–2176.

For programs under Part C, James English, Migrant Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3E333, Washington, DC 20202–6135. Telephone: (202) 260–1989.

For programs under Part F and Part H, Hugh Burkett, Academic Improvement and Demonstration Programs, 400 Maryland Avenue, SW, Room 2W100, Washington. DC 20202–6135. Telephone: (202) 260–1989.

For programs under Part G, Edith Harvey, School Improvement Programs, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202–6135. Telephone: (202) 260–1393.

Background

On January 8, 2002, the President signed into law the ''No Child Left Behind Act of 2001'' (NCLB Act), amending the Elementary and Secondary Education Act of 1965 (ESEA). The NCLB Act reauthorizes the ESEA and incorporates the major reforms proposed by President Bush in his *No Child Left Behind* framework for education reform, particularly in the areas of assessment, accountability, and school improvement. The NCLB Act will strengthen Title I accountability by requiring States to implement statewide accountability systems covering all public schools and their students. These systems must be based on challenging State standards in at least reading and mathematics, annual testing for all students in grades 3 through 8, and annual statewide progress objectives for ensuring that all students reach proficiency within 12 years. Assessment results and State progress objectives must be disaggregated by poverty, race or ethnicity, disability and limited-English proficiency to ensure that schools address the educational needs of all students. Schools that meet or exceed State adequate yearly progress (AYP) objectives or close achievement gaps will be eligible for State Academic Achievement Awards. School districts and schools that fail to make AYP toward statewide proficiency goals will, over time, be subject to improvement, corrective action, and restructuring measures to help them meet State standards. Furthermore, parents of students in those schools will have the opportunity to transfer their children to a better public school or to obtain supplemental educational services for them.

The programs included in Title I of the ESEA, as amended by the NCLB Act, are designed to help disadvantaged children meet high academic standards. They include: Improving Basic Programs Operated by Local Educational Agencies (Part A), Reading First (Part B, Subpart 1), Early Reading First (Part B, Subpart 2), Even Start family literacy programs (Part B, Subpart 3), programs for migratory children (Part C), prevention and intervention programs for children and youth who are neglected, delinquent, or at risk of dropping out (Part D), Comprehensive School Reform (Part F), Advanced Placement Programs (Part G), and School Dropout Prevention (Part H).

The Department intends to implement Title I programs in a manner that respects State and local control over education while ensuring strong accountability for results. In particular, the Department intends to issue regulations only where absolutely necessary: for example, where the statute requires a regulation or where a regulation is necessary to provide flexibility or clarification for State and local educational agencies. Rather than regulating extensively, the Department intends to issue nonregulatory guidance addressing legal and policy issues under the Title I programs. This guidance can inform schools, parents, school districts, States, and other affected parties about the flexibility that exists under the statute, including multiple approaches that may be available in carrying out the statute's requirements.

The Secretary invites advice and recommendations from interested parties involved with the implementation and operation of programs under Title I concerning issues for which regulations may be necessary or for which nonregulatory guidance would be helpful to clarify statutory ambiguities or to provide appropriate flexibility. The Secretary specifically invites advice and recommendations from States and local administrators, parents, teachers,

paraprofessionals, members of local boards of education, charter school operators and public chartering authorizers, and other organizations (including civil rights groups, test publishers, representatives of private schools, and faith-based organizations with educational expertise).

Issues for Negotiated Rulemaking

Before publishing any proposed regulations to implement programs under Title I, the Secretary must establish a negotiated rulemaking process (unless regulations must be issued within a very limited time to assist State and local educational agencies with the operation of Title I programs). Negotiated rulemaking can improve the substance of regulations; increase understanding of, and support for, those regulations; encourage affected parties to communicate with each other and share information, knowledge, expertise, and analysis; and discourage expensive and time-consuming litigation concerning the regulations. The Secretary will select individuals to participate in this process from among the individuals or groups providing advice and recommendations on Title I regulatory issues. The Secretary will publish a separate notice in the **Federal Register** providing details about the negotiated rulemaking process.

Section 1901 of Title I requires that, at a minimum, the negotiated rulemaking process address issues concerning standards and assessments. The Secretary is also considering conducting negotiated rulemaking on the statutory provisions dealing with adequate yearly progress in section 1111. Therefore, the Secretary specifically invites comments on these provisions, including whether regulations are necessary and whether nonregulatory guidance would be helpful. The following discussion describes these statutory provisions. Commenters should use this discussion to guide their comments. The discussion, however, is not intended to restrict the issues that commenters may address.

Academic Standards

Under section 1111(b)(1) of Title I, each State must adopt challenging academic content standards and student academic achievement standards (formerly called ''student performance standards'') that will be used by the State, its local educational agencies, and its schools to carry out Part A. These academic standards must be the same standards that the State applies to all students and all schools in the State. States must have such standards in subjects determined by the State, but at a minimum, in mathematics, reading/language arts, and (beginning in the 2005–2006 school year) science. These standards must include challenging content standards in academic subjects that specify what children are expected to know and be able to do. They must contain coherent and rigorous content, and encourage the teaching of advanced skills. States also must have challenging student academic achievement standards that are aligned with the State's content standards and describe three levels of achievement: Advanced, proficient, and basic. Advanced and proficient levels determine how well children are mastering the State's content standards; the basic level provides complete information about the progress of lower-performing children toward achieving the proficient and advanced levels of achievement.

Academic Assessments

Under section 1111(b)(3) of Title I, each State also must implement a set of high-quality, yearly student academic assessments in, at a minimum, mathematics, reading/language arts, and (by school year 2007–08) science that will be used as the primary means of determining the yearly achievement of the State and each local educational agency and public school in enabling all children to meet the State's student academic achievement standards. These assessments must be the same ones used to measure the achievement of all children, be aligned with the State's academic content and student achievement standards, and be used for purposes for which they are valid and reliable. The statutory timeline for developing and administering assessments unfolds in three stages. In stage one, through school year 2004–05, assessments in mathematics and reading/language arts must be administered no less than one time during grades 3 though 5, grades 6 though 9, and grades 10 through 12. In stage two, beginning no later than school year 2005–2006, assessments in mathematics and reading/language arts, at a minimum, must be administered in grades 3 through 8 and one time during grades 10 through 12. In stage three, beginning no later than school year 2007–2008, assessments that measure proficiency in science must be administered no less than one time during grades 3 through 5, grades 6 though 9, and grades 10 through 12. Assessments must involve multiple up-to-date measures of academic achievement, including measures that assess higher-order thinking skills and understanding.

States must administer assessments to all students, providing reasonable adaptations and accommodations for students with disabilities and students with limited English proficiency. Moreover, students with limited English proficiency must be assessed, to the extent practicable, in the language and form most likely to yield accurate data on what those students know and can do in academic content areas until they have achieved English proficiency. With respect to reading/language arts, students with limited English proficiency who have attended schools in the United States (excluding Puerto Rico) for three or more consecutive school years must be assessed in English, unless a local educational agency determines, on a case-by-case basis, that academic assessments in another language for up to an additional two years would likely yield more accurate and reliable information.

The results of assessments must be disaggregated within each State, local educational agency, and school by gender, by each major racial and ethnic group, by English proficiency status, by migrant status, by students with disabilities compared to nondisabled students, and by economically disadvantaged students compared to students who are not economically disadvantaged. Finally, States must produce individual student interpretive, descriptive, and diagnostic reports and itemized score analyses that allow parents, teachers, and principals to understand and address the specific academic needs of students relative to their achievement against State standards.

Adequate Yearly Progress

Under section 1111(b)(2)(B), each State must demonstrate what constitutes adequate yearly progress of the State, and of all public elementary and secondary schools and local educational agencies in the State, toward enabling all students to meet the State's student achievement standards, while working toward the goal of narrowing achievement gaps in the State. ''Adequate yearly progress'' definitions must apply the same high standards of academic achievement to all public elementary and secondary school students in the State, be statistically valid and reliable, and measure progress based primarily on the State's academic assessments. The definition must include separate annual measurable objectives for continuous and substantial improvement in both mathematics and reading/language arts

for all students and for each of the following specific groups of students: Students who are economically disadvantaged, students from each major racial and ethnic group, students with disabilities, and students with limited English proficiency. However, disaggregated data are not required in cases when the number of students in a category is insufficient to yield statistically reliable information or when the results would reveal personally identifiable information about an individual student.

''Adequate yearly progress'' definitions must include graduation rates for public secondary schools and at least one other academic indicator for public elementary schools, and may include other academic indicators. However, although additional indicators may be used to identify additional schools for school improvement, corrective action, or restructuring, they may not be used to reduce the number of, or change the identity of, the schools that would otherwise be subject to school improvement, corrective action, or restructuring.

Each State must use data from the 2001–2002 school year to establish the starting point for measuring the percentage of students meeting or exceeding the State's proficient level of academic achievement. The starting point must, at a minimum, be based on the higher of two levels defined in the statute.

''Adequate yearly progress'' must include a timeline that ensures that all students in each subgroup meet or exceed the State's proficient level of academic achievement no later than 12 years after the end of the 2001–2002 school year. The timeline must include intermediate goals for meeting adequate yearly progress. These intermediate goals must increase in equal increments over the timeline; the first increment must occur in not more than two years, and the following increases must occur in not more than three years. In calculating whether a school has made ''adequate yearly progress,'' the State may establish procedures for averaging data. These procedures may include averaging scores across grade spans and averaging data over three years.

To make ''adequate yearly progress,'' a school must meet two criterias. First, the school must meet or exceed the State's annual measurable objectives with respect to all students and students in each subgroup. If students in any subgroup fail to make the requisite progress, however, the school need not be identified for improvement if the percentage of students in that group below proficient decreased by at least 10 percent compared to the preceding year and that group made progress on one or more of the additional academic indicators. Second, at least 95 percent of the students in each group who have been enrolled in the local educational agency's schools for at least one year must take the assessment.

Invitation to Comment

This request for comments on regulatory issues under Title I is designed to elicit the views of interested parties, particularly State and local administrators, parents, teachers, paraprofessionals, members of local boards of education, charter school operators and public chartering authorities, and other organizations (including civil rights groups, test publishers, representatives of private school children, and faith-based organizations with educational expertise) involved with the implementation and operation of Title I programs.

In addition to inviting specific comments on issues relating to standards, assessments and adequate yearly progress, the Secretary invites comments on other regulatory issues concerning provisions under Title I, including suggestions that regulations are not needed to resolve particular issues.

The Secretary requests that each commenter identify his or her role in education and the perspective from which he or she views the educational system—either as a representative of an association, agency, or school (public or private), or as an individual teacher, student, parent, or private citizen. The Secretary urges each commenter to be specific regarding his or her recommendations, including the statutory citation pertinent to the comment.

All comments submitted in response to this notice will be available for public inspection during and after the comment period in 400 Maryland Avenue, SW, Room 3W202, Washington, DC 20202 between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday of each week except Federal holidays.

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(Catalog of Federal Domestic Assistance Numbers: 84.010, Improving Programs Operated by Local Educational Agencies; 84.011, Migrant Education Basic State Formula Grant Program; 84.013, Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk of Dropping Out; 84.213, Even Start)

Program Authority: Public Law 107–110.

Dated: January 14, 2002.

Rod Paige,

Secretary of Education.

[FR Doc. 02–1341 Filed 1–17–02; 8:45 am]

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Federal Register

Friday,
January 18, 2002

Part III

Department of Education

34 CFR Chapter II

Office of Elementary and Secondary Education; Title I of the Elementary and Secondary Education Act of 1965 as amended (ESEA); Improving the Academic Achievement of the Disadvantaged; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Chapter II

Office of Elementary and Secondary Education; Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA); Improving the Academic Achievement of the Disadvantaged

AGENCY: Department of Education.

ACTION: Request for advice and recommendations on regulatory issues.

SUMMARY: The Secretary of Education (Secretary) is soliciting advice and recommendations from interested parties prior to publishing proposed regulations to implement programs under Title I of the Elementary and Secondary Education Act of 1965, as recently amended. Programs under Title I are designed to help disadvantaged children meet high academic standards. They include programs operated by local educational agencies in high-poverty schools (Part A), Reading First (Part B, Subpart 1), Early Reading First (Part B, Subpart 2), Even Start family literacy programs (Part B, Subpart 3), programs for migratory children (Part C), prevention and intervention programs for children and youth who are neglected, delinquent, or at risk of dropping out (Part D), Comprehensive School Reform (Part F), Advanced Placement Programs (Part G), and School Dropout Prevention (Part H). The Secretary invites advice and recommendations concerning issues for which regulations may be helpful to clarify statutory ambiguities or to provide appropriate flexibility.

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Background

On January 8, 2002, the President signed into law the ''No Child Left Behind Act of 2001'' (NCLB Act), amending the Elementary and Secondary Education Act of 1965 (ESEA). The NCLB Act reauthorizes the ESEA and incorporates the major reforms proposed by President Bush in his *No Child Left Behind* framework for education reform, particularly in the areas of assessment, accountability, and school improvement. The NCLB Act will strengthen Title I accountability by requiring States to implement statewide accountability systems covering all public schools and their students. These systems must be based on challenging State standards in at least reading and mathematics, annual testing for all students in grades 3 through 8, and annual statewide progress objectives for ensuring that all students reach proficiency within 12 years. Assessment results and State progress objectives must be disaggregated by poverty, race or ethnicity, disability and limited-English proficiency to ensure that schools address the educational needs of all students. Schools that meet or exceed State adequate yearly progress (AYP) objectives or close achievement gaps will be eligible for State Academic Achievement Awards. School districts and schools that fail to make AYP toward statewide proficiency goals will, over time, be subject to improvement, corrective action, and restructuring measures to help them meet State standards. Furthermore, parents of students in those schools will have the opportunity to transfer their children to a better public school or to obtain supplemental educational services for them.

The programs included in Title I of the ESEA, as amended by the NCLB Act, are designed to help disadvantaged children meet high academic standards. They include: Improving Basic Programs Operated by Local Educational Agencies (Part A), Reading First (Part B, Subpart 1), Early Reading First (Part B, Subpart 2), Even Start family literacy programs (Part B, Subpart 3), programs for migratory children (Part C), prevention and intervention programs for children and youth who are neglected, delinquent, or at risk of dropping out (Part D), Comprehensive School Reform (Part F), Advanced Placement Programs (Part G), and School Dropout Prevention (Part H).

The Department intends to implement Title I programs in a manner that respects State and local control over education while ensuring strong accountability for results. In particular, the Department intends to issue regulations only where absolutely necessary: for example, where the statute requires a regulation or where a regulation is necessary to provide flexibility or clarification for State and local educational agencies. Rather than regulating extensively, the Department intends to issue nonregulatory guidance addressing legal and policy issues under the Title I programs. This guidance can inform schools, parents, school districts, States, and other affected parties about the flexibility that exists under the statute, including multiple approaches that may be available in carrying out the statute's requirements.

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Issues for Negotiated Rulemaking

Before publishing any proposed regulations to implement programs under Title I, the Secretary must establish a negotiated rulemaking process (unless regulations must be issued within a very limited time to assist State and local educational agencies with the operation of Title I programs). Negotiated rulemaking can improve the substance of regulations; increase understanding of, and support for, those regulations; encourage affected parties to communicate with each other and share information, knowledge, expertise, and analysis; and discourage expensive and time-consuming litigation concerning the regulations. The Secretary will select individuals to participate in this process from among the individuals or groups providing advice and recommendations on Title I regulatory issues. The Secretary will publish a separate notice in the **Federal Register** providing details about the negotiated rulemaking process.

Section 1901 of Title I requires that, at a minimum, the negotiated rulemaking process address issues concerning standards and assessments. The Secretary is also considering conducting negotiated rulemaking on the statutory provisions dealing with adequate yearly progress in section 1111. Therefore, the Secretary specifically invites comments on these provisions, including whether regulations are necessary and whether nonregulatory guidance would be helpful. The following discussion describes these statutory provisions. Commenters should use this discussion to guide their comments. The discussion, however, is not intended to restrict the issues that commenters may address.

Academic Standards

Under section 1111(b)(1) of Title I, each State must adopt challenging academic content standards and student academic achievement standards (formerly called ''student performance standards'') that will be used by the State, its local educational agencies, and its schools to carry out Part A. These academic standards must be the same standards that the State applies to all students and all schools in the State. States must have such standards in subjects determined by the State, but at a minimum, in mathematics, reading/language arts, and (beginning in the 2005–2006 school year) science. These standards must include challenging content standards in academic subjects that specify what children are expected to know and be able to do. They must contain coherent and rigorous content, and encourage the teaching of advanced skills. States also must have challenging student academic achievement standards that are aligned with the State's content standards and describe three levels of achievement: Advanced, proficient, and basic. Advanced and proficient levels determine how well children are mastering the State's content standards; the basic level provides complete information about the progress of lower-performing children toward achieving the proficient and advanced levels of achievement.

Academic Assessments

Under section 1111(b)(3) of Title I, each State also must implement a set of high-quality, yearly student academic assessments in, at a minimum, mathematics, reading/language arts, and (by school year 2007–08) science that will be used as the primary means of determining the yearly achievement of the State and each local educational agency and public school in enabling all children to meet the State's student academic achievement standards. These assessments must be the same ones used to measure the achievement of all children, be aligned with the State's academic content and student achievement standards, and be used for purposes for which they are valid and reliable. The statutory timeline for developing and administering assessments unfolds in three stages. In stage one, through school year 2004–05, assessments in mathematics and reading/language arts must be administered no less than one time during grades 3 though 5, grades 6 though 9, and grades 10 through 12. In stage two, beginning no later than school year 2005–2006, assessments in mathematics and reading/language arts, at a minimum, must be administered in grades 3 through 8 and one time during grades 10 through 12. In stage three, beginning no later than school year 2007–2008, assessments that measure proficiency in science must be administered no less than one time during grades 3 through 5, grades 6 though 9, and grades 10 through 12. Assessments must involve multiple up-to-date measures of academic achievement, including measures that assess higher-order thinking skills and understanding.

States must administer assessments to all students, providing reasonable adaptations and accommodations for students with disabilities and students with limited English proficiency. Moreover, students with limited English proficiency must be assessed, to the extent practicable, in the language and form most likely to yield accurate data on what those students know and can do in academic content areas until they have achieved English proficiency. With respect to reading/language arts, students with limited English proficiency who have attended schools in the United States (excluding Puerto Rico) for three or more consecutive school years must be assessed in English, unless a local educational agency determines, on a case-by-case basis, that academic assessments in another language for up to an additional two years would likely yield more accurate and reliable information.

The results of assessments must be disaggregated within each State, local educational agency, and school by gender, by each major racial and ethnic group, by English proficiency status, by migrant status, by students with disabilities compared to nondisabled students, and by economically disadvantaged students compared to students who are not economically disadvantaged. Finally, States must produce individual student interpretive, descriptive, and diagnostic reports and itemized score analyses that allow parents, teachers, and principals to understand and address the specific academic needs of students relative to their achievement against State standards.

