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

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Presidential Documents

Title 3—

The President

Proclamation 7658 of April 1, 2003

National Donate Life Month, 2003

By the President of the United States of America

A Proclamation

Advances in medical research and technology are helping our citizens to live longer and better lives. An important aspect of these improvements is transplant technology. Today, up to 50 lives can be saved or enhanced by just one organ and tissue donor. During National Donate Life Month, we honor living and deceased donors and their families across our Nation who have renewed the lives of others, and we call upon more Americans to follow their example.

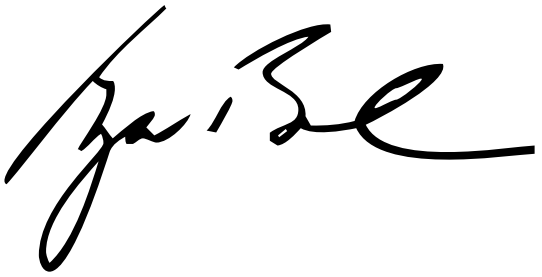
Through our Nation's organ and tissue donor programs, thousands of Americans have given the gift of life. In 2002, 24,851 organ transplants and 32,744 corneal transplants were performed in the United States. In addition, the National Bone Marrow Donor Registry facilitated an average of 173 transplants each month. These donors' spirit of giving reflects the compassion of our great Nation.

Unfortunately, the current rate of donation is inadequate to meet the growing needs of our fellow Americans. Nearly 81,000 of our citizens are on the national organ transplant waiting list. Each day, an average of 68 of these individuals receive an organ transplant, yet another 17 on the waiting list die. As a Nation, we must strive to meet the needs of all Americans awaiting such donations.

Through the ''Gift of Life Donation Initiative,'' my Administration is working to educate our Nation about the importance of becoming a donor. During National Donate Life Month, more than 6,000 partners, including Federal agencies, State governments, private industries, unions, fraternal organizations, and associations have committed to promoting organ and tissue donation awareness. As a result, millions of Americans will learn about the many ways they can help those in need and save lives.

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 April 2003 as National Donate Life Month. I call upon our citizens to sign an organ and tissue donor card and to be screened for bone marrow donation. I also urge healthcare professionals, volunteers, educators, government agencies, and private organizations to help raise awareness of the important need for organ and tissue donors in communities throughout our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this First day of April, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–8429
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Billing code 3195–01–P

Rules and Regulations

Federal Register
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Friday, April 4, 2003

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN: 3245–AE98

Small Business Size Standards; Tour Operators

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is adopting its proposed modification to the way average annual receipts are calculated for firms in the Tour Operators industry (North American Industry Classification System 561520). This change excludes funds received in trust for unaffiliated third parties from the calculation of a tour operator's receipts. The SBA is retaining the current size standard of $6 million in average annual receipts, as proposed.

DATES: This rule is effective May 5, 2003.

FOR FURTHER INFORMATION CONTACT: Robert N. Ray, Economist, Office of Size Standards, (202) 205–6618.

SUPPLEMENTARY INFORMATION: On October 2, 2002, in response to industry requests, the SBA issued a proposed rule that would modify the way average annual receipts are calculated for firms in the Tour Operators industry (North American Industry Classification System (NAICS) 561520), while retaining the size standard of $6 million (67 FR 61829). Under the SBA's Small Business Size Regulations (13 CFR 121.104), the receipts of a firm are based on information reported on a firm's Federal tax returns. Generally, receipts reported to the Internal Revenue Service (IRS) include a firm's gross receipts from the sale of goods and services and all other sources of income. The SBA proposed to exclude from the calculation of average annual receipts, those receipts that are collected for other parties (primarily to the actual transportation and lodging providers) for purposes of determining the size and eligibility of a tour operator for the SBA's assistance. Based on a review of industry practices, the SBA agreed with industry commentators that certain types of receipts should be excluded from the calculation of size for firms in this industry.

Related to this issue, the SBA also considered whether the current size standard continues to be appropriate if receipts collected for third party reimbursement are excluded from a firm's gross receipts. Based on a review of industry data discussed in the proposed rule, the SBA believes the current size standard is appropriate even if size is measured on an adjusted basis rather than by gross receipts. For more information on the size standard analysis of the Tour Operators industry, and the justification for excluding receipts held in trust for payment to transportation and lodging providers, see the October 2, 2002, proposed rule.

Comments on the proposed rule all supported the revised method of calculating the average annual receipts of a tour operator and retaining the $6 million size standard. Accordingly, the SBA is revising its size standard measure for the Tour Operators industry by excluding funds received in trust for unaffiliated third parties, while retaining the size standard of $6 million.

Discussion of Comments on the Proposed Rule

The SBA received six comments to the proposed rule. Four comments were from firms in the industry, one comment was from a travel agency, and one was from members of Congress (six U.S. Representatives co-signed a single comment letter).

In summary, all six commentators supported the change to $6 million in adjusted annual receipts. They all, however, had the following two additional recommendations:

(1) The SBA should extend the application period for its Economic Injury Disaster Loan (EIDL) Program for 60 days after the size standard is revised; and

(2) The SBA should clarify that trust receipts do not refer to formal legal trusts.