Adequate Yearly Progress

Under section 1111(b)(2)(B), each State must demonstrate what constitutes adequate yearly progress of the State, and of all public elementary and secondary schools and local educational agencies in the State, toward enabling all students to meet the State's student achievement standards, while working toward the goal of narrowing achievement gaps in the State. ''Adequate yearly progress'' definitions must apply the same high standards of academic achievement to all public elementary and secondary school students in the State, be statistically valid and reliable, and measure progress based primarily on the State's academic assessments. The definition must include separate annual measurable objectives for continuous and substantial improvement in both mathematics and reading/language arts

for all students and for each of the following specific groups of students: Students who are economically disadvantaged, students from each major racial and ethnic group, students with disabilities, and students with limited English proficiency. However, disaggregated data are not required in cases when the number of students in a category is insufficient to yield statistically reliable information or when the results would reveal personally identifiable information about an individual student.

''Adequate yearly progress'' definitions must include graduation rates for public secondary schools and at least one other academic indicator for public elementary schools, and may include other academic indicators. However, although additional indicators may be used to identify additional schools for school improvement, corrective action, or restructuring, they may not be used to reduce the number of, or change the identity of, the schools that would otherwise be subject to school improvement, corrective action, or restructuring.

Each State must use data from the 2001–2002 school year to establish the starting point for measuring the percentage of students meeting or exceeding the State's proficient level of academic achievement. The starting point must, at a minimum, be based on the higher of two levels defined in the statute.

''Adequate yearly progress'' must include a timeline that ensures that all students in each subgroup meet or exceed the State's proficient level of academic achievement no later than 12 years after the end of the 2001–2002 school year. The timeline must include intermediate goals for meeting adequate yearly progress. These intermediate goals must increase in equal increments over the timeline; the first increment must occur in not more than two years, and the following increases must occur in not more than three years. In calculating whether a school has made ''adequate yearly progress,'' the State may establish procedures for averaging data. These procedures may include averaging scores across grade spans and averaging data over three years.

To make ''adequate yearly progress,'' a school must meet two criterias. First, the school must meet or exceed the State's annual measurable objectives with respect to all students and students in each subgroup. If students in any subgroup fail to make the requisite progress, however, the school need not be identified for improvement if the percentage of students in that group below proficient decreased by at least 10 percent compared to the preceding year and that group made progress on one or more of the additional academic indicators. Second, at least 95 percent of the students in each group who have been enrolled in the local educational agency's schools for at least one year must take the assessment.

Invitation to Comment

This request for comments on regulatory issues under Title I is designed to elicit the views of interested parties, particularly State and local administrators, parents, teachers, paraprofessionals, members of local boards of education, charter school operators and public chartering authorities, and other organizations (including civil rights groups, test publishers, representatives of private school children, and faith-based organizations with educational expertise) involved with the implementation and operation of Title I programs.

In addition to inviting specific comments on issues relating to standards, assessments and adequate yearly progress, the Secretary invites comments on other regulatory issues concerning provisions under Title I, including suggestions that regulations are not needed to resolve particular issues.

The Secretary requests that each commenter identify his or her role in education and the perspective from which he or she views the educational system—either as a representative of an association, agency, or school (public or private), or as an individual teacher, student, parent, or private citizen. The Secretary urges each commenter to be specific regarding his or her recommendations, including the statutory citation pertinent to the comment.

All comments submitted in response to this notice will be available for public inspection during and after the comment period in 400 Maryland Avenue, SW, Room 3W202, Washington, DC 20202 between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday of each week except Federal holidays.

Electronic Access to This Document

You may view this document, in Text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*

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(Catalog of Federal Domestic Assistance Numbers: 84.010, Improving Programs Operated by Local Educational Agencies; 84.011, Migrant Education Basic State Formula Grant Program; 84.013, Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk of Dropping Out; 84.213, Even Start)

Program Authority: Public Law 107–110.

Dated: January 14, 2002.

Rod Paige,

Secretary of Education.

[FR Doc. 02–1341 Filed 1–17–02; 8:45 am]

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Federal Register

Friday,
January 18, 2002

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Airspace and Flight Operations Requirements for the 2002 Winter Olympic Games, Salt Lake City, UT; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2002–11332; SFAR No. 95]

RIN No. 2120–AH61

Airspace and Flight Operations Requirements for the 2002 Winter Olympic Games, Salt Lake City, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Special Federal Aviation Regulation (SFAR), applicable February 8, 2002, through February 24, 2002, establishes restrictions for aircraft operations in the vicinity of the 2002 Winter Olympic Games to be held in Salt Lake City, UT. Additionally, this action notifies the public as to the establishment of temporary flight restrictions in areas overlying the various competition venues and the Olympic Village for the XIX Olympic Winter Games. This action also establishes a security process for certain flight arrivals and departures at specified airports in the vicinity of the Olympic Games. The FAA and the United States Secret Service (Secret Service) believe this action is necessary for the security of participating athletes, dignitaries, and others attending the Winter Games, and the people of Utah, and for the safe operation and management of aircraft operating to, within, and from these areas.

DATES: Effective January 15, 2002. The Olympic Village temporary flight restriction (TFR) area is implemented January 25, 2002, 0000 hours mountain standard time (MST), through February 25, 2002, 2359 hours MST. The Olympic venue TFR's are implemented February 6, 2002, 0000 hours MST through February 24, 2002, 2359 hours MST. The Olympic Ring Airspace, the slot reservation program and the security inspection process are implemented February 8, 2002, 0000 hours MST through February 24, 2002, 2359 hours MST.

FOR FURTHER INFORMATION CONTACT: Cliff Armstrong, Special Operations Division, ATP–200, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–9155.

SUPPLEMENTARY INFORMATION:

Availability of This Action

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to search function of the Department of Transportation's electronic Docket Management System (DMS) Web page *(http://dms.dot.gov/search).*

(2) On the search page, type in the last four digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through FAA's web page at *http://www.faa.gov/avr/armhome.htm* or the **Federal Register**'s web page at *http://www.access.gpo.gov/su_docs/aces/aces140html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this final rule.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information advice about compliance with statutes and regulations within the FAA's jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official. Internet users can find additional information on SBREFA on the FAA's web page at http://www.faa.gov/avr/arm/sbrefa.htm and send electronic inquiries to the following Internet address: *9-AWA-SBREFA@faa.gov.*

Background

The 2002 Winter Olympic Games will be held February 8 through February 24, 2002, primarily in the Salt Lake City, Utah, area. This is an important international sporting event. In terms of air traffic demand, the pre-game, the game, and the post-game activities from January 25 through February 25, 2002, are expected to generate substantial increases in aircraft operations in Salt Lake City and the surrounding areas. The Secret Service has been charged with the responsibility of developing a security plan for the Olympics, and the United States Customs Service (Customs Service) has been granted the authority for providing the security force. Additionally, the FAA is responsible for implementing the security plan as it pertains to aviation security.

Prior to September 11, 2001, the FAA, in conjunction with the Secret Service and the Customs Service, determined that it would be necessary to establish TFR's over each Olympic venue and over the Olympic village. These TFR's were to be implemented by a notice to airmen (NOTAM), pursuant to the FAA's regulations in Title 14 Code of Federal Regulations (14 CFR) section 91.145, TFR in the Vicinity Of Aerial Demonstrations Or Major Sporting Events, and section 99.7, Special Security Instructions. In addition, the FAA is establishing a reservation system to manage Instrument Flight Rules (IFR) operations into and out of key airports in the Salt Lake City area.

The terrorist attacks of September 11, 2001, and the nation's continuing high alert status have led the Secret Service, and the Customs Service, to reevaluate the security issues associated with staging a large international event such as the Winter Olympic Games. Additionally, the mountainous terrain within and around Salt Lake City provides unique security concerns that, in this new environment, necessitate stricter security measures to protect participating athletes, dignitaries, and others attending the Winter Games, and the people of Utah. These additional security measures are part of a broader security package that encompasses all transportation modes.

Given the short time frame between the events of September 11, 2001, and the 2002 Winter Olympic Games, the FAA is adopting this SFAR as a final rule, pursuant to its authority under 49 U.S.C. 40103 and 44701(a)(5) and section 553 of the Administrative Procedures Act. Section 40103 provides that the Administrator shall develop ''plans and policy for the use of navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft'' (See 49 U.S.C. 40103(b)(1)). In addition, the FAA shall ''establish security provisions that will encourage and allow the maximum use of the navigable airspace by civil aviation aircraft consistent with national security, [and] the Administrator, in consultation with the Secretary of Defense shall * * * (B) by regulation or order, restrict or prohibit flight of civil aircraft that the Administrator cannot identify, locate and control with available facilities in those areas.'' See 49 U.S.C. 40103(b)(3)(B). See also, 49 U.S.C. 44701(a)(5).

The Administrative Procedures Act permits an agency to forego notice and comment rulemaking when ''the agency for good cause finds * * * that notice and public procedures thereon are impracticable, unnecessary, or contrary to the public interest.'' See 5 U.S.C.

553(b)(B). The FAA finds that notice and comment is impracticable and unnecessary because this SFAR is a temporary action, imposed for a very short time-frame, that is necessary to provide for the security of the Winter Olympic Games, the participating athletes, dignitaries, others attending the Winter Games, and the people of Utah. Additionally, the FAA finds that it is contrary to the public interest to follow notice and comment procedures and thereby delay this final rule because the affected parties need time to obtain approval from the Utah Olympic Public Safety Command (UOPSC) if they plan on operating within the Olympic ring airspace; and to take actions to otherwise mitigate the impact of this final rule.

Airspace Restrictions

The Secret Service has recommended, a four-pronged plan for securing the airspace around the Salt Lake Area that includes the following—(1) A 45 nautical mile (NM) restricted area around Salt Lake City Airport (Olympic ring airspace); (2) nine TFR's established over the Olympic venues (including the Olympic Village); (3) a slot reservation program for certain airports located just outside of the Olympic ring airspace; and (4) a security inspection for flights operating under section 4(a)(x) of this SFAR.

In support of this security plan, the FAA is establishing the Olympic ring airspace which consists of a 45 NM circle centered on Runway 17 Localizer/DME (I–BNT) at Salt Lake City International Airport with a vertical limit extending from the surface up to, but not including 18,000 feet Mean Sea Level (MSL). Operating restrictions within the 45 NM radius Olympic ring airspace are effective for the period from February 8, 2002 through February 24, 2002, 24 hours a day. The Olympic ring airspace includes all Olympic venues, the major population center in Utah, and key transportation infrastructure modes. The establishment of this Olympic ring airspace will restrict aircraft operations, including, but not limited to, ultralight vehicles regulated under 14 CFR part 103. Air Traffic Control (ATC) will retain the ability to manage aircraft through the Olympic ring airspace in accordance with normal traffic flows. No crewmember (including flight attendants) can enter the Olympic ring airspace without having a background check completed by UOPSC. Carriers who have security programs that comply with section 108.101(a) are recognized by UOPSC. For any questions on your accreditation status, please call UOPSC.

Only certain airports within the Olympic ring airspace may be used by people operating aircraft during the effective time period of this SFAR. These airports are listed in section 3(g) of this SFAR. All other airports within the Olympic ring airspace cannot be used by people operating aircraft, except that the military and other security personnel may use other airports (*e.g.,* military airports) if authorized by Aviation Security Operations Command (ASOC) under section 4 (a)(vii). See also section 3 (h). Additionally, only those flights specifically authorized in Section 4 of this SFAR are permitted to operate in the Olympic ring airspace in accordance with the conditions of this SFAR. On February 8, 2002, 1800 hours MST to 2200 hours MST, and February 24, 2002, 1800 hours MST to 2200 hours MST, the Olympic ring airspace will be closed to all air traffic except aeromedical aircraft, military aircraft, aircraft operating in support of national or event security and public safety, and aircraft instructed by ATC to enter the airspace due to weather, traffic or special ATC routing.

Within the Olympic ring airspace, the FAA is establishing additional flight restrictions over the Olympic village TFR and venue TFR areas. The establishment of TFR areas over the Olympic Village and the competition venues creates no-fly zones for all aircraft, except:

(1) Aeromedical aircraft;

(2) Military aircraft;

(3) Operations in support of national or event security and public safety that are authorized by UOPSC; or

(4) Aircraft that are under ATC control.

Operating restrictions within the airspace overlying the Olympic Village are effective for the period from January 25, 2002, through February 25, 2002, 24 hours a day. Operating restrictions within the airspace overlying the competition venues are effective for the period from February 6, 2002 through February 24, 2002, 24 hours a day. The restrictions become effective before and after the Olympic events to accommodate the observation and securing of the airspace. The TFR areas are effective from the surface up to but not including 18,000 feet MSL. The TFR area sites are as follows—

(1) Olympic Village—Salt Lake City, UT;
(2) The E Center—West Valley City, UT;
(3) Utah Olympic Oval—Kearns, UT;
(4) The Peaks Ice Arena—Provo, UT;
(5) The Ice Sheet at Ogden—Ogden, UT;
(6) Snowbasin Ski Area—Huntsville, UT;
(7) Utah Olympic Park—Park City, UT;
(8) Park City and Deer Valley Mountain Resorts—Park City, UT; and
(9) Soldier Hollow—Heber City, UT.

The TFR areas are circular areas of 2 to 3 NM in radius from the surface up to, but not including, 18,000 feet MSL. Aircraft and ultralight vehicles regulated under 14 CFR part 103 are prohibited from operating within the Olympic ring airspace during the effective dates and times unless authorized by the designated using agency or ATC. The locations, dimensions, and effective times of the TFR areas are published for use by all pilots on air navigation charts and in the **Federal Register**, and specific details will be disseminated by NOTAM. These publications are available from the Flight Service Station and on the FAA website, www.faa.gov/ntap. Requests for access to the airspace areas can be obtained by contacting the using agency. Olympic venues that fall within Class B surface areas, specifically, the Olympic Village in Salt Lake City, the E Center in West Valley City and the Olympic Oval in Kearns, are charted along with those outside of Class B airspace.

Slot Reservation Program

The FAA is aware that some operators may choose to conduct operations from airports outside the Olympic ring airspace. There are four airports located near the Olympic ring airspace that the FAA believes are likely to receive an increased amount of traffic due to the Olympics. These four airports are Wendover, Logan, and Brigham City, UT, and Evanston, WY. In order to manage aircraft operations at those airports the FAA is establishing a slot reservation program for these four airports. Thus, beginning on February 8, 2002, 0000 hours, through February 25, 2002, 2359 hours, all aircraft arriving or departing at these four airports must have a slot reservation prior to arrival or departure. Slot reservations may be obtained up to 72 hours in advance starting February 5, 2002, by calling 1–800–875–9755, 24 hours a day, or by accessing the website www.fly.faa.gov. Flights arriving or departing these airports may not enter the Olympic ring airspace unless specifically authorized in section 4 (a)(i) through (ix) of this SFAR.

Security Inspection

To ensure the safety of the Winter Olympic Games, the participating athletes, dignitaries, others attending the Winter Games, and the people of Utah, all flights entering the Olympic ring airspace under section 4(a)(x) of this SFAR (including charter operations, corporate operations and general

aviation) must be inspected at a Gateway airport and approved by the Salt Lake City (SLC) Olympic Security Team Inspectors prior to operating within the Olympic ring airspace. Gateway airports are those airports outside of the Olympic ring airspace that have SLC Olympic Security Team Inspectors present to inspect and approve an aircraft to enter the Olympic ring airspace. The following are designated Gateway airports:

(1) City of Colorado Springs Municipal Airport, Colorado Springs, CO (COS);
(2) Boise Air Terminal (Gowen Field), Boise, ID (BOI);
(3) Walker Field, Grand Junction, CO (GJT); and
(4) McCarran International Airport, Las Vegas, NV (LAS).

Flight operations conducted under section 4(a)(x) of this SFAR that depart from an airport within the Olympic ring airspace must be inspected and approved by SLC Olympic Security Team Inspectors at that airport prior to departure. Operators must arrange for an appointment with SLC Olympic Security Team Inspectors no earlier than 48 hours in advance prior to landing at a Gateway airport or departing from an airport within the Olympic ring airspace by calling 801–257–2761. Failure to arrange for an inspection appointment may result in long delays and potentially being denied entry into or out of the Olympic ring airspace. This security inspection process is applicable at all times from February 8, 2002, 0000 hours MST, to February 24, 2002, 2359 hours MST.

Aircraft operators covered by this SFAR will be permitted to conduct operations from February 8, 2002, 0000 hours MST, to February 24, 2002, 2359 hours MST, only at the following airports within the Olympic ring airspace:

(1) Salt Lake City International (SLC), Salt Lake City, UT;
(2) Ogden Municipal Airport (OGD), Ogden, UT;
(3) Provo Municipal Airport (PVU), Provo, UT;
(4) Heber City Municipal-Ross McDonald Field Airport (36U), Heber City, UT;
(5) Salt Lake City Municipal Airport (U42), Salt Lake City, UT; and
(6) Skypark Airport (BTF), Bountiful, UT (rotorcraft operations only).

Exceptions

This SFAR contains provisions to provide for the safety and security of the Winter Olympic Games, participating athletes, dignitaries, others attending the Winter Games, and the people of Utah, and for the flexible and efficient management and control of air traffic. Included in this SFAR are provisions that give priority to, or exclude from requirements of the special regulation, flight operations dealing with or containing essential military, medical emergency, rescue, law enforcement, public health and welfare, Presidential, and heads of state.

Obtaining U.S. Air Navigation Charts

The following provides information on how to obtain the special air navigation charts for the Olympic Games, as well as other air navigation charts for use in the U.S. The National Aeronautical Charting Office (NACO) publishes and distributes aeronautical charts of the U.S. National airspace system (NAS). Charts are readily available through a network of sales agents located at or near principal civil airports. Due to the large variety, all NACO products may not be available locally; users can procure these products directly from NACO. Chart prices, subscription rates, and catalogs of related publications are available on request and are obtainable by writing to: FAA, National Aeronautical Charting Office, AVN–530, Distribution Division, Riverdale, Maryland 20737, USA, Phone 1–800–638–8972, Fax 301–436–6829, E-Mail 9–AMC–ChartSales@faa.gov.

Notice to Airmen (NOTAM) Information

ATC and air traffic flow management systems will monitor and assess the air traffic demand so that restrictions are kept to an essential minimum. To assure maximum flexibility, the FAA will announce all restrictions and other actions including the lifting of any restrictions taken by the FAA in response to changing airspace conditions through NOTAMS.

Time-critical aeronautical information that is of a temporary nature or is not sufficiently known in advance to permit publication on aeronautical charts or in other operational publications, receives immediate dissemination via the National NOTAM system. All domestic operators planning flight to the Olympics need to pay particular attention to NOTAM D and Flight Data Center (FDC) NOTAM information. NOTAM D information could affect a pilot's decision to make a flight. NOTAM D pertains to information on airports, runways, navigational aids, radar services, and other information essential to flight. An FDC NOTAM will contain information which is regulatory in nature, such as amendments to aeronautical charts and restrictions to flight. FDC NOTAM and NOTAM D information would also be provided to international operators in the form of International NOTAM's. NOTAM's are distributed through the National Communications Center in Kansas City, Missouri, USA, for transmission to all air traffic facilities having telecommunications access.

Pilots and operators should consult the Flight Service Station or the FAA website at www.FAA.gov/ntap. For more detailed information concerning the NOTAM system, refer to the Aeronautical Information Manual, ''Preflight'' Section.

Operators of aircraft and ultralight vehicles regulated under 14 CFR part 103 must clearly understand that the restrictions in this SFAR are in addition to other laws and regulations of the U.S. The SFAR does not waive or supersede any U.S. law or obligation. When operating within the jurisdictional limits of the U.S., operators of foreign aircraft must conform to all applicable requirements of U.S. Federal, State, and local governments. In particular, aircraft operators planning flights into the U.S. must be aware of and conform to the rules and regulations of the:

(1) U.S. Federal Aviation Administration regarding flights entering the United States;

(2) U.S. Customs Service, Immigration and other authorities regarding customs, immigrations, health, firearms, and imports/exports;

(3) U.S. FAA regarding flight in or into United States airspace. This includes compliance with Federal aviation regulations regarding operations within the territorial airspace of the United States through air defense identification zones, and compliance with general flight rules; and

(4) Airport management authorities regarding use of airports and airport facilities.

Justification for Immediate Adoption

Because the circumstances described herein warrant immediate action, the Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further, the Administrator finds that good cause exists under 5 U.S.C. 553(d) for making this rule effective immediately upon issuance by the FAA Administrator. This action is necessary to permit aircraft operations at the affected airports and prevent possible hazardous actions directed against aircraft, persons, and property within the United States.

Environmental Effects

This action establishes the Olympic ring airspace and TFR areas for safety and security purposes and curtails or limit certain aircraft operations within designated areas at defined dates and times, rather than require aircraft to be operated along specified routings or in accordance with specific procedures. Additionally, this action is temporary in nature and effective only for the dates and times necessary to provide for the safety and protection of participants and spectators on the ground, as well as law enforcement and security personnel operating in the air at Olympic game venues. ATC retains the ability to direct aircraft through the restricted areas in accordance with normal traffic flows. The FAA believes, therefore, that the establishment of temporary flight restriction areas has minimal impact on ATC routings or procedures.

Further, this action results in a reduction in aircraft activity in the vicinity of the Olympic games by restricting aircraft operations. Therefore, there will be fewer aircraft operations in the vicinity of the Olympic games than would have occurred if the restricted areas were not in place and noise levels associated with that greater aircraft activity also are reduced. Additionally, aircraft avoiding the restricted areas will not be routed over any particular area. This action, therefore, does not result in any long-term action that routinely routes aircraft over noise-sensitive areas. For the reasons stated above, the FAA concludes that this rule does not significantly affect the quality of the human environment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices (SARP) to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to this SFAR.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the small amount of paperwork burden associated with the rule will be submitted to the Office of Management and Budget for review.

Regulatory Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only if the agency makes a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. sections 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards. Where appropriate, agencies are directed to use those international standards as the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules. This requirement applies only to rules that include a Federal mandate on State, local or tribal governments or the private sector, likely to result in a total expenditure of $100 million or more in any one year (adjusted for inflation.) In conducting these analyses, FAA has determined this rule:

(1) Has benefits which do justify its costs, is a ''significant regulatory action'' as defined in the Executive Order and is ''significant'' as defined in DOT's Regulatory Policies and Procedures;

(2) Will have a significant impact on a substantial number of small entities,

(3) Will not constitute a barrier to international trade; and

(4) Does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

Costs and Benefits

There are five major areas where economic impacts are likely: (1) Slot reservation system; (2) the establishment of the Olympic ring airspace; (3) temporary flight restrictions; (4) background checks; and (5) required use of gateway airports for some aircraft operations for security inspections prior to entering the Olympic ring airspace.

1. Slot Reservation System

During the busy Olympic period, the U.S. Government must assure the security of the Olympic venues, the athletes, visitors and people of Utah, while also maintaining the safe and efficient use of airspace. To achieve these objectives the FAA will implement an arrival and departure slot reservation system to manage air traffic into and out of four airports serving the Olympic games that are located outside the Olympic ring airspace. These four airports are Wendover, Logan and Brigham City, Utah, and Evanston, Wyoming. The FAA has determined that a slot program is necessary at these airports because it anticipates a significant increase in air traffic at these airports due to the Olympics.

The FAA anticipates that most passenger flights going into one of the slot airports would be operating under either 14 CFR parts 91 or 135. Some cargo operations operating under either 14 CFR parts 121 or 135 also may use the slot airports and then move cargo into the Salt Lake City area by motor vehicle. Flight operations that are not able to secure a slot reservation may have to fly into an airport further outside the Olympic ring airspace, or be postponed.

For 14 CFR part 135 flight operations, the cost of the cancellations would be the value of the flights to airlines and passengers less aircraft operating cost to conduct the flights. Other flights may be diverted to other airports in the Olympic games area. Diversions would result in additional cost of trips to and from places of intended lodging and possible extra aircraft operation costs. The major economic impact in the case of diversion would be inconvenience to operators who may not be able to operate at their first choice airport. Because such occurrences are of a limited duration, the FAA believes that costs associated with any diversions from one airport to another in the affected area will probably be small. Current personnel and equipment resources will absorb the additional FAA administrative workload generated by this emergency final rule. The slot provision will not require any additional air traffic controllers nor any additional radar control equipment.

The benefits of the slot reservation system will be better management of the air traffic into airports located just outside the Olympic ring airspace. The increase of air traffic due to the Olympics could overwhelm these smaller airports without a slot reservation system. Additionally, given this increase in air traffic, there is an increased risk of accidents due to this unprecedented congestion in the airspace outside the Olympic ring if greater controls are not implemented. Implementing a slot reservation system also may reduce the number of delays at these airports.

2. Establishment of Olympic Ring Airspace

The FAA is establishing a 45 NM ring around Salt Lake City Airport Runway 17, with a vertical limit extending from the surface up to but not including 18,000 feet MSL. This airspace is known as the Olympic ring airspace. There are

a total of 10 public airports located within this ring and an unknown number of private airports. Aircraft operators may operate only at the following six airports within the Olympic ring airspace—

- Salt Lake City International (SLC) Salt Lake City, UT;
- Ogden Municipal Airport (OGD),Ogden, UT;
- Provo Municipal Airport (PVU), Provo, UT;
- Heber City Municipal-Ross McDonald Field Airport (36U), Heber City, UT;
- Salt Lake City Municipal Airport (U42), Salt Lake City, UT; and
- Skypark Airport (BTF), Bountiful, UT (rotorcraft operations only).

The FAA is aware of four public use airports located in Utah at which aircraft will not be permitted to operate due to the imposition of the Olympic ring airspace. These are Eagle Mountain, Morgan County, Spanish Fork, and Tooele Valley. It is necessary to prohibit aircraft operations due to manpower issues and to maintain security over the airspace. In selecting the airports that will be available for aircraft operations the U.S. government considered many factors including location, IFR capability, the size of the airport, the type of aircraft it will accommodate, and the presence of air traffic control towers. Airports that are not available for aircraft operations will likely lose or delay operating revenue. Additionally, the restrictions may cause some operators to relocate aircraft to other airports where they can conduct operations during the February 8, 2002 through February 24, 2002, time period. The airports at which aircraft operators will not be permitted to operate all lack control towers. Eagle Mountain does not provide fuel or any other services. Bolinder Field-Tooele Valley, Morgan County, and Spanish Fork-Springville airports do provide fuel sales, aircraft rentals, maintenance, and flight training. According to available information, general aviation operations account for virtually all activity at these airports except for Spanish Fork where an estimated 5 percent of the operations are conducted by air taxis. Between 110 and 150 aircraft are based at these airports including approximately 6 multi-engine airplanes, 17 gliders and 2 ultralights.

There are a number of restrictions on the aircraft that can enter the Olympic ring airspace. The following flight operations will be prohibited within the Olympic ring airspace at all times—

(a) Hang gliding, paragliding and parasailing;

(b) Acrobatic flights;

(c) Radio remote-controlled aircraft;

(d) Gliders;

(e) Ultralights;

(f) Hot air balloons/airships;

(g) Tethered balloons;

(h) Flight training;

(i) Parachuting;

(j) Agriculture/crop dusting

(k) Animal population control flights

(l) Rockets (manned and unmanned);

(m) Shrimp spotters;

(n) Helicopter skiing;

(o) Commercial cargo carriers that do not have a Domestic Security Integration Program (DSIP) or a program that the Administrator has determined is equal to or exceeds such program; and

(p) Banner towing.

This prohibition is only for the duration of the Olympic ring airspace, thus while it will impact these operations significantly, such impact is for a limited period of time.

Passenger operations conducted by 14 CFR part 121 domestic or flag carriers, 14 CFR part 135 commuter operations or public charter operations as defined by 14 CFR section 108.3 are permitted to operate into, out of and within the Olympic ring airspace provided certain conditions are satisfied. 14 CFR part 121 all cargo carriers are permitted within the Olympic ring airspace provided certain conditions are satisfied. The FAA anticipates that only two conditions could impose additional costs on the operators—the condition that all crewmembers be accredited and the condition that requires all operators using this provision to have a security program in compliance with 14 CFR 108.101(a). The security program condition eliminates certain operators who would operate a flight subject to less than the full security program under 14 CFR 108.101(a). The FAA recognizes that this may cause certain operators to be diverted to Gateway airports, thus accruing additional costs (flight time, inspection time, fuel). However, the cost of these extraordinary regulations are necessary to ensure that aircraft entering the Olympic ring airspace meet a certain level of security.

14 CFR part 121 supplemental all cargo operations are permitted within the Olympic ring airspace provided, among other things, the carrier operates under a published schedule (or is a 14 CFR part 91 maintenance or positioning ferry flight) and the flight is in full compliance with the FAA's Domestic Security Integration Program. The FAA is aware that these conditions will prohibit certain cargo carriers from entering Olympic airspace, however, the Government is concerned about its ability to maintain security of the airspace with cargo carriers who do not comply with all of the prescribed conditions. This action will result in certain cargo carriers flying to outlying airports and transferring cargo to motor vehicle to be moved into the Olympic area. This additional cost, however, is necessary to ensure that aircraft entering the Olympic ring airspace meet a certain level of security.

Foreign air carriers that operate under 14 CFR part 129 or special authority from the Department of Transportation are permitted to enter the Olympic ring airspace only if the flight operation has been inspected at a Gateway airport in accordance with section 4(a)(x) or the carrier has been issued a waiver by the Administrator permitting the flight operation to enter the Olympic ring airspace and has demonstrated to the Administrator that the carrier's security program for that flight is similar to a security program that is in compliance with 14 CFR 108.101(a). The FAA believes that through the waiver, it can assure that foreign air carriers are not being discriminated against as compared to similarly situated domestic carriers.

With the exception of law enforcement, aeromedical services, news media aircraft, aircraft in support of the Olympics, military aircraft, aircraft carrying heads of state or other dignitaries, or foreign aircraft which are subject to special conditions, all other aircraft must enter the Olympic ring airspace only after landing at a Gateway airport and having a security inspection completed. See section 4(a)(x) of the SFAR. The costs to these operators are discussed herein under ''Gateway Inspections.''

3. Temporary Flight Restrictions

To secure the airspace around the Olympic venues, the FAA is establishing nine TFR areas over the 2002 Winter Olympic village and Olympic venue areas. The Olympic Village TFR will be effective from January 25, 2002, 0000 hours, through February 25, 2002, 2400 hours. The competition venue TFR's will be effective from February 6, 2002, 0000 hours, through February 24, 2002. The establishment of TFR's over the Olympic ring airspace will result in the restriction of aircraft operations from the surface up to but not including 18,000 feet MSL.

These restrictions may require some flights to circumnavigate the TFR areas. The major economic impact of circumnavigation will be inconvenience to operators who may have wanted to operate in the area of the TFR's. Because such occurrences are of limited duration and the restricted area is limited in size,

the FAA believes that any circumnavigation costs will be negligible. Maps depicting the TFR's may be purchased from NACO and will be shipped via United Parcel Service, First Class Mail, or priority package. The costs associated with these charts are small.

The potential benefits of the proposed TFR airspace will be primarily enhanced safety to the public. Enhanced safety will be achieved by reducing the risk of a terrorist attack from the air during the Olympic games.

4. Background Checks

All crewmembers will be required under this SFAR to be ''accredited'' prior to serving on an aircraft that enters the Olympic ring airspace. All crewmembers who are operating aircraft for operators with a security program in compliance with 14 CFR 108.101(a) should have a minimal accreditation burden. The crewmember accreditation process entails the submission of personal, company and aircraft information, and a criminal history review that requires the applicant to submit their fingerprints. The FAA estimates that it will take each applicant 1 hour to complete the forms, provide the required photos and fingerprints at a cost of $50, plus a $15 processing fee for a total of $65. The FAA had approximately 500 completed applications on hand as of the year-end and it is possible that another 500 applications will be submitted. Thus the total cost to the applicants is estimated to be approximately $65,000 ($65 × 1,000). The UOPSC will process the applications.

5. Gateway Airport Inspections

Flight operations conducted under section 4(a)(x) of the SFAR must have a special security check at a Gateway airport prior to entering the Olympic ring airspace, or prior to departing from an airport within the Olympic ring airspace. This security check will involve a check of all crewmembers, passengers, baggage and aircraft.

There are four Gateway airports:

(1) City of Coloardo Springs Municipal airport, Colorado Springs, CO (COS);
(2) Boise Air Terminal (Gowen Field), Boise, ID (BOI);
(3) Walker Field, Grand Junction, CO (GJT); and
(4) McCarran International Airport, Las Vegas, NV (LAS).

A team composed of an FAA inspector, other federal and local law enforcement representatives, and the National Guard will conduct the inspections. Assuming two teams are assigned to each airport, approximately 40 personnel will be assigned to this task for the 17-day period. Assuming an eight-hour shift at an hourly rate of $25, each team member will cost $200 per day and the total cost will be approximately $136,000 ($200 × 40 × 17). These costs will be borne by the federal and local governments.

Flights conducted under section 4(a)(x) are principally conducted by on-demand operators, corporate owners, and the general aviation community. These operators will incur additional costs to comply with this inspection requirement. The costs consist of lost time and extra operating costs. The inspection time will vary by size of aircraft and load factor; small aircraft may take less than 10 minutes while a large jet may take an hour. The FAA anticipates that this check will average ½ hour per aircraft.

Extra flying time will be required since these flights must stop at one of the four airports rather than flying directly to their destination airport. The airports where the inspections will be conducted are located from 215 miles to 407 miles from Salt Lake City with an average of 320 miles. While some flights may not incur this many extra miles depending on their routing, 320-miles serves as a benchmark. The distance of 320 miles represents about 85 minutes flight time for a twin engine turboprop and about 40 minutes for a business jet. Since the type of aircraft subject to the inspection is unknown at this time, an average of 60 minutes additional flying time is assumed. Thus the total additional time each flight will experience is estimated at 90 minutes.

The value of this additional travel time to each passenger is estimated at $50. This is based on a economic value of passenger time per hour for all general aviation passengers as calculated in Table E–1of the FAA's ''Economic Values for Evaluation of Federal Aviation Administration Investment and Regulatory Programs'', June 1998, adjusted using the GDP implicit price deflator. The following values are also drawn from Table E–1. The ''typical'' general aviation and on-demand aircraft carries 3 passengers so the value of passenger time lost per flight is approximately $150. However, it is anticipated that larger aircraft will be used for these Olympic flights and are more likely to carry an estimated 16 passengers per flight (based on the number of passengers on commuter flights) thus increasing the value of passenger time lost per flight to approximately $800.

The ''typical'' general aviation and on-demand aircraft incurs fixed and variable operating costs per hour of approximately $725 while the larger aircraft which may be used for these Olympic flights incur operating costs of approximately $910 per hour (based on commuter flights operating costs). Thus the extra fixed and variable costs due to the inspection and extra flight time are estimated to range between $1,090 and $1,365 per flight.

The benefits of the Gateway Airport Inspection program will be a level of security equivalent to that of flights operated under § 108.101(a) of the Federal aviation regulations. This will provide a higher level of security within the Olympic ring that would not be possible without this program. These emergency procedures are necessary because of the terrorist attacks of September 11, 2001.

The FAA has determined that this rule will impose only temporary costs on the public. The overall magnitude of these costs while undetermined are limited to a 17-day period. The benefits will be increased aviation security resulting from a lower risk of accidents due to increased congestion during the 2002 Winter Olympics and increased security at the Olympic events due to the security inspections at the Gateway Airports.

Considering the temporary nature of this rule and the inherent benefits to the public, the FAA finds that the benefits of the rule justify its costs.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and applicable statues, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the Act provides that the head of the agency may so certify and an RFA is not required. The certification must include

a statement providing the factual basis for this determination, and the reasoning should be clear.

Many of the flights that will require inspections will be conducted by private operators and are not business flights for purposes of this analysis. A number of flights will be conducted as on-demand charter flights and the costs of the inspection time and the extra flight time will be costs to the business. However, it is likely that these costs will be borne by the chartering party and not the operator. In the event an on-demand operator must absorb the extra cost, the cost would consist of the crew accreditation fee and the extra operating cost. The accreditation fee will be $130 for two crewmembers and, assuming the use of a larger aircraft, additional operating costs of $1,365 for a total of approximately $1,500. If the operator flew one flight each day of the Olympics with a new crew each day the total cost would be $25,500.

The Small Business Administration (SBA) suggests that aircraft operators with 1,500 or fewer employees are ''small'' entities. Thus, nearly all on-demand charter operators are small entities. Data for firms with fewer than 1,500 employees are not available but a SBA analysis of Bureau of Census data for non-scheduled air transportation firms with fewer than 500 employees indicates they have average revenues of $1.87 million. Thus the possible cost of this emergency rule would equate to as much as 1.4 percent of a small entity's annual revenue. Since adequate data is not immediately available to more clearly establish impacts, the FAA assumes that this final rule will have a significant economic impact on a substantial number of small entities.

Accordingly, the FAA has prepared the following regulatory flexibility analysis although it is not required by the RFA because no notice of public rulemaking for this final rule will be published.