Response to Issues Raised by the Comments

The comments expressed the concern that many tour operators continue to need assistance as a result of the September 11, 2001, terrorist attacks, but had not applied for EIDL assistance because they exceeded the gross receipts size standard. The EIDL program provides assistance to businesses that have suffered substantial economic injury, regardless of physical damage, and is located in a declared disaster area. The SBA extended the deadline for submitting an application for EIDL assistance for the September 11, 2001, terrorist attacks until January 31, 2003, for businesses located in the presidentially designated disaster areas of New York and Northern Virginia. However, for areas outside of the area of the physical declaration, the SBA's extension period expired on September 30, 2002. With a revision to the size standard, the commentators recommended that the SBA extend the EIDL application deadline for 60 days after the implementation of the size standard, to afford the newly eligible tour operators an opportunity to apply for EIDL assistance.

The SBA will not grant an extension of the EIDL deadline for tour operators. The SBA carefully considered the reasons presented by the commentators to extend the application deadline, but has elected not to adopt that recommendation.

The comments also recommended that the SBA clarify that ''trust receipts'' do not require the creation of a formal legal trust. In determining the receipts of a tour operator and other specifically identified activities, footnote 10 of the size standards table allows for the exclusion of ''funds received in trusts for an unaffiliated third party, such as books subject to commissions'' (13 CFR 121.201). The language of this provision does not require the creation of a legal trust. The SBA follows the ''law of agency'' in determining whether receipts may be excluded. If money is received under a claim of right, it must be included as the firm's receipts. If, on the other hand, it is received as an agent for another, the money is excluded (see Size Appeal of Mid-Columbia Engineering, SBA No. 4134, (1996)). Thus, the current provision does not require that the excludable funds be passed through a legal trust.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

The Office of Management and Budget (OMB) has determined that this final rule is a ''significant'' regulatory action for purposes of Executive Order 12866. Size standards determine which businesses are eligible for Federal small business programs. This is not a major rule, however, under the Congressional Review Act, 5 U.S.C. 800. For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this rule would not impose new reporting or record keeping requirements. For purposes of Executive Order 13132, the SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12988, the SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that order. Our Regulatory Impact Analysis follows.

Regulatory Impact Analysis

1. Is There a Need for the Regulatory Action?

The SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To effectively assist intended beneficiaries of these programs, the SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to the SBA Administrator the responsibility for establishing small business definitions. It also requires that small business definitions vary to reflect industry differences. The preamble of the proposed rule explained the approach the SBA follows when analyzing a size standard for a particular industry as well as the criteria used to determine whether to use adjusted receipts. Based on that analysis, the SBA believes that a change in the way receipts are measured for businesses in the Tour Operators industry is needed to better reflect their size and activities.

2. What Are the Potential Benefits and Costs of This Regulatory Action?

The most significant benefit to businesses obtaining small business status as a result of this rule is eligibility for Federal small business assistance programs. Under this rule, 238 additional firms generating 21 percent of sales in the industry will obtain small business status and become eligible for these programs. These include the SBA's financial assistance programs, economic injury disaster loans and Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses, and small businesses located in Historically Underutilized Business Zones (HUBZone), as well as those awarded through full and open competition after application of the HUBZone or small disadvantaged business price evaluation preference or adjustment. Through the assistance of these programs, small businesses may benefit by becoming more knowledgeable, stable, and competitive businesses.

Other Federal agencies also use the SBA size standards for a variety of regulatory and program purposes. However, discussions with industry representatives identified no other uses of the SBA's tour operators size standard. If such a case exists where the SBA's size standard is not appropriate, an agency may establish its own size standards with the approval of the SBA Administrator (*see* 13 CFR 121.902).

The benefits of a size standard change to a more appropriate level would accrue to three groups: (1) Businesses that benefit by gaining small business status from the higher size standards that also use small business assistance programs; (2) growing small businesses that may exceed the current size standards in the near future and who will retain small business status from the higher size standard; and (3) Federal agencies that award contracts under procurement programs that require small business status. Although there may be some procurements that are awarded to tour operators, the SBA's research was unable to find any Federal contracting awards reported during the last 3 fiscal years.

Newly defined small businesses could benefit from the SBA's 7(a) Guarantee Loan Program. The SBA estimates that three additional loans totaling approximately $0.6 million in new Federal loan guarantees would be made to these newly defined small businesses. This represents 21 percent (the percentage increase in coverage of sales in the industry by firms under the higher ''real'' size standard) of the $2.9 million yearly average in loans that were guaranteed by the SBA in this industry under these two financial programs from fiscal years 1999 to 2001. These additional loan guarantees, because of their limited magnitude, will have virtually no impact on the overall availability of loans for the SBA's loan programs, which have averaged about 50,000 loans totaling more than $12 billion per year in recent years.

The newly defined small businesses would also benefit from the SBA's EIDL program. Since this program is contingent upon the occurrence and severity of a disaster, no meaningful estimate of benefits can be projected from future disasters. However, for the terrorist attacks of September 11, 2001, the SBA has declined 11 applicants based on size. Many of these companies would likely qualify if pass-through receipts were excluded from a firm's measure of size in this industry. In addition, out of the newly eligible tour operators, six more loans would likely be approved. Based on an analysis of the September 11, 2001, EIDL assistance, this rule may result in $607,000 in additional loans.

Federal agencies may benefit from the higher size standards if the newly defined and expanding small businesses compete for more set-aside procurements. However, no Federal contracting has been reported for fiscal years 1999–2001 in the Tour Operators industry and there will be no procurement gains from a higher size standard in this industry for Federal agencies if this pattern continues.

To the extent that up to 238 additional firms