Reasons Agency Action Is Being Taken

The Secret Service and Customs Service have determined that in order to protect the athletes, visitors and people of Utah during the Olympics additional aviation security measures are necessary.

Statement of Objectives and Legal Basis

The Administrative Procedures Act (49 U.S.C 40103(b)(3)(B)) states that the FAA shall ''establish security provisions that will encourage and allow the maximum use of the navigable airspace by civil aviation aircraft consistent with national security, [and] the Administrator, in consultation with the Secretary of Defense shall ''* * * by regulation or order, restrict or prohibit flight of civil aircraft that the Administrator cannot identify, locate and control with aviation facilities in those areas''. See also 49 U.S.C.44701(a).

Description of Small Entities Affected

The FAA concludes that virtually all of the entities affected by this emergency rule are small according to thresholds established by the SBA. The on-demand charter operators that are affected by this rule could incur costs of approximately $25,500.

Projected Reporting, Recordkeeping and Other Compliance Requirements

The crewmembers of the operator most undergo a background check at an estimated cost of $65 per member. The usual crew complement consists of a pilot and a co-pilot for a cost per crew of $130. Assuming a new crew daily for the entire period, the cost to an operator would be $2,730.

Overlapping, Duplicative, or Conflicting Federal Rules

The rule would not overlap, duplicate, or conflict with existing Federal rules.

Analysis of Alternatives

This rule is an emergency security rulemaking. In order to achieve the level of security determined by the Secret Service and Customs Service it is essential that all aircraft entering the Olympic ring comply with these requirements. Allowing aircraft to enter the ring without either having a security program meeting 14 CFR 108.101 (a) or being inspected at a Gateway airport would compromise the overall security of the Olympics. These additional security measures are part of a broader security package that encompasses all transportation modes. An alternative would have been to ban all non-scheduled operations within the ring.

Affordability Analysis

The FAA lacks reliable revenue and profit data for the individual entities affected by this rule and, therefore, is unable to explicitly compare the potential costs to revenues or profits. This is because they have no financial reporting requirements. The FAA believes that very few entities will incur these costs since they will generally be included in the charter price.

Business Closure Analysis

The FAA estimates that no entity will cease to operate due to this rule which is only in effect for a 17-day period.

Disproportionality Analysis

Almost all entities in the on-demand charter business are small. Accordingly, the costs imposed by this rule will be borne almost entirely by small businesses. Security at the Olympics is essential and the FAA believes that the only way to ensure security is to control all operations entering the ring airspace.

Key Assumption Analysis

The FAA has made several conservative assumptions in this analysis which may have resulted in an overestimate of the costs of the rule. For example, the FAA has estimated that a new crew will be used each day. It is highly possible that the same crew will be used numerous times. The FAA has also assumed that a larger than average aircraft with higher operating costs will be used for these operations. It is possible that the average operating costs may be lower than the FAA has estimated and that no operator will be affected by this rule.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of this final rule and has determined that it will impose the same costs on domestic and international entities for comparable services and thus has a neutral trade impact.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995 is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This rule does not contain such a mandate. Therefore, the requirements of

Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Federalism Implications

The regulation set forth herein does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 91

Aircraft flight, Airspace, Aviation safety, Air Traffic Control.

The Amendment

For the reasons stated in the preamble, the Federal Aviation Administration amends 14 CFR chapter I as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 USC 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506, 46507, 47122, 47508, 47528–47531; articles 12 and 29 of the Convention on International Civil Aviation 861 stat. 1180.

2. Add Special Federal Aviation Regulation No. 95 to read as follows:

SFAR No. 95—Airspace and Flight Operations Requirements for the 2002 Winter Olympic Games, Salt Lake City, Utah

1. *Applicability.* This SFAR applies to all crewmembers aboard aircraft operating within the Olympic ring airspace, the Olympic village temporary flight restrictions area and the Olympic venue temporary flight restrictions area, and to all aircraft operating within this airspace.

2. *Definitions.*

(a) Olympic ring airspace—for the time period February 8, 2002, 0000 hours MST, through February 24, 2002, 2359 hours MST, that airspace within a 45 NM radius of the Salt Lake City International Airport Runway 17 localizer/distance measuring equipment (DME), identifier I–BNT (latitude 40°46′10.06″ N/111°57′43.44″ W) with a vertical limit extending from the surface up to but not including 18,000 feet mean sea level (MSL).

(b) Venue temporary flight restriction area (TFR)—that airspace overlying an U.S. Olympic competition venue as described in section 4(b) of this SFAR.

(c) Olympic Village temporary flight restriction area (TFR)—that airspace overlying the U.S. Olympic village and athletes housing as described in section 4(b) of this SFAR.

(d) Gateway Airport—an airport specified in section 5(b) of this SFAR that is located outside the Olympic ring airspace that aircraft flight operations seeking to enter the Olympic ring airspace pursuant to section 4 (a)(x) of this SFAR must land at prior to entry.

(e) UOPSC—Utah Olympic Public Safety Command

(f) ASOC—Aviation Security Operations Command

(g) Administrator—includes, in addition to the Administrator of the FAA, the Under Secretary of Transportation for Security, acting under the authority of the Aviation and Transportation Security Act, Pub. L. 107–71. During the transition period, the Administrator and the Under Secretary will coordinate closely to avoid duplication of requirements and disruption of operations.

3. *General rules.*

(a) Each person operating an aircraft within the Olympic ring airspace and all aircraft operating in this airspace shall adhere to the terms and conditions of this SFAR, all NOTAM's issued pursuant to this SFAR and all other applicable FAA rules and regulations. In addition, each person operating a flight originating outside U.S. airspace that enters U.S. airspace shall adhere to all international NOTAM's issued pursuant to this SFAR. NOTAM's are available for inspection at operating FAA air traffic facilities and regional air traffic division offices.

(b) As conditions warrant, the Administrator will:

(i) Restrict, prohibit, or permit VFR and IFR operations at any airport, terminal, or enroute airspace area designated in this SFAR or in a NOTAM issued pursuant to this SFAR;

(ii) Give priority to the following flights from provisions of this SFAR and NOTAM's issued pursuant to this SFAR—

(A) Essential military;

(B) Medical and rescue;

(C) Essential public health and welfare;

(D) Presidential and Vice Presidential;

(E) Flights carrying visiting heads of state;

(F) Law enforcement and security; and

(G) Flights authorized by the Director, Air Traffic Service.

(iii) Implement flow control management procedures.

(c) For security purposes, the Administrator may issue NOTAM's during the effective period of this SFAR to cancel or modify provisions of this SFAR and NOTAM's issued pursuant to this SFAR if such action is consistent with the safe and efficient use of airspace, and the safety and security of persons and property on the ground.

(d) No person may operate an aircraft in or through the Olympic ring airspace unless it is specifically authorized in section 4 of this SFAR and it is operated in accordance with this SFAR and all other applicable FAA rules and regulations.

(e) No operator may use, and no person may serve as, a crewmember in an aircraft operating in the Olympic ring airspace unless they have been accredited by the UOPSC. For further information on accreditation, contact UOPSC Aviation at (801) 257–2761.

(f) No person may operate an aircraft within the Olympic ring airspace, any Olympic venue TFR, or the Olympic Village TFR area unless the aircraft is equipped with an operating transponder with Mode C, and uses an assigned discrete beacon code while in this airspace.

(g) Unless otherwise provided for in this SFAR, persons operating flights that arrive at, or depart from, an airport located within the Olympic ring airspace may only conduct operations at the following designated airports located in the Olympic ring airspace: Salt Lake City International (SLC), Salt Lake City, UT; Ogden Municipal Airport (OGD), Ogden, UT; Provo Municipal Airport (PVU), Provo, UT; Heber City Municipal-Ross McDonald Field Airport (36U), Heber City, UT; Salt Lake City Municipal Airport (U42), Salt Lake City, UT; and Skypark Airport (BTF), Bountiful, Utah (rotorcraft operations only).

(h) No person is permitted to land an aircraft at, depart from, or otherwise operate an aircraft at any location other than those identified in paragraph (g) of this section, except for aeromedical aircraft responding to an emergency, military aircraft, or law enforcement and security aircraft that are conducting flights in support of the Olympic events.

(i) The following operations are specifically prohibited within the Olympic ring airspace at all times—

(i) Hang gliding, paragliding and parasailing;

(ii) Acrobatic flights;

(iii) Radio remote-controlled aircraft;

(iv) Gliders;

(v) Ultralights;

(vi) Hot air balloons/airships;

(vii) Tethered balloons;

(viii) Flight training;

(ix) Parachuting;

(x) Agriculture/crop dusting;

(xi) Animal population control flights;

(xii) Rockets (manned or unmanned);

(xiii) Shrimp spotters;

(xiv) Helicopter skiing;

(xv) Commercial cargo carriers flight operations that do not have a Domestic Security Integration Program (DSIP) or a program that the Administrator has determined equal or exceeds such program; and

(xvi) Banner towing.

4. *Restricted airspace.*

(a) Olympic Ring Airspace. No person operating an aircraft and no aircraft may enter, depart from, or fly within the Olympic ring airspace unless the aircraft operation is identified below and is operated in compliance with all applicable conditions:

(i) A 14 CFR part 121 Domestic, Flag Operation, 14 CFR part 135 Commuter Operation or public charter operation as defined by 14 CFR 108.3 of this chapter, is permitted in the Olympic ring airspace provided the aircraft is operated by a commercial passenger carrier certificated under 14 CFR part 119 of this chapter that:

(A) Is operated in accordance with 14 CFR part 121 or part 135 of this chapter, as applicable, under a regularly published schedule, or is operated as a 14 CFR part 91 maintenance or positioning ferry flight;

(B) Is operated in accordance with an open IFR flight plan, unless otherwise authorized by ATC;

(C) Has received a discrete beacon code and transmits that code while airborne in the Olympic ring airspace;

(D) Is conducted in accordance with a full security program under 14 CFR 108.101(a) (no exceptions allowed);

(E) Complies with the provisions of this SFAR and all other applicable FAA rules and regulations; and

(F) Complies with all additional safety and security requirements communicated to the carriers via NOTAM, security directives or operations specifications.

(ii) A 14 CFR part 121 supplemental all-cargo operation is permitted within the Olympic ring airspace provided the aircraft is operated by a commercial cargo carrier certificated under 14 CFR part 119 to operate in accordance with 14 CFR part 121 of this chapter that:

(A) Is operated in accordance with 14 CFR part 121 of this chapter under a published schedule, or is a 14 CFR part 91 maintenance or positioning ferry flight;

(B) Is operated in accordance with an open IFR flight plan, unless otherwise authorized by ATC;

(C) Has received a discrete beacon code and transmits that code while airborne in the Olympic ring airspace;

(D) Is in full compliance with the FAA's Domestic Security Integration Program or is in full compliance with a program that has been approved by the Administrator as equal to or exceeding the DSIP Program; and

(E) Complies with all additional security requirements communicated to the air carriers via NOTAM, security directive or operations specifications.

(iii) A foreign air carrier operating under 14 CFR part 129 or under authority from the U.S. Department of Transportation (14 CFR part 375) may enter the Olympic ring airspace only if the flight operation is in compliance with section 4(a)(x) of this SFAR or the carrier has been issued a waiver by the Administrator permitting the flight operation to enter the Olympic ring airspace and has demonstrated to the Administrator that the carrier's security program for that flight is similar to a security program that is in full compliance 14 CFR 108.101(a) of this chapter.

(iv) A law enforcement or aeromedical services aircraft may land in, depart from, or fly within the Olympic ring airspace provided it is in compliance with the applicable provisions of this SFAR and the pilot has notified the ASOC that the aircraft is landing in, departing from, or flying within the Olympic ring airspace and has received authorization from ASOC to conduct such operation.

(v) An aircraft carrying news media representatives may land in, depart from, or fly within the Olympic ring airspace only if it is in compliance with the applicable provisions of this SFAR and the pilot has notified ASOC that the aircraft is landing in, departing from, or flying within the Olympic ring airspace and has received authorization from ASOC to conduct such operation.

(vi) Aircraft directly supporting the Salt Lake Organizing Committee are permitted to operate in the Olympic ring airspace only if the operation is in compliance with the applicable provisions of this SFAR and the pilot notifies ASOC that it is landing in, departing from, or flying in the Olympic ring airspace and has received authorization from ASOC to conduct such operation.

(vii) Aircraft and crewmembers used in military operations or other operations in support of event security and public safety may operate within the Olympic ring airspace only if the pilot notifies ASOC that the aircraft is landing in, departing from, or flying in the Olympic ring airspace and receives authorization from ASOC to conduct such operation.

(viii) Aircraft carrying the President or Vice President of the United States are permitted to operate within the Olympic ring airspace as authorized by the U.S. Secret Service.

(ix) All aircraft carrying heads of state or other dignitaries may operate within the Olympic ring airspace provided the flight is in compliance with the applicable provisions of this SFAR and the pilot notifies ASOC that it is landing in, departing from, or flying in the Olympic ring airspace and receives authorization from ASOC to conduct such operation.

(x) Except for those aircraft flight operations specifically prohibited for the duration of this SFAR under section 3 (i) of this SFAR, aircraft operations not satisfying one of the categories identified in section 4 (a)(i) through (a)(ix) are permitted within the Olympic ring airspace only if all of the following conditions are satisfied—

(A) The operation is in compliance with all applicable provisions of this SFAR;

(B) The aircraft is operating in accordance with an open IFR flight plan from a Gateway airport;

(C) The aircraft, passengers, baggage and crewmembers have been inspected and cleared by SLC Olympic Security Team Inspectors at a Gateway airport, or at an airport designated in section 5 of this SFAR within the Olympic ring airspace;

(D) The aircraft has been assigned a discrete beacon code and transmits that code while airborne in the Olympic ring airspace; and

(E) The aircraft complies with any additional NOTAMS or security directives.

(xi) All other aircraft, including but not limited to operations conducted under part 103 of this chapter, are prohibited from operating within the Olympic ring airspace, unless specifically authorized by the terms of the SFAR or by special authorization by the Administrator and ASOC.

(xii) All aircraft are prohibited from operating within the Olympic ring airspace on February 8, 2002, from 1800 hours to 2200 hours MST, and on February 24, 2002, from 1800 hours to 2200 hours MST, except for aircraft operated by law enforcement, emergency medical services or the military, or other operations in support of national or event security and public safety provided that the pilot has notified ASOC that it needs to operate within the Olympic ring airspace and has received authorization from ASOC to conduct such operation; or the aircraft is operating under the direction of FAA ATC and is instructed by FAA ATC to enter the airspace due to weather, traffic or routing. The pilot must remain in radio contact with FAA ATC and under ATC direction for the entire time the flight is within the Olympic ring airspace.

(b) Venue TFR area and Olympic Village TFR area. [Note: These are the planned TFRs. Pilots must check the NOTAM system to ensure they have the latest TFR information.]

(i) No aircraft may enter or operate within the airspace overlying a Venue TFR or the Olympic Village TFR area during the times indicated, unless one of the following applies—

(A) The aircraft operation is for purposes of law enforcement, aeromedical services, or is a military flight or other operation in support of national or event security and public safety operations and the pilot has notified ASOC that it needs to operate within the Olympic venue TFR or Olympic village TFR area and has received authorization from ASOC to conduct such operation; or

(B) The aircraft is operating under the direction of Air Traffic Control, and Air Traffic Control has directed the pilot to operate within the venue or Olympic village TFR due to weather, traffic or routing. The pilot must remain in radio contact with FAA ATC and under ATC direction for the entire time the flight is within the venue or Olympic village TFR.

(ii) The following TFRs are established—

(A) The Olympic Village; Salt Lake City, Utah.

That airspace within a 3 NM radius of latitude (lat.) 40 deg.46′22″ N, longitude (long.) 111 deg.50′37″ W (SLC 110R/8 NM distance measuring equipment (DME) fix). Designated altitudes: Surface up to but not including 18,000 feet mean sea level (MSL). Times of Designation: January 25, 2002 to February 25, 2002, 24 hours per day. Using agency: Utah Olympic Public Safety Command (UOPSC). Contact: Patricia Miller, 801–257–2761 *www.uopsc.org*

(B) The E Center; West Valley City, Utah.

That airspace within a 2 NM radius of lat. 40 deg.42′07.6″ N, long. 111 deg.57′05.6″ W (SLC 155R/9 NM DME fix). Designated altitudes: Surface up to but not including 18,000 feet MSL. Times of Designation: February 6, 2002 to February 24, 2002, 24 hours per day. Using agency: UOPSC. Contact: Patricia Miller, 801–257–2761 *www.uopsc.org*

(C) Utah Olympic Oval; Kearns, Utah.

That airspace within a 2 NM radius of lat. 40 deg.40′22.8″ N, long. 112 deg.00′02.8″ W (SLC 168R/10.8 NM DME fix). Designated altitudes: Surface up to but not including 18,000 feet MSL. Times of Designation: February 6, 2002 to February 24, 2002, 24 hours per day. Using agency: UOPSC. Contact: Patricia Miller, 801–257–2761 *www.uopsc.org*

(D) The Peaks Ice Arena; Provo, Utah.

That airspace within a 2 NM radius of lat. 40 deg.14′03.7″ N, long. 111 deg.38′05.3″ W (FFU 084R/14.3 NM DME fix), excluding the airspace along and southwest of I–15. Designated altitudes: Surface up to but not including 18,000 feet MSL. Times of Designation: February 6, 2002 to February 24, 2002, 24 hours per day. Using agency: UOPSC. Contact: Patricia Miller, 801–257–2761 *www.uopsc.org*

(E) The Ice Sheet at Ogden; Ogden, Utah.

That airspace within a 2 NM radius of lat. 41 deg.11′00.6″ N, long. 111 deg.56′47.6″ W (OGD 092R/7.3 NM DME fix). Designated altitudes. Surface up to but not including 18,000 feet MSL. Times of Designation: February 6, 2002 to February 24, 2002, 24 hours per day. Using agency: UOPSC. Contact: Patricia Miller, 801–257–2761 *www.uopsc.org*

(F) Snowbasin Ski Area; Huntsville, Utah.

That airspace within a 2.5 NM radius of lat. 41 deg.12′40″ N, long. 111 deg.51′30″ W (OGD 077R/10.9 NM DME fix). Designated altitudes. Surface up to but not including 18,000 feet MSL. Times of Designation: February 6, 2002 to February 24, 2002, 24 hours per day. Using agency: UOPSC. Contact: Patricia Miller, 801–257–2761 *www.uopsc.org*

(G) Utah Olympic Park; Park City, Utah.

That airspace within a 2.5 NM radius of lat. 40 deg.42′40.6″ N, long. 111 deg.33′40.4″ W (SLC 097R/20.9 NM DME fix), excluding the airspace along and North of I–80. Designated altitudes: Surface up to but not including 18,000 feet MSL. Times of Designation: February 6, 2002 to February 24, 2002, 24 hours per day. Using agency: UOPSC. Contact: Patricia Miller, 801–257–2761 *www.uopsc.org*

(H) Park City and Deer Valley Mountain Resorts; Park City, Utah.

That airspace within a 3 NM radius of lat. 40 deg.38′31.8″ N, long. 111 deg.29′40.7″ W (SLC 103R/25.5 NM DME fix) excluding that airspace along and east of U.S. Highway 40. Designated altitudes: Surface up to but not including 18,000 feet MSL. Times of Designation: February 6, 2002 to February 24, 2002, 24 hours per day. Using agency: UOPSC. Contact: Patricia Miller, 801–257–2761 *www.uopsc.org*

(I) Soldier Hollow; Heber City, Utah.

That airspace within a 2.5 NM radius of lat. 40 deg.28′53.7″ N, long. 111 deg.29′44.4″ W (FFU 043R/23.9 NM DME fix) excluding that airspace along and southeast of Highway 189. Designated altitudes. Surface up to but not including 18,000 feet MSL. Times of Designation: February 6, 2002 to February 24, 2002, 24 hours per day. Using agency: UOPSC. Contact: Patricia Miller, 801–257–2761 *www.uopsc.org*

5. *Flights operating within the Olympic Ring Airspace pursuant to section 4 (a)(x) of this SFAR.*

(a) General Description. (i) All flights that operate in accordance with section 4 (a)(x) of this SFAR must arrive at, or depart from, one of the following airports within the Olympic ring airspace: Salt Lake City International (SLC), Salt Lake City, UT; Ogden Municipal Airport (OGD), Ogden, UT; Provo Municipal Airport (PVU), Provo, UT; Heber City Municipal-Ross McDonald Field Airport (36U), Heber City, UT; Salt Lake City Municipal Airport (U42), Salt Lake City, UT; or Skypark Airport (BTF), Bountiful, UT (rotorcraft operations only).

(b) Security Check: (i) Prior to entering the Olympic ring airspace, all operations conducted in accordance with section 4 (a)(x) of this SFAR must first land at one of the following Gateway airports listed below and undergo a consensual security inspection by SLC Olympic Security Team Inspectors and be approved for landing in the Olympic ring airspace:

(A) City of Colorado Springs Municipal Airport, Colorado Springs, CO (COS);

(B) Boise Air Terminal (Gowen Field), Boise, ID (BOI);

(C) Walker Field, Grand Junction, CO (GJT); and

(D) McCarran International Airport, Las Vegas, NV (LAS).

(ii) An aircraft (including passengers and baggage) and crew that has been inspected at a Gateway airport, approved for entering the Olympic ring airspace by SLC Olympic Gateway Security Team Inspectors and departs for a designated airport located within the Olympic ring airspace, is prohibited from making any intermediate stops. Any aircraft that has been inspected and approved by SLC Olympic Gateway Security Team Inspectors at a Gateway airport that lands at an airport other than its intended destination within the Olympic ring airspace, must be reinspected and reapproved by SLC Olympic Gateway Security Team Inspectors at a Gateway airport before entering the Olympic ring airspace.

(iii) All flights conducted under section 4 (a)(x) of this SFAR that depart from an Olympic ring airport identified in section 5 (a) of this SFAR must first be inspected and approved for departure by SLC Olympic Gateway Security Team Inspectors and must operate on an IFR flight plan from the Gateway airport.

(iv) No earlier than 48 hours prior to arrival at a Gateway airport, or departure from an airport within the Olympic ring airspace, an operator must arrange for a security inspection with the SLC Olympic Security Team Inspectors. This appointment may be made by calling: 801–775–5524.

6. *Slot reservation process.* (a) Starting February 8, 2002, 0000 hours MST, through February 25, 2002, 2359 hours MST, all aircraft arriving or departing at one of the following airports located outside of the Olympic ring airspace must have a slot reservation prior to arrival or departure: Wendover, Logan, or Brigham City, Utah, or Evanston, Wyoming.

(b) Slot reservations for the airports identified in section 6 (a) of this SFAR may be obtained up to 72 hours in advance by contacting 1–800–975–9755 or by accessing *www.fly.faa.gov* starting February 5, 2002.

7. *Termination date.* Except for section 4 (b)(i) and 4 (b)(ii)(A), this SFAR terminates on February 24, 2002, 2359 hours MST, unless an earlier date is prescribed for a specific provision. The Olympic Village TFR terminates on February 25, 2002, at 2359 hours MST.

Issued in Washington, DC, on January 15, 2002.

Jane F. Garvey,

Administrator.

[FR Doc. 02–1441 Filed 1–16–02; 10:15 am]

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Federal Register

Friday,
January 18, 2002

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Airspace and Flight Operations Requirements for the 2002 Winter Olympic Games, Salt Lake City, UT; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2002–11332; SFAR No. 95]

RIN No. 2120–AH61

Airspace and Flight Operations Requirements for the 2002 Winter Olympic Games, Salt Lake City, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Special Federal Aviation Regulation (SFAR), applicable February 8, 2002, through February 24, 2002, establishes restrictions for aircraft operations in the vicinity of the 2002 Winter Olympic Games to be held in Salt Lake City, UT. Additionally, this action notifies the public as to the establishment of temporary flight restrictions in areas overlying the various competition venues and the Olympic Village for the XIX Olympic Winter Games. This action also establishes a security process for certain flight arrivals and departures at specified airports in the vicinity of the Olympic Games. The FAA and the United States Secret Service (Secret Service) believe this action is necessary for the security of participating athletes, dignitaries, and others attending the Winter Games, and the people of Utah, and for the safe operation and management of aircraft operating to, within, and from these areas.

DATES: Effective January 15, 2002. The Olympic Village temporary flight restriction (TFR) area is implemented January 25, 2002, 0000 hours mountain standard time (MST), through February 25, 2002, 2359 hours MST. The Olympic venue TFR's are implemented February 6, 2002, 0000 hours MST through February 24, 2002, 2359 hours MST. The Olympic Ring Airspace, the slot reservation program and the security inspection process are implemented February 8, 2002, 0000 hours MST through February 24, 2002, 2359 hours MST.

FOR FURTHER INFORMATION CONTACT: Cliff Armstrong, Special Operations Division, ATP–200, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–9155.

SUPPLEMENTARY INFORMATION:

Availability of This Action

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to search function of the Department of Transportation's electronic Docket Management System (DMS) Web page *(http://dms.dot.gov/search).*

(2) On the search page, type in the last four digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through FAA's web page at *http://www.faa.gov/avr/armhome.htm* or the **Federal Register**'s web page at *http://www.access.gpo.gov/su_docs/aces/aces140html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this final rule.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information advice about compliance with statutes and regulations within the FAA's jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official. Internet users can find additional information on SBREFA on the FAA's web page at http://www.faa.gov/avr/arm/sbrefa.htm and send electronic inquiries to the following Internet address: *9-AWA-SBREFA@faa.gov.*

Background

The 2002 Winter Olympic Games will be held February 8 through February 24, 2002, primarily in the Salt Lake City, Utah, area. This is an important international sporting event. In terms of air traffic demand, the pre-game, the game, and the post-game activities from January 25 through February 25, 2002, are expected to generate substantial increases in aircraft operations in Salt Lake City and the surrounding areas. The Secret Service has been charged with the responsibility of developing a security plan for the Olympics, and the United States Customs Service (Customs Service) has been granted the authority for providing the security force. Additionally, the FAA is responsible for implementing the security plan as it pertains to aviation security.

Prior to September 11, 2001, the FAA, in conjunction with the Secret Service and the Customs Service, determined that it would be necessary to establish TFR's over each Olympic venue and over the Olympic village. These TFR's were to be implemented by a notice to airmen (NOTAM), pursuant to the FAA's regulations in Title 14 Code of Federal Regulations (14 CFR) section 91.145, TFR in the Vicinity Of Aerial Demonstrations Or Major Sporting Events, and section 99.7, Special Security Instructions. In addition, the FAA is establishing a reservation system to manage Instrument Flight Rules (IFR) operations into and out of key airports in the Salt Lake City area.

The terrorist attacks of September 11, 2001, and the nation's continuing high alert status have led the Secret Service, and the Customs Service, to reevaluate the security issues associated with staging a large international event such as the Winter Olympic Games. Additionally, the mountainous terrain within and around Salt Lake City provides unique security concerns that, in this new environment, necessitate stricter security measures to protect participating athletes, dignitaries, and others attending the Winter Games, and the people of Utah. These additional security measures are part of a broader security package that encompasses all transportation modes.

Given the short time frame between the events of September 11, 2001, and the 2002 Winter Olympic Games, the FAA is adopting this SFAR as a final rule, pursuant to its authority under 49 U.S.C. 40103 and 44701(a)(5) and section 553 of the Administrative Procedures Act. Section 40103 provides that the Administrator shall develop ''plans and policy for the use of navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft'' (See 49 U.S.C. 40103(b)(1)). In addition, the FAA shall ''establish security provisions that will encourage and allow the maximum use of the navigable airspace by civil aviation aircraft consistent with national security, [and] the Administrator, in consultation with the Secretary of Defense shall * * * (B) by regulation or order, restrict or prohibit flight of civil aircraft that the Administrator cannot identify, locate and control with available facilities in those areas.'' See 49 U.S.C. 40103(b)(3)(B). See also, 49 U.S.C. 44701(a)(5).

The Administrative Procedures Act permits an agency to forego notice and comment rulemaking when ''the agency for good cause finds * * * that notice and public procedures thereon are impracticable, unnecessary, or contrary to the public interest.'' See 5 U.S.C.

553(b)(B). The FAA finds that notice and comment is impracticable and unnecessary because this SFAR is a temporary action, imposed for a very short time-frame, that is necessary to provide for the security of the Winter Olympic Games, the participating athletes, dignitaries, others attending the Winter Games, and the people of Utah. Additionally, the FAA finds that it is contrary to the public interest to follow notice and comment procedures and thereby delay this final rule because the affected parties need time to obtain approval from the Utah Olympic Public Safety Command (UOPSC) if they plan on operating within the Olympic ring airspace; and to take actions to otherwise mitigate the impact of this final rule.

Airspace Restrictions

The Secret Service has recommended, a four-pronged plan for securing the airspace around the Salt Lake Area that includes the following—(1) A 45 nautical mile (NM) restricted area around Salt Lake City Airport (Olympic ring airspace); (2) nine TFR's established over the Olympic venues (including the Olympic Village); (3) a slot reservation program for certain airports located just outside of the Olympic ring airspace; and (4) a security inspection for flights operating under section 4(a)(x) of this SFAR.

In support of this security plan, the FAA is establishing the Olympic ring airspace which consists of a 45 NM circle centered on Runway 17 Localizer/DME (I–BNT) at Salt Lake City International Airport with a vertical limit extending from the surface up to, but not including 18,000 feet Mean Sea Level (MSL). Operating restrictions within the 45 NM radius Olympic ring airspace are effective for the period from February 8, 2002 through February 24, 2002, 24 hours a day. The Olympic ring airspace includes all Olympic venues, the major population center in Utah, and key transportation infrastructure modes. The establishment of this Olympic ring airspace will restrict aircraft operations, including, but not limited to, ultralight vehicles regulated under 14 CFR part 103. Air Traffic Control (ATC) will retain the ability to manage aircraft through the Olympic ring airspace in accordance with normal traffic flows. No crewmember (including flight attendants) can enter the Olympic ring airspace without having a background check completed by UOPSC. Carriers who have security programs that comply with section 108.101(a) are recognized by UOPSC. For any questions on your accreditation status, please call UOPSC.

Only certain airports within the Olympic ring airspace may be used by people operating aircraft during the effective time period of this SFAR. These airports are listed in section 3(g) of this SFAR. All other airports within the Olympic ring airspace cannot be used by people operating aircraft, except that the military and other security personnel may use other airports (*e.g.,* military airports) if authorized by Aviation Security Operations Command (ASOC) under section 4 (a)(vii). See also section 3 (h). Additionally, only those flights specifically authorized in Section 4 of this SFAR are permitted to operate in the Olympic ring airspace in accordance with the conditions of this SFAR. On February 8, 2002, 1800 hours MST to 2200 hours MST, and February 24, 2002, 1800 hours MST to 2200 hours MST, the Olympic ring airspace will be closed to all air traffic except aeromedical aircraft, military aircraft, aircraft operating in support of national or event security and public safety, and aircraft instructed by ATC to enter the airspace due to weather, traffic or special ATC routing.

Within the Olympic ring airspace, the FAA is establishing additional flight restrictions over the Olympic village TFR and venue TFR areas. The establishment of TFR areas over the Olympic Village and the competition venues creates no-fly zones for all aircraft, except:

(1) Aeromedical aircraft;

(2) Military aircraft;

(3) Operations in support of national or event security and public safety that are authorized by UOPSC; or

(4) Aircraft that are under ATC control.

Operating restrictions within the airspace overlying the Olympic Village are effective for the period from January 25, 2002, through February 25, 2002, 24 hours a day. Operating restrictions within the airspace overlying the competition venues are effective for the period from February 6, 2002 through February 24, 2002, 24 hours a day. The restrictions become effective before and after the Olympic events to accommodate the observation and securing of the airspace. The TFR areas are effective from the surface up to but not including 18,000 feet MSL. The TFR area sites are as follows—

(1) Olympic Village—Salt Lake City, UT;
(2) The E Center—West Valley City, UT;
(3) Utah Olympic Oval—Kearns, UT;
(4) The Peaks Ice Arena—Provo, UT;
(5) The Ice Sheet at Ogden—Ogden, UT;
(6) Snowbasin Ski Area—Huntsville, UT;
(7) Utah Olympic Park—Park City, UT;
(8) Park City and Deer Valley Mountain Resorts—Park City, UT; and
(9) Soldier Hollow—Heber City, UT.

The TFR areas are circular areas of 2 to 3 NM in radius from the surface up to, but not including, 18,000 feet MSL. Aircraft and ultralight vehicles regulated under 14 CFR part 103 are prohibited from operating within the Olympic ring airspace during the effective dates and times unless authorized by the designated using agency or ATC. The locations, dimensions, and effective times of the TFR areas are published for use by all pilots on air navigation charts and in the **Federal Register**, and specific details will be disseminated by NOTAM. These publications are available from the Flight Service Station and on the FAA website, www.faa.gov/ntap. Requests for access to the airspace areas can be obtained by contacting the using agency. Olympic venues that fall within Class B surface areas, specifically, the Olympic Village in Salt Lake City, the E Center in West Valley City and the Olympic Oval in Kearns, are charted along with those outside of Class B airspace.

Slot Reservation Program

The FAA is aware that some operators may choose to conduct operations from airports outside the Olympic ring airspace. There are four airports located near the Olympic ring airspace that the FAA believes are likely to receive an increased amount of traffic due to the Olympics. These four airports are Wendover, Logan, and Brigham City, UT, and Evanston, WY. In order to manage aircraft operations at those airports the FAA is establishing a slot reservation program for these four airports. Thus, beginning on February 8, 2002, 0000 hours, through February 25, 2002, 2359 hours, all aircraft arriving or departing at these four airports must have a slot reservation prior to arrival or departure. Slot reservations may be obtained up to 72 hours in advance starting February 5, 2002, by calling 1–800–875–9755, 24 hours a day, or by accessing the website www.fly.faa.gov. Flights arriving or departing these airports may not enter the Olympic ring airspace unless specifically authorized in section 4 (a)(i) through (ix) of this SFAR.

Security Inspection

To ensure the safety of the Winter Olympic Games, the participating athletes, dignitaries, others attending the Winter Games, and the people of Utah, all flights entering the Olympic ring airspace under section 4(a)(x) of this SFAR (including charter operations, corporate operations and general

aviation) must be inspected at a Gateway airport and approved by the Salt Lake City (SLC) Olympic Security Team Inspectors prior to operating within the Olympic ring airspace. Gateway airports are those airports outside of the Olympic ring airspace that have SLC Olympic Security Team Inspectors present to inspect and approve an aircraft to enter the Olympic ring airspace. The following are designated Gateway airports:

(1) City of Colorado Springs Municipal Airport, Colorado Springs, CO (COS);
(2) Boise Air Terminal (Gowen Field), Boise, ID (BOI);
(3) Walker Field, Grand Junction, CO (GJT); and
(4) McCarran International Airport, Las Vegas, NV (LAS).

Flight operations conducted under section 4(a)(x) of this SFAR that depart from an airport within the Olympic ring airspace must be inspected and approved by SLC Olympic Security Team Inspectors at that airport prior to departure. Operators must arrange for an appointment with SLC Olympic Security Team Inspectors no earlier than 48 hours in advance prior to landing at a Gateway airport or departing from an airport within the Olympic ring airspace by calling 801–257–2761. Failure to arrange for an inspection appointment may result in long delays and potentially being denied entry into or out of the Olympic ring airspace. This security inspection process is applicable at all times from February 8, 2002, 0000 hours MST, to February 24, 2002, 2359 hours MST.

Aircraft operators covered by this SFAR will be permitted to conduct operations from February 8, 2002, 0000 hours MST, to February 24, 2002, 2359 hours MST, only at the following airports within the Olympic ring airspace:

(1) Salt Lake City International (SLC), Salt Lake City, UT;
(2) Ogden Municipal Airport (OGD), Ogden, UT;
(3) Provo Municipal Airport (PVU), Provo, UT;
(4) Heber City Municipal-Ross McDonald Field Airport (36U), Heber City, UT;
(5) Salt Lake City Municipal Airport (U42), Salt Lake City, UT; and
(6) Skypark Airport (BTF), Bountiful, UT (rotorcraft operations only).

Exceptions

This SFAR contains provisions to provide for the safety and security of the Winter Olympic Games, participating athletes, dignitaries, others attending the Winter Games, and the people of Utah, and for the flexible and efficient management and control of air traffic. Included in this SFAR are provisions that give priority to, or exclude from requirements of the special regulation, flight operations dealing with or containing essential military, medical emergency, rescue, law enforcement, public health and welfare, Presidential, and heads of state.

Obtaining U.S. Air Navigation Charts

The following provides information on how to obtain the special air navigation charts for the Olympic Games, as well as other air navigation charts for use in the U.S. The National Aeronautical Charting Office (NACO) publishes and distributes aeronautical charts of the U.S. National airspace system (NAS). Charts are readily available through a network of sales agents located at or near principal civil airports. Due to the large variety, all NACO products may not be available locally; users can procure these products directly from NACO. Chart prices, subscription rates, and catalogs of related publications are available on request and are obtainable by writing to: FAA, National Aeronautical Charting Office, AVN–530, Distribution Division, Riverdale, Maryland 20737, USA, Phone 1–800–638–8972, Fax 301–436–6829, E-Mail 9–AMC–ChartSales@faa.gov.

Notice to Airmen (NOTAM) Information

ATC and air traffic flow management systems will monitor and assess the air traffic demand so that restrictions are kept to an essential minimum. To assure maximum flexibility, the FAA will announce all restrictions and other actions including the lifting of any restrictions taken by the FAA in response to changing airspace conditions through NOTAMS.

Time-critical aeronautical information that is of a temporary nature or is not sufficiently known in advance to permit publication on aeronautical charts or in other operational publications, receives immediate dissemination via the National NOTAM system. All domestic operators planning flight to the Olympics need to pay particular attention to NOTAM D and Flight Data Center (FDC) NOTAM information. NOTAM D information could affect a pilot's decision to make a flight. NOTAM D pertains to information on airports, runways, navigational aids, radar services, and other information essential to flight. An FDC NOTAM will contain information which is regulatory in nature, such as amendments to aeronautical charts and restrictions to flight. FDC NOTAM and NOTAM D information would also be provided to international operators in the form of International NOTAM's. NOTAM's are distributed through the National Communications Center in Kansas City, Missouri, USA, for transmission to all air traffic facilities having telecommunications access.

Pilots and operators should consult the Flight Service Station or the FAA website at www.FAA.gov/ntap. For more detailed information concerning the NOTAM system, refer to the Aeronautical Information Manual, ''Preflight'' Section.

Operators of aircraft and ultralight vehicles regulated under 14 CFR part 103 must clearly understand that the restrictions in this SFAR are in addition to other laws and regulations of the U.S. The SFAR does not waive or supersede any U.S. law or obligation. When operating within the jurisdictional limits of the U.S., operators of foreign aircraft must conform to all applicable requirements of U.S. Federal, State, and local governments. In particular, aircraft operators planning flights into the U.S. must be aware of and conform to the rules and regulations of the:

(1) U.S. Federal Aviation Administration regarding flights entering the United States;

(2) U.S. Customs Service, Immigration and other authorities regarding customs, immigrations, health, firearms, and imports/exports;

(3) U.S. FAA regarding flight in or into United States airspace. This includes compliance with Federal aviation regulations regarding operations within the territorial airspace of the United States through air defense identification zones, and compliance with general flight rules; and

(4) Airport management authorities regarding use of airports and airport facilities.

Justification for Immediate Adoption

Because the circumstances described herein warrant immediate action, the Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further, the Administrator finds that good cause exists under 5 U.S.C. 553(d) for making this rule effective immediately upon issuance by the FAA Administrator. This action is necessary to permit aircraft operations at the affected airports and prevent possible hazardous actions directed against aircraft, persons, and property within the United States.

Environmental Effects

This action establishes the Olympic ring airspace and TFR areas for safety and security purposes and curtails or limit certain aircraft operations within designated areas at defined dates and times, rather than require aircraft to be operated along specified routings or in accordance with specific procedures. Additionally, this action is temporary in nature and effective only for the dates and times necessary to provide for the safety and protection of participants and spectators on the ground, as well as law enforcement and security personnel operating in the air at Olympic game venues. ATC retains the ability to direct aircraft through the restricted areas in accordance with normal traffic flows. The FAA believes, therefore, that the establishment of temporary flight restriction areas has minimal impact on ATC routings or procedures.

Further, this action results in a reduction in aircraft activity in the vicinity of the Olympic games by restricting aircraft operations. Therefore, there will be fewer aircraft operations in the vicinity of the Olympic games than would have occurred if the restricted areas were not in place and noise levels associated with that greater aircraft activity also are reduced. Additionally, aircraft avoiding the restricted areas will not be routed over any particular area. This action, therefore, does not result in any long-term action that routinely routes aircraft over noise-sensitive areas. For the reasons stated above, the FAA concludes that this rule does not significantly affect the quality of the human environment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices (SARP) to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to this SFAR.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the small amount of paperwork burden associated with the rule will be submitted to the Office of Management and Budget for review.

Regulatory Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only if the agency makes a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. sections 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards. Where appropriate, agencies are directed to use those international standards as the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules. This requirement applies only to rules that include a Federal mandate on State, local or tribal governments or the private sector, likely to result in a total expenditure of $100 million or more in any one year (adjusted for inflation.) In conducting these analyses, FAA has determined this rule:

(1) Has benefits which do justify its costs, is a ''significant regulatory action'' as defined in the Executive Order and is ''significant'' as defined in DOT's Regulatory Policies and Procedures;

(2) Will have a significant impact on a substantial number of small entities,

(3) Will not constitute a barrier to international trade; and

(4) Does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

Costs and Benefits

There are five major areas where economic impacts are likely: (1) Slot reservation system; (2) the establishment of the Olympic ring airspace; (3) temporary flight restrictions; (4) background checks; and (5) required use of gateway airports for some aircraft operations for security inspections prior to entering the Olympic ring airspace.

1. Slot Reservation System

During the busy Olympic period, the U.S. Government must assure the security of the Olympic venues, the athletes, visitors and people of Utah, while also maintaining the safe and efficient use of airspace. To achieve these objectives the FAA will implement an arrival and departure slot reservation system to manage air traffic into and out of four airports serving the Olympic games that are located outside the Olympic ring airspace. These four airports are Wendover, Logan and Brigham City, Utah, and Evanston, Wyoming. The FAA has determined that a slot program is necessary at these airports because it anticipates a significant increase in air traffic at these airports due to the Olympics.

The FAA anticipates that most passenger flights going into one of the slot airports would be operating under either 14 CFR parts 91 or 135. Some cargo operations operating under either 14 CFR parts 121 or 135 also may use the slot airports and then move cargo into the Salt Lake City area by motor vehicle. Flight operations that are not able to secure a slot reservation may have to fly into an airport further outside the Olympic ring airspace, or be postponed.

For 14 CFR part 135 flight operations, the cost of the cancellations would be the value of the flights to airlines and passengers less aircraft operating cost to conduct the flights. Other flights may be diverted to other airports in the Olympic games area. Diversions would result in additional cost of trips to and from places of intended lodging and possible extra aircraft operation costs. The major economic impact in the case of diversion would be inconvenience to operators who may not be able to operate at their first choice airport. Because such occurrences are of a limited duration, the FAA believes that costs associated with any diversions from one airport to another in the affected area will probably be small. Current personnel and equipment resources will absorb the additional FAA administrative workload generated by this emergency final rule. The slot provision will not require any additional air traffic controllers nor any additional radar control equipment.

The benefits of the slot reservation system will be better management of the air traffic into airports located just outside the Olympic ring airspace. The increase of air traffic due to the Olympics could overwhelm these smaller airports without a slot reservation system. Additionally, given this increase in air traffic, there is an increased risk of accidents due to this unprecedented congestion in the airspace outside the Olympic ring if greater controls are not implemented. Implementing a slot reservation system also may reduce the number of delays at these airports.

2. Establishment of Olympic Ring Airspace

The FAA is establishing a 45 NM ring around Salt Lake City Airport Runway 17, with a vertical limit extending from the surface up to but not including 18,000 feet MSL. This airspace is known as the Olympic ring airspace. There are

a total of 10 public airports located within this ring and an unknown number of private airports. Aircraft operators may operate only at the following six airports within the Olympic ring airspace—

- Salt Lake City International (SLC) Salt Lake City, UT;
- Ogden Municipal Airport (OGD),Ogden, UT;
- Provo Municipal Airport (PVU), Provo, UT;
- Heber City Municipal-Ross McDonald Field Airport (36U), Heber City, UT;
- Salt Lake City Municipal Airport (U42), Salt Lake City, UT; and
- Skypark Airport (BTF), Bountiful, UT (rotorcraft operations only).

The FAA is aware of four public use airports located in Utah at which aircraft will not be permitted to operate due to the imposition of the Olympic ring airspace. These are Eagle Mountain, Morgan County, Spanish Fork, and Tooele Valley. It is necessary to prohibit aircraft operations due to manpower issues and to maintain security over the airspace. In selecting the airports that will be available for aircraft operations the U.S. government considered many factors including location, IFR capability, the size of the airport, the type of aircraft it will accommodate, and the presence of air traffic control towers. Airports that are not available for aircraft operations will likely lose or delay operating revenue. Additionally, the restrictions may cause some operators to relocate aircraft to other airports where they can conduct operations during the February 8, 2002 through February 24, 2002, time period. The airports at which aircraft operators will not be permitted to operate all lack control towers. Eagle Mountain does not provide fuel or any other services. Bolinder Field-Tooele Valley, Morgan County, and Spanish Fork-Springville airports do provide fuel sales, aircraft rentals, maintenance, and flight training. According to available information, general aviation operations account for virtually all activity at these airports except for Spanish Fork where an estimated 5 percent of the operations are conducted by air taxis. Between 110 and 150 aircraft are based at these airports including approximately 6 multi-engine airplanes, 17 gliders and 2 ultralights.

There are a number of restrictions on the aircraft that can enter the Olympic ring airspace. The following flight operations will be prohibited within the Olympic ring airspace at all times—

(a) Hang gliding, paragliding and parasailing;

(b) Acrobatic flights;

(c) Radio remote-controlled aircraft;

(d) Gliders;

(e) Ultralights;

(f) Hot air balloons/airships;

(g) Tethered balloons;

(h) Flight training;

(i) Parachuting;

(j) Agriculture/crop dusting

(k) Animal population control flights

(l) Rockets (manned and unmanned);

(m) Shrimp spotters;

(n) Helicopter skiing;

(o) Commercial cargo carriers that do not have a Domestic Security Integration Program (DSIP) or a program that the Administrator has determined is equal to or exceeds such program; and

(p) Banner towing.

This prohibition is only for the duration of the Olympic ring airspace, thus while it will impact these operations significantly, such impact is for a limited period of time.

Passenger operations conducted by 14 CFR part 121 domestic or flag carriers, 14 CFR part 135 commuter operations or public charter operations as defined by 14 CFR section 108.3 are permitted to operate into, out of and within the Olympic ring airspace provided certain conditions are satisfied. 14 CFR part 121 all cargo carriers are permitted within the Olympic ring airspace provided certain conditions are satisfied. The FAA anticipates that only two conditions could impose additional costs on the operators—the condition that all crewmembers be accredited and the condition that requires all operators using this provision to have a security program in compliance with 14 CFR 108.101(a). The security program condition eliminates certain operators who would operate a flight subject to less than the full security program under 14 CFR 108.101(a). The FAA recognizes that this may cause certain operators to be diverted to Gateway airports, thus accruing additional costs (flight time, inspection time, fuel). However, the cost of these extraordinary regulations are necessary to ensure that aircraft entering the Olympic ring airspace meet a certain level of security.

14 CFR part 121 supplemental all cargo operations are permitted within the Olympic ring airspace provided, among other things, the carrier operates under a published schedule (or is a 14 CFR part 91 maintenance or positioning ferry flight) and the flight is in full compliance with the FAA's Domestic Security Integration Program. The FAA is aware that these conditions will prohibit certain cargo carriers from entering Olympic airspace, however, the Government is concerned about its ability to maintain security of the airspace with cargo carriers who do not comply with all of the prescribed conditions. This action will result in certain cargo carriers flying to outlying airports and transferring cargo to motor vehicle to be moved into the Olympic area. This additional cost, however, is necessary to ensure that aircraft entering the Olympic ring airspace meet a certain level of security.

Foreign air carriers that operate under 14 CFR part 129 or special authority from the Department of Transportation are permitted to enter the Olympic ring airspace only if the flight operation has been inspected at a Gateway airport in accordance with section 4(a)(x) or the carrier has been issued a waiver by the Administrator permitting the flight operation to enter the Olympic ring airspace and has demonstrated to the Administrator that the carrier's security program for that flight is similar to a security program that is in compliance with 14 CFR 108.101(a). The FAA believes that through the waiver, it can assure that foreign air carriers are not being discriminated against as compared to similarly situated domestic carriers.

With the exception of law enforcement, aeromedical services, news media aircraft, aircraft in support of the Olympics, military aircraft, aircraft carrying heads of state or other dignitaries, or foreign aircraft which are subject to special conditions, all other aircraft must enter the Olympic ring airspace only after landing at a Gateway airport and having a security inspection completed. See section 4(a)(x) of the SFAR. The costs to these operators are discussed herein under ''Gateway Inspections.''

3. Temporary Flight Restrictions

To secure the airspace around the Olympic venues, the FAA is establishing nine TFR areas over the 2002 Winter Olympic village and Olympic venue areas. The Olympic Village TFR will be effective from January 25, 2002, 0000 hours, through February 25, 2002, 2400 hours. The competition venue TFR's will be effective from February 6, 2002, 0000 hours, through February 24, 2002. The establishment of TFR's over the Olympic ring airspace will result in the restriction of aircraft operations from the surface up to but not including 18,000 feet MSL.

These restrictions may require some flights to circumnavigate the TFR areas. The major economic impact of circumnavigation will be inconvenience to operators who may have wanted to operate in the area of the TFR's. Because such occurrences are of limited duration and the restricted area is limited in size,

the FAA believes that any circumnavigation costs will be negligible. Maps depicting the TFR's may be purchased from NACO and will be shipped via United Parcel Service, First Class Mail, or priority package. The costs associated with these charts are small.

The potential benefits of the proposed TFR airspace will be primarily enhanced safety to the public. Enhanced safety will be achieved by reducing the risk of a terrorist attack from the air during the Olympic games.

4. Background Checks

All crewmembers will be required under this SFAR to be ''accredited'' prior to serving on an aircraft that enters the Olympic ring airspace. All crewmembers who are operating aircraft for operators with a security program in compliance with 14 CFR 108.101(a) should have a minimal accreditation burden. The crewmember accreditation process entails the submission of personal, company and aircraft information, and a criminal history review that requires the applicant to submit their fingerprints. The FAA estimates that it will take each applicant 1 hour to complete the forms, provide the required photos and fingerprints at a cost of $50, plus a $15 processing fee for a total of $65. The FAA had approximately 500 completed applications on hand as of the year-end and it is possible that another 500 applications will be submitted. Thus the total cost to the applicants is estimated to be approximately $65,000 ($65 × 1,000). The UOPSC will process the applications.

5. Gateway Airport Inspections

Flight operations conducted under section 4(a)(x) of the SFAR must have a special security check at a Gateway airport prior to entering the Olympic ring airspace, or prior to departing from an airport within the Olympic ring airspace. This security check will involve a check of all crewmembers, passengers, baggage and aircraft.

There are four Gateway airports:

(1) City of Coloardo Springs Municipal airport, Colorado Springs, CO (COS);
(2) Boise Air Terminal (Gowen Field), Boise, ID (BOI);
(3) Walker Field, Grand Junction, CO (GJT); and
(4) McCarran International Airport, Las Vegas, NV (LAS).

A team composed of an FAA inspector, other federal and local law enforcement representatives, and the National Guard will conduct the inspections. Assuming two teams are assigned to each airport, approximately 40 personnel will be assigned to this task for the 17-day period. Assuming an eight-hour shift at an hourly rate of $25, each team member will cost $200 per day and the total cost will be approximately $136,000 ($200 × 40 × 17). These costs will be borne by the federal and local governments.

Flights conducted under section 4(a)(x) are principally conducted by on-demand operators, corporate owners, and the general aviation community. These operators will incur additional costs to comply with this inspection requirement. The costs consist of lost time and extra operating costs. The inspection time will vary by size of aircraft and load factor; small aircraft may take less than 10 minutes while a large jet may take an hour. The FAA anticipates that this check will average ½ hour per aircraft.

Extra flying time will be required since these flights must stop at one of the four airports rather than flying directly to their destination airport. The airports where the inspections will be conducted are located from 215 miles to 407 miles from Salt Lake City with an average of 320 miles. While some flights may not incur this many extra miles depending on their routing, 320-miles serves as a benchmark. The distance of 320 miles represents about 85 minutes flight time for a twin engine turboprop and about 40 minutes for a business jet. Since the type of aircraft subject to the inspection is unknown at this time, an average of 60 minutes additional flying time is assumed. Thus the total additional time each flight will experience is estimated at 90 minutes.

The value of this additional travel time to each passenger is estimated at $50. This is based on a economic value of passenger time per hour for all general aviation passengers as calculated in Table E–1of the FAA's ''Economic Values for Evaluation of Federal Aviation Administration Investment and Regulatory Programs'', June 1998, adjusted using the GDP implicit price deflator. The following values are also drawn from Table E–1. The ''typical'' general aviation and on-demand aircraft carries 3 passengers so the value of passenger time lost per flight is approximately $150. However, it is anticipated that larger aircraft will be used for these Olympic flights and are more likely to carry an estimated 16 passengers per flight (based on the number of passengers on commuter flights) thus increasing the value of passenger time lost per flight to approximately $800.

The ''typical'' general aviation and on-demand aircraft incurs fixed and variable operating costs per hour of approximately $725 while the larger aircraft which may be used for these Olympic flights incur operating costs of approximately $910 per hour (based on commuter flights operating costs). Thus the extra fixed and variable costs due to the inspection and extra flight time are estimated to range between $1,090 and $1,365 per flight.

The benefits of the Gateway Airport Inspection program will be a level of security equivalent to that of flights operated under § 108.101(a) of the Federal aviation regulations. This will provide a higher level of security within the Olympic ring that would not be possible without this program. These emergency procedures are necessary because of the terrorist attacks of September 11, 2001.

The FAA has determined that this rule will impose only temporary costs on the public. The overall magnitude of these costs while undetermined are limited to a 17-day period. The benefits will be increased aviation security resulting from a lower risk of accidents due to increased congestion during the 2002 Winter Olympics and increased security at the Olympic events due to the security inspections at the Gateway Airports.

Considering the temporary nature of this rule and the inherent benefits to the public, the FAA finds that the benefits of the rule justify its costs.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and applicable statues, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the Act provides that the head of the agency may so certify and an RFA is not required. The certification must include

a statement providing the factual basis for this determination, and the reasoning should be clear.

Many of the flights that will require inspections will be conducted by private operators and are not business flights for purposes of this analysis. A number of flights will be conducted as on-demand charter flights and the costs of the inspection time and the extra flight time will be costs to the business. However, it is likely that these costs will be borne by the chartering party and not the operator. In the event an on-demand operator must absorb the extra cost, the cost would consist of the crew accreditation fee and the extra operating cost. The accreditation fee will be $130 for two crewmembers and, assuming the use of a larger aircraft, additional operating costs of $1,365 for a total of approximately $1,500. If the operator flew one flight each day of the Olympics with a new crew each day the total cost would be $25,500.

The Small Business Administration (SBA) suggests that aircraft operators with 1,500 or fewer employees are ''small'' entities. Thus, nearly all on-demand charter operators are small entities. Data for firms with fewer than 1,500 employees are not available but a SBA analysis of Bureau of Census data for non-scheduled air transportation firms with fewer than 500 employees indicates they have average revenues of $1.87 million. Thus the possible cost of this emergency rule would equate to as much as 1.4 percent of a small entity's annual revenue. Since adequate data is not immediately available to more clearly establish impacts, the FAA assumes that this final rule will have a significant economic impact on a substantial number of small entities.

Accordingly, the FAA has prepared the following regulatory flexibility analysis although it is not required by the RFA because no notice of public rulemaking for this final rule will be published.

Reasons Agency Action Is Being Taken

The Secret Service and Customs Service have determined that in order to protect the athletes, visitors and people of Utah during the Olympics additional aviation security measures are necessary.

Statement of Objectives and Legal Basis

The Administrative Procedures Act (49 U.S.C 40103(b)(3)(B)) states that the FAA shall ''establish security provisions that will encourage and allow the maximum use of the navigable airspace by civil aviation aircraft consistent with national security, [and] the Administrator, in consultation with the Secretary of Defense shall ''* * * by regulation or order, restrict or prohibit flight of civil aircraft that the Administrator cannot identify, locate and control with aviation facilities in those areas''. See also 49 U.S.C.44701(a).

Description of Small Entities Affected

The FAA concludes that virtually all of the entities affected by this emergency rule are small according to thresholds established by the SBA. The on-demand charter operators that are affected by this rule could incur costs of approximately $25,500.

Projected Reporting, Recordkeeping and Other Compliance Requirements

The crewmembers of the operator most undergo a background check at an estimated cost of $65 per member. The usual crew complement consists of a pilot and a co-pilot for a cost per crew of $130. Assuming a new crew daily for the entire period, the cost to an operator would be $2,730.

Overlapping, Duplicative, or Conflicting Federal Rules

The rule would not overlap, duplicate, or conflict with existing Federal rules.

Analysis of Alternatives

This rule is an emergency security rulemaking. In order to achieve the level of security determined by the Secret Service and Customs Service it is essential that all aircraft entering the Olympic ring comply with these requirements. Allowing aircraft to enter the ring without either having a security program meeting 14 CFR 108.101 (a) or being inspected at a Gateway airport would compromise the overall security of the Olympics. These additional security measures are part of a broader security package that encompasses all transportation modes. An alternative would have been to ban all non-scheduled operations within the ring.

Affordability Analysis

The FAA lacks reliable revenue and profit data for the individual entities affected by this rule and, therefore, is unable to explicitly compare the potential costs to revenues or profits. This is because they have no financial reporting requirements. The FAA believes that very few entities will incur these costs since they will generally be included in the charter price.

Business Closure Analysis

The FAA estimates that no entity will cease to operate due to this rule which is only in effect for a 17-day period.

Disproportionality Analysis

Almost all entities in the on-demand charter business are small. Accordingly, the costs imposed by this rule will be borne almost entirely by small businesses. Security at the Olympics is essential and the FAA believes that the only way to ensure security is to control all operations entering the ring airspace.

Key Assumption Analysis

The FAA has made several conservative assumptions in this analysis which may have resulted in an overestimate of the costs of the rule. For example, the FAA has estimated that a new crew will be used each day. It is highly possible that the same crew will be used numerous times. The FAA has also assumed that a larger than average aircraft with higher operating costs will be used for these operations. It is possible that the average operating costs may be lower than the FAA has estimated and that no operator will be affected by this rule.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of this final rule and has determined that it will impose the same costs on domestic and international entities for comparable services and thus has a neutral trade impact.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995 is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This rule does not contain such a mandate. Therefore, the requirements of

Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Federalism Implications

The regulation set forth herein does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 91

Aircraft flight, Airspace, Aviation safety, Air Traffic Control.

The Amendment

For the reasons stated in the preamble, the Federal Aviation Administration amends 14 CFR chapter I as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 USC 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506, 46507, 47122, 47508, 47528–47531; articles 12 and 29 of the Convention on International Civil Aviation 861 stat. 1180.

2. Add Special Federal Aviation Regulation No. 95 to read as follows:

SFAR No. 95—Airspace and Flight Operations Requirements for the 2002 Winter Olympic Games, Salt Lake City, Utah

1. *Applicability.* This SFAR applies to all crewmembers aboard aircraft operating within the Olympic ring airspace, the Olympic village temporary flight restrictions area and the Olympic venue temporary flight restrictions area, and to all aircraft operating within this airspace.

2. *Definitions.*

(a) Olympic ring airspace—for the time period February 8, 2002, 0000 hours MST, through February 24, 2002, 2359 hours MST, that airspace within a 45 NM radius of the Salt Lake City International Airport Runway 17 localizer/distance measuring equipment (DME), identifier I–BNT (latitude 40°46′10.06″ N/111°57′43.44″ W) with a vertical limit extending from the surface up to but not including 18,000 feet mean sea level (MSL).

(b) Venue temporary flight restriction area (TFR)—that airspace overlying an U.S. Olympic competition venue as described in section 4(b) of this SFAR.

(c) Olympic Village temporary flight restriction area (TFR)—that airspace overlying the U.S. Olympic village and athletes housing as described in section 4(b) of this SFAR.

(d) Gateway Airport—an airport specified in section 5(b) of this SFAR that is located outside the Olympic ring airspace that aircraft flight operations seeking to enter the Olympic ring airspace pursuant to section 4 (a)(x) of this SFAR must land at prior to entry.

(e) UOPSC—Utah Olympic Public Safety Command

(f) ASOC—Aviation Security Operations Command

(g) Administrator—includes, in addition to the Administrator of the FAA, the Under Secretary of Transportation for Security, acting under the authority of the Aviation and Transportation Security Act, Pub. L. 107–71. During the transition period, the Administrator and the Under Secretary will coordinate closely to avoid duplication of requirements and disruption of operations.

3. *General rules.*

(a) Each person operating an aircraft within the Olympic ring airspace and all aircraft operating in this airspace shall adhere to the terms and conditions of this SFAR, all NOTAM's issued pursuant to this SFAR and all other applicable FAA rules and regulations. In addition, each person operating a flight originating outside U.S. airspace that enters U.S. airspace shall adhere to all international NOTAM's issued pursuant to this SFAR. NOTAM's are available for inspection at operating FAA air traffic facilities and regional air traffic division offices.

(b) As conditions warrant, the Administrator will:

(i) Restrict, prohibit, or permit VFR and IFR operations at any airport, terminal, or enroute airspace area designated in this SFAR or in a NOTAM issued pursuant to this SFAR;

(ii) Give priority to the following flights from provisions of this SFAR and NOTAM's issued pursuant to this SFAR—

(A) Essential military;

(B) Medical and rescue;

(C) Essential public health and welfare;

(D) Presidential and Vice Presidential;

(E) Flights carrying visiting heads of state;

(F) Law enforcement and security; and

(G) Flights authorized by the Director, Air Traffic Service.

(iii) Implement flow control management procedures.

(c) For security purposes, the Administrator may issue NOTAM's during the effective period of this SFAR to cancel or modify provisions of this SFAR and NOTAM's issued pursuant to this SFAR if such action is consistent with the safe and efficient use of airspace, and the safety and security of persons and property on the ground.

(d) No person may operate an aircraft in or through the Olympic ring airspace unless it is specifically authorized in section 4 of this SFAR and it is operated in accordance with this SFAR and all other applicable FAA rules and regulations.

(e) No operator may use, and no person may serve as, a crewmember in an aircraft operating in the Olympic ring airspace unless they have been accredited by the UOPSC. For further information on accreditation, contact UOPSC Aviation at (801) 257–2761.

(f) No person may operate an aircraft within the Olympic ring airspace, any Olympic venue TFR, or the Olympic Village TFR area unless the aircraft is equipped with an operating transponder with Mode C, and uses an assigned discrete beacon code while in this airspace.

(g) Unless otherwise provided for in this SFAR, persons operating flights that arrive at, or depart from, an airport located within the Olympic ring airspace may only conduct operations at the following designated airports located in the Olympic ring airspace: Salt Lake City International (SLC), Salt Lake City, UT; Ogden Municipal Airport (OGD), Ogden, UT; Provo Municipal Airport (PVU), Provo, UT; Heber City Municipal-Ross McDonald Field Airport (36U), Heber City, UT; Salt Lake City Municipal Airport (U42), Salt Lake City, UT; and Skypark Airport (BTF), Bountiful, Utah (rotorcraft operations only).

(h) No person is permitted to land an aircraft at, depart from, or otherwise operate an aircraft at any location other than those identified in paragraph (g) of this section, except for aeromedical aircraft responding to an emergency, military aircraft, or law enforcement and security aircraft that are conducting flights in support of the Olympic events.

(i) The following operations are specifically prohibited within the Olympic ring airspace at all times—

(i) Hang gliding, paragliding and parasailing;

(ii) Acrobatic flights;

(iii) Radio remote-controlled aircraft;

(iv) Gliders;

(v) Ultralights;

(vi) Hot air balloons/airships;

(vii) Tethered balloons;

(viii) Flight training;

(ix) Parachuting;

(x) Agriculture/crop dusting;

(xi) Animal population control flights;

(xii) Rockets (manned or unmanned);

(xiii) Shrimp spotters;

(xiv) Helicopter skiing;

(xv) Commercial cargo carriers flight operations that do not have a Domestic Security Integration Program (DSIP) or a program that the Administrator has determined equal or exceeds such program; and

(xvi) Banner towing.

4. *Restricted airspace.*

(a) Olympic Ring Airspace. No person operating an aircraft and no aircraft may enter, depart from, or fly within the Olympic ring airspace unless the aircraft operation is identified below and is operated in compliance with all applicable conditions:

(i) A 14 CFR part 121 Domestic, Flag Operation, 14 CFR part 135 Commuter Operation or public charter operation as defined by 14 CFR 108.3 of this chapter, is permitted in the Olympic ring airspace provided the aircraft is operated by a commercial passenger carrier certificated under 14 CFR part 119 of this chapter that:

(A) Is operated in accordance with 14 CFR part 121 or part 135 of this chapter, as applicable, under a regularly published schedule, or is operated as a 14 CFR part 91 maintenance or positioning ferry flight;

(B) Is operated in accordance with an open IFR flight plan, unless otherwise authorized by ATC;

(C) Has received a discrete beacon code and transmits that code while airborne in the Olympic ring airspace;

(D) Is conducted in accordance with a full security program under 14 CFR 108.101(a) (no exceptions allowed);

(E) Complies with the provisions of this SFAR and all other applicable FAA rules and regulations; and

(F) Complies with all additional safety and security requirements communicated to the carriers via NOTAM, security directives or operations specifications.

(ii) A 14 CFR part 121 supplemental all-cargo operation is permitted within the Olympic ring airspace provided the aircraft is operated by a commercial cargo carrier certificated under 14 CFR part 119 to operate in accordance with 14 CFR part 121 of this chapter that:

(A) Is operated in accordance with 14 CFR part 121 of this chapter under a published schedule, or is a 14 CFR part 91 maintenance or positioning ferry flight;

(B) Is operated in accordance with an open IFR flight plan, unless otherwise authorized by ATC;

(C) Has received a discrete beacon code and transmits that code while airborne in the Olympic ring airspace;

(D) Is in full compliance with the FAA's Domestic Security Integration Program or is in full compliance with a program that has been approved by the Administrator as equal to or exceeding the DSIP Program; and

(E) Complies with all additional security requirements communicated to the air carriers via NOTAM, security directive or operations specifications.

(iii) A foreign air carrier operating under 14 CFR part 129 or under authority from the U.S. Department of Transportation (14 CFR part 375) may enter the Olympic ring airspace only if the flight operation is in compliance with section 4(a)(x) of this SFAR or the carrier has been issued a waiver by the Administrator permitting the flight operation to enter the Olympic ring airspace and has demonstrated to the Administrator that the carrier's security program for that flight is similar to a security program that is in full compliance 14 CFR 108.101(a) of this chapter.

(iv) A law enforcement or aeromedical services aircraft may land in, depart from, or fly within the Olympic ring airspace provided it is in compliance with the applicable provisions of this SFAR and the pilot has notified the ASOC that the aircraft is landing in, departing from, or flying within the Olympic ring airspace and has received authorization from ASOC to conduct such operation.

(v) An aircraft carrying news media representatives may land in, depart from, or fly within the Olympic ring airspace only if it is in compliance with the applicable provisions of this SFAR and the pilot has notified ASOC that the aircraft is landing in, departing from, or flying within the Olympic ring airspace and has received authorization from ASOC to conduct such operation.

(vi) Aircraft directly supporting the Salt Lake Organizing Committee are permitted to operate in the Olympic ring airspace only if the operation is in compliance with the applicable provisions of this SFAR and the pilot notifies ASOC that it is landing in, departing from, or flying in the Olympic ring airspace and has received authorization from ASOC to conduct such operation.

(vii) Aircraft and crewmembers used in military operations or other operations in support of event security and public safety may operate within the Olympic ring airspace only if the pilot notifies ASOC that the aircraft is landing in, departing from, or flying in the Olympic ring airspace and receives authorization from ASOC to conduct such operation.

(viii) Aircraft carrying the President or Vice President of the United States are permitted to operate within the Olympic ring airspace as authorized by the U.S. Secret Service.

(ix) All aircraft carrying heads of state or other dignitaries may operate within the Olympic ring airspace provided the flight is in compliance with the applicable provisions of this SFAR and the pilot notifies ASOC that it is landing in, departing from, or flying in the Olympic ring airspace and receives authorization from ASOC to conduct such operation.

(x) Except for those aircraft flight operations specifically prohibited for the duration of this SFAR under section 3 (i) of this SFAR, aircraft operations not satisfying one of the categories identified in section 4 (a)(i) through (a)(ix) are permitted within the Olympic ring airspace only if all of the following conditions are satisfied—

(A) The operation is in compliance with all applicable provisions of this SFAR;

(B) The aircraft is operating in accordance with an open IFR flight plan from a Gateway airport;

(C) The aircraft, passengers, baggage and crewmembers have been inspected and cleared by SLC Olympic Security Team Inspectors at a Gateway airport, or at an airport designated in section 5 of this SFAR within the Olympic ring airspace;

(D) The aircraft has been assigned a discrete beacon code and transmits that code while airborne in the Olympic ring airspace; and

(E) The aircraft complies with any additional NOTAMS or security directives.

(xi) All other aircraft, including but not limited to operations conducted under part 103 of this chapter, are prohibited from operating within the Olympic ring airspace, unless specifically authorized by the terms of the SFAR or by special authorization by the Administrator and ASOC.

(xii) All aircraft are prohibited from operating within the Olympic ring airspace on February 8, 2002, from 1800 hours to 2200 hours MST, and on February 24, 2002, from 1800 hours to 2200 hours MST, except for aircraft operated by law enforcement, emergency medical services or the military, or other operations in support of national or event security and public safety provided that the pilot has notified ASOC that it needs to operate within the Olympic ring airspace and has received authorization from ASOC to conduct such operation; or the aircraft is operating under the direction of FAA ATC and is instructed by FAA ATC to enter the airspace due to weather, traffic or routing. The pilot must remain in radio contact with FAA ATC and under ATC direction for the entire time the flight is within the Olympic ring airspace.

(b) Venue TFR area and Olympic Village TFR area. [Note: These are the planned TFRs. Pilots must check the NOTAM system to ensure they have the latest TFR information.]

(i) No aircraft may enter or operate within the airspace overlying a Venue TFR or the Olympic Village TFR area during the times indicated, unless one of the following applies—

(A) The aircraft operation is for purposes of law enforcement, aeromedical services, or is a military flight or other operation in support of national or event security and public safety operations and the pilot has notified ASOC that it needs to operate within the Olympic venue TFR or Olympic village TFR area and has received authorization from ASOC to conduct such operation; or

(B) The aircraft is operating under the direction of Air Traffic Control, and Air Traffic Control has directed the pilot to operate within the venue or Olympic village TFR due to weather, traffic or routing. The pilot must remain in radio contact with FAA ATC and under ATC direction for the entire time the flight is within the venue or Olympic village TFR.

(ii) The following TFRs are established—

(A) The Olympic Village; Salt Lake City, Utah.

That airspace within a 3 NM radius of latitude (lat.) 40 deg.46′22″ N, longitude (long.) 111 deg.50′37″ W (SLC 110R/8 NM distance measuring equipment (DME) fix). Designated altitudes: Surface up to but not including 18,000 feet mean sea level (MSL). Times of Designation: January 25, 2002 to February 25, 2002, 24 hours per day. Using agency: Utah Olympic Public Safety Command (UOPSC). Contact: Patricia Miller, 801–257–2761 *www.uopsc.org*

(B) The E Center; West Valley City, Utah.

That airspace within a 2 NM radius of lat. 40 deg.42′07.6″ N, long. 111 deg.57′05.6″ W (SLC 155R/9 NM DME fix). Designated altitudes: Surface up to but not including 18,000 feet MSL. Times of Designation: February 6, 2002 to February 24, 2002, 24 hours per day. Using agency: UOPSC. Contact: Patricia Miller, 801–257–2761 *www.uopsc.org*

(C) Utah Olympic Oval; Kearns, Utah.

That airspace within a 2 NM radius of lat. 40 deg.40′22.8″ N, long. 112 deg.00′02.8″ W (SLC 168R/10.8 NM DME fix). Designated altitudes: Surface up to but not including 18,000 feet MSL. Times of Designation: February 6, 2002 to February 24, 2002, 24 hours per day. Using agency: UOPSC. Contact: Patricia Miller, 801–257–2761 *www.uopsc.org*

(D) The Peaks Ice Arena; Provo, Utah.

That airspace within a 2 NM radius of lat. 40 deg.14′03.7″ N, long. 111 deg.38′05.3″ W (FFU 084R/14.3 NM DME fix), excluding the airspace along and southwest of I–15. Designated altitudes: Surface up to but not including 18,000 feet MSL. Times of Designation: February 6, 2002 to February 24, 2002, 24 hours per day. Using agency: UOPSC. Contact: Patricia Miller, 801–257–2761 *www.uopsc.org*

(E) The Ice Sheet at Ogden; Ogden, Utah.

That airspace within a 2 NM radius of lat. 41 deg.11′00.6″ N, long. 111 deg.56′47.6″ W (OGD 092R/7.3 NM DME fix). Designated altitudes. Surface up to but not including 18,000 feet MSL. Times of Designation: February 6, 2002 to February 24, 2002, 24 hours per day. Using agency: UOPSC. Contact: Patricia Miller, 801–257–2761 *www.uopsc.org*

(F) Snowbasin Ski Area; Huntsville, Utah.

That airspace within a 2.5 NM radius of lat. 41 deg.12′40″ N, long. 111 deg.51′30″ W (OGD 077R/10.9 NM DME fix). Designated altitudes. Surface up to but not including 18,000 feet MSL. Times of Designation: February 6, 2002 to February 24, 2002, 24 hours per day. Using agency: UOPSC. Contact: Patricia Miller, 801–257–2761 *www.uopsc.org*

(G) Utah Olympic Park; Park City, Utah.

That airspace within a 2.5 NM radius of lat. 40 deg.42′40.6″ N, long. 111 deg.33′40.4″ W (SLC 097R/20.9 NM DME fix), excluding the airspace along and North of I–80. Designated altitudes: Surface up to but not including 18,000 feet MSL. Times of Designation: February 6, 2002 to February 24, 2002, 24 hours per day. Using agency: UOPSC. Contact: Patricia Miller, 801–257–2761 *www.uopsc.org*

(H) Park City and Deer Valley Mountain Resorts; Park City, Utah.

That airspace within a 3 NM radius of lat. 40 deg.38′31.8″ N, long. 111 deg.29′40.7″ W (SLC 103R/25.5 NM DME fix) excluding that airspace along and east of U.S. Highway 40. Designated altitudes: Surface up to but not including 18,000 feet MSL. Times of Designation: February 6, 2002 to February 24, 2002, 24 hours per day. Using agency: UOPSC. Contact: Patricia Miller, 801–257–2761 *www.uopsc.org*

(I) Soldier Hollow; Heber City, Utah.

That airspace within a 2.5 NM radius of lat. 40 deg.28′53.7″ N, long. 111 deg.29′44.4″ W (FFU 043R/23.9 NM DME fix) excluding that airspace along and southeast of Highway 189. Designated altitudes. Surface up to but not including 18,000 feet MSL. Times of Designation: February 6, 2002 to February 24, 2002, 24 hours per day. Using agency: UOPSC. Contact: Patricia Miller, 801–257–2761 *www.uopsc.org*

5. *Flights operating within the Olympic Ring Airspace pursuant to section 4 (a)(x) of this SFAR.*

(a) General Description. (i) All flights that operate in accordance with section 4 (a)(x) of this SFAR must arrive at, or depart from, one of the following airports within the Olympic ring airspace: Salt Lake City International (SLC), Salt Lake City, UT; Ogden Municipal Airport (OGD), Ogden, UT; Provo Municipal Airport (PVU), Provo, UT; Heber City Municipal-Ross McDonald Field Airport (36U), Heber City, UT; Salt Lake City Municipal Airport (U42), Salt Lake City, UT; or Skypark Airport (BTF), Bountiful, UT (rotorcraft operations only).

(b) Security Check: (i) Prior to entering the Olympic ring airspace, all operations conducted in accordance with section 4 (a)(x) of this SFAR must first land at one of the following Gateway airports listed below and undergo a consensual security inspection by SLC Olympic Security Team Inspectors and be approved for landing in the Olympic ring airspace:

(A) City of Colorado Springs Municipal Airport, Colorado Springs, CO (COS);

(B) Boise Air Terminal (Gowen Field), Boise, ID (BOI);

(C) Walker Field, Grand Junction, CO (GJT); and

(D) McCarran International Airport, Las Vegas, NV (LAS).

(ii) An aircraft (including passengers and baggage) and crew that has been inspected at a Gateway airport, approved for entering the Olympic ring airspace by SLC Olympic Gateway Security Team Inspectors and departs for a designated airport located within the Olympic ring airspace, is prohibited from making any intermediate stops. Any aircraft that has been inspected and approved by SLC Olympic Gateway Security Team Inspectors at a Gateway airport that lands at an airport other than its intended destination within the Olympic ring airspace, must be reinspected and reapproved by SLC Olympic Gateway Security Team Inspectors at a Gateway airport before entering the Olympic ring airspace.

(iii) All flights conducted under section 4 (a)(x) of this SFAR that depart from an Olympic ring airport identified in section 5 (a) of this SFAR must first be inspected and approved for departure by SLC Olympic Gateway Security Team Inspectors and must operate on an IFR flight plan from the Gateway airport.

(iv) No earlier than 48 hours prior to arrival at a Gateway airport, or departure from an airport within the Olympic ring airspace, an operator must arrange for a security inspection with the SLC Olympic Security Team Inspectors. This appointment may be made by calling: 801–775–5524.

6. *Slot reservation process.* (a) Starting February 8, 2002, 0000 hours MST, through February 25, 2002, 2359 hours MST, all aircraft arriving or departing at one of the following airports located outside of the Olympic ring airspace must have a slot reservation prior to arrival or departure: Wendover, Logan, or Brigham City, Utah, or Evanston, Wyoming.

(b) Slot reservations for the airports identified in section 6 (a) of this SFAR may be obtained up to 72 hours in advance by contacting 1–800–975–9755 or by accessing *www.fly.faa.gov* starting February 5, 2002.

7. *Termination date.* Except for section 4 (b)(i) and 4 (b)(ii)(A), this SFAR terminates on February 24, 2002, 2359 hours MST, unless an earlier date is prescribed for a specific provision. The Olympic Village TFR terminates on February 25, 2002, at 2359 hours MST.

Issued in Washington, DC, on January 15, 2002.

Jane F. Garvey,

Administrator.

[FR Doc. 02–1441 Filed 1–16–02; 10:15 am]

BILLING CODE 4910–13–P

Federal Register

Friday,
January 18, 2002

Part V

The President

Proclamation 7517—Religious Freedom Day, 2002

Federal Register
Vol. 67, No. 13
Friday, January 18, 2002

Presidential Documents

Title 3—

The President

Proclamation 7517 of January 15, 2002

Religious Freedom Day, 2002

By the President of the United States of America

A Proclamation

Religious freedom is a cornerstone of our Republic, a core principle of our Constitution, and a fundamental human right. Many of those who first settled in America, such as Pilgrims, came for the freedom of worship and belief that this new land promised. And when the British Colonies became the United States, our Founders constitutionally limited our Federal Government's capacity to interfere with religious belief by prohibiting the Congress from passing any law ''respecting an establishment of religion, or prohibiting the free exercise thereof.'' These constitutional limits have allowed the flourishing of faith across our country, which greatly blesses our land.

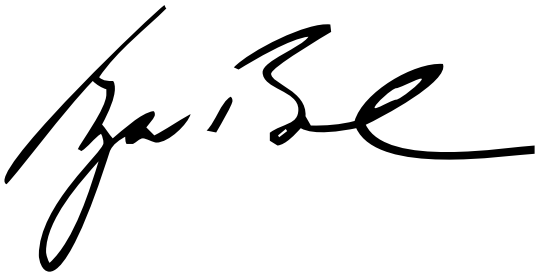
George Washington forcefully expressed our collective constitutional promise to protect the rights of people of all faiths, in a historic letter he wrote to the Jewish community at Touro Synagogue in Newport, Rhode Island: ''the Government of the United States, which gives to bigotry no sanction, to persecution no assistance, requires only that they who live under its protection should demean themselves as good citizens....'' Today, our cities are home to synagogues, churches, temples, mosques, and other houses of worship that peacefully welcome Americans of every belief. Preserving religious freedom has helped America avoid the wars of religion that have plagued so many cultures throughout history, with deadly consequences.

Today, as America wages war against terror, our resolve to defend religious freedom remains as strong as ever. Many miles from home, American service men and women have risked their lives in our efforts to drive the Taliban regime from power, ending an era of brutal oppression, including religious oppression. At home, Americans demonstrated the vitality of our religious freedom in the enormous outreach by faith communities to help those harmed by the terrorist attacks. In quiet prayers offered to God in churches, synagogues, temples, and mosques and in the helping hands of faith-based groups, Americans have shown a deep love for others and genuine spiritual unity that will sustain us through the difficult days of recovery.

Religious Freedom Day provides us an opportunity to celebrate America's commitment to protect the freedom of religion. On this special day, I encourage all Americans to renew their commitment to protecting the liberties that make our country a beacon of hope for people around the world who seek the free exercise of religious beliefs and other freedoms.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim January 16, 2002, as Religious Freedom Day. I urge all Americans to observe this day by asking for the blessing and protection of Almighty God for our Nation, and to engage in appropriate ceremonies and activities in their homes, schools, and places of worship as a sign of our resolve to protect and preserve our religious freedom.

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



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Federal Register

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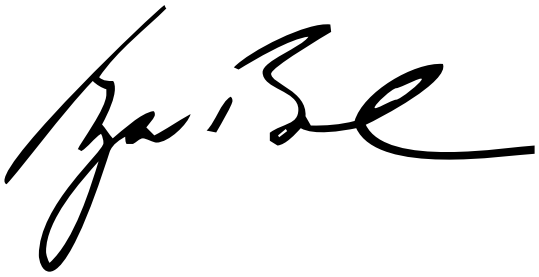

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Federal Register

Friday,
January 18, 2002

Part VI

The President

Executive Order 13253—Amendment to Executive Order 13223, Ordering the Ready Reserve of the Armed Forces to Active Duty and Delegating Certain Authorities to the Secretary of Defense and the Secretary of Transportation

Federal Register
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Friday, January 18, 2002

Presidential Documents

Title 3—

The President

Executive Order 13253 of January 16, 2002

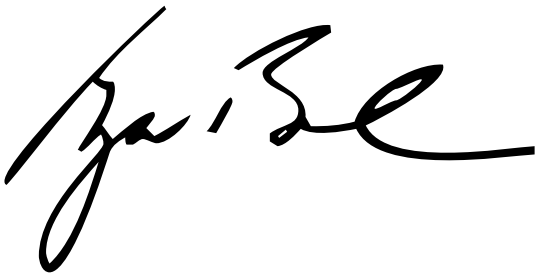
Amendment to Executive Order 13223, Ordering the Ready Reserve of the Armed Forces to Active Duty and Delegating Certain Authorities to the Secretary of Defense and the Secretary of Transportation

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Emergencies Act (50 U.S.C. 1601 *et seq.*) and section 301 of title 3, United States Code, and in furtherance of Proclamation 7463 of September 14, 2001, Declaration of National Emergency by Reason of Certain Terrorist Attacks, which declared a national emergency by reason of the terrorist attacks on the World Trade Center, New York, New York, and the Pentagon, and the continuing and immediate threat of further attacks on the United States, and in order to provide the Secretary of Transportation, with respect to the Coast Guard, with the authority to manage personnel requirements in a manner consistent with the authorization provided to the Secretary of Defense in Executive Order 13223 of September 14, 2001, it is hereby ordered as follows:

Section 1. Section 5 of Executive Order 13223 is amended by adding at the end: ''The Secretary of Transportation is further designated and empowered, without the approval, ratification or any other action by the President, to exercise the authority vested in the President by sections 123 and 123a of title 10, United States Code, and sections 149 (detail members to assist foreign governments), 275(a) (suspension of provisions on selection, promotion, or involuntary separation of officers), and 722 (administration of reserve forces) of title 14, United States Code, as invoked by section 2 of Executive Order 13223.''

Sec. 2. Section 7 of Executive Order 13223 is deleted and revised to read as follows: ''Based upon my determination under 10 U.S.C. 2201(c) that it is necessary to increase (subject to limits imposed by law) the number of members of the armed forces on active duty for the Department of Defense beyond the number for which funds are provided in the appropriation Act for the Department of Defense, which, by virtue of 14 U.S.C. 652, applies to the Department of Transportation with respect to the Coast Guard, the Secretary of Defense and the Secretary of Transportation may provide

for the cost of such additional members under their respective jurisdictions as an excepted expense under section 11(a) of title 41, United States Code.''



THE WHITE HOUSE,
January 16, 2002.

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Federal Register

Friday,
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The President

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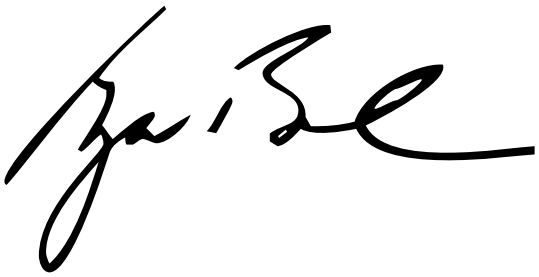

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JANUARY 18, 2002

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Northeastern United States fisheries—

Atlantic deep-sea red crab; published 1-15-02

Northeast Multispecies Fishing Capacity Reduction Program; published 12-19-01

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Imidacloprid; published 1-18-02

GENERAL SERVICES ADMINISTRATION

Federal Management Regulation:

Surplus personal property donation; published 1-18-02

LABOR DEPARTMENT

Occupational Safety and Health Administration

Construction safety and health standards:

Steel erection; published 7-17-01

TRANSPORTATION DEPARTMENT

Coast Guard

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Vessels arriving in or departing from U.S. ports; notification requirements; correction; published 1-18-02

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

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Dornier; published 12-27-01

TREASURY DEPARTMENT

Internal Revenue Service

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Filing of notice of lien; notice and opportunity for hearing; published 1-18-02

Levy; notice and opportunity for hearing; published 1-18-02

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AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Oranges, grapefruit, tangerines, and tangelos grown in—

Florida; comments due by 1-23-02; published 1-8-02 [FR 02-00450]

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Walnuts grown in—

California; comments due by 1-22-02; published 11-21-01 [FR 01-29114]

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

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Tobacco; comments due by 1-22-02; published 1-4-02 [FR 02-00185]

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Loan and purchase programs:

Tobacco; comments due by 1-22-02; published 1-4-02 [FR 02-00186]

AGRICULTURE DEPARTMENT

Rural Utilities Service

Electric loans:

Insured and guaranteed loans; general and pre-loan policies and procedures—

Treasury rate direct loan program; comments due by 1-25-02; published 12-26-01 [FR 01-31574]

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Electric loans:

Insured and guaranteed loans; general and pre-loan policies and procedures—

Treasury rate direct loan program; comments due by 1-25-02; published 12-26-01 [FR 01-31575]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Bering Sea and Aleutian Islands groundfish, king and tanner crab, and scallop and salmon; comments due by 1-22-02; published 1-10-02 [FR 02-00644]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Federal Tort Claims Act procedures; comments due by 1-22-02; published 11-20-01 [FR 01-28944]

DEFENSE DEPARTMENT

Prototype projects; transactions other than contracts, grants, or cooperative agreements; comments due by 1-22-02; published 11-21-01 [FR 01-29008]

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Air pollutants, hazardous; national emission standards:

Asphalt processing and asphalt roofing manufacturing facilities; comments due by 1-22-02; published 11-21-01 [FR 01-28192]

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Air programs; State authority delegations:

District of Columbia; comments due by 1-25-02; published 12-26-01 [FR 01-31485]

ENVIRONMENTAL PROTECTION AGENCY

Air programs; State authority delegations:

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Louisiana; comments due by 1-25-02; published 12-26-01 [FR 01-31483]

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Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:

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Hazardous waste program authorizations:

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Unbundled network elements and interconnection; performance measurements and standards; comments due by 1-22-02; published 12-17-01 [FR 01-30984]

Practice and procedure:

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Television stations; table of assignments:

Wisconsin; comments due by 1-21-02; published 12-5-01 [FR 01-30036]

HEALTH AND HUMAN SERVICES DEPARTMENT

Children and Families Administration

Foster care maintenance payments, adoption assistance, and child and family services:

Title IV-E foster care eligibility reviews and child and family services State plan reviews; technical corrections; comments

due by 1-22-02; published 11-23-01 [FR 01-29174]

HEALTH AND HUMAN SERVICES DEPARTMENT
Energy Employees Occupational Illness Compensation Program Act; implementation:
Probable cause determination guidelines; comments due by 1-23-02; published 1-17-02 [FR 02-01319]
Radiation dose reconstruction methods; comments due by 1-23-02; published 1-17-02 [FR 02-01318]

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Fish and Wildlife Service
Migratory bird hunting:
Light goose populations; harvest management; comments due by 1-25-02; published 12-10-01 [FR 01-30411]

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Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Oklahoma; comments due by 1-22-02; published 12-21-01 [FR 01-31536]

LEGAL SERVICES CORPORATION
Welfare reform; comments due by 1-25-02; published 11-26-01 [FR 01-29301]

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Revisions and clarifications; comments due by 1-24-02; published 10-26-01 [FR 01-26934]

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TRANSPORTATION DEPARTMENT
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TRANSPORTATION DEPARTMENT
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TRANSPORTATION DEPARTMENT
Federal Aviation Administration
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Interstate school bus safety; comments due by 1-22-02; published 10-22-01 [FR 01-26562]

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
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Small business entities; economic impact; comments due by 1-25-02; published 1-7-02 [FR 02-00154]

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Gasoline tax claims; comments due by 1-22-02; published 10-23-01 [FR 01-26571]

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Death benefits claim by survivor; comments due by 1-22-02; published 12-21-01 [FR 01-31479]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 1088/P.L. 107–123
Investor and Capital Markets Fee Relief Act (Jan. 16, 2002; 115 Stat. 2390)

H.R. 2277/P.L. 107–124
To provide for work authorization for nonimmigrant spouses of treaty traders and treaty investors. (Jan. 16, 2002; 115 Stat. 2402)

H.R. 2278/P.L. 107–125
To provide for work authorization for nonimmigrant spouses of intracompany transferees, and to reduce the period of time during which certain intracompany transferees have to be continuously employed before applying for admission to the United States. (Jan. 16, 2002; 115 Stat. 2403)

H.R. 2336/P.L. 107–126
To extend for 4 years, through December 31, 2005, the authority to redact financial disclosure statements of judicial employees and judicial officers. (Jan. 16, 2002; 115 Stat. 2404)

H.R. 2751/P.L. 107–127
General Shelton Congressional Gold Medal Act (Jan. 16, 2002; 115 Stat. 2405)

H.R. 3030/P.L. 107–128
Basic Pilot Extension Act of 2001 (Jan. 16, 2002; 115 Stat. 2407)

H.R. 3248/P.L. 107–129
To designate the facility of the United States Postal Service located at 65 North Main Street in Cranbury, New Jersey, as the ''Todd Beamer Post Office Building''. (Jan. 16, 2002; 115 Stat. 2408)

H.R. 3334/P.L. 107–130
To designate the Richard J. Guadagno Headquarters and Visitors Center at Humboldt Bay National Wildlife Refuge, California. (Jan. 16, 2002; 115 Stat. 2409)

H.R. 3346/P.L. 107–131
To amend the Internal Revenue Code of 1986 to simplify the reporting requirements relating to higher education tuition and related expenses. (Jan. 16, 2002; 115 Stat. 2410)

H.R. 3348/P.L. 107–132
To designate the National Foreign Affairs Training Center as the George P. Shultz National Foreign Affairs Training Center. (Jan. 16, 2002; 115 Stat. 2412)

Last List January 17, 2002

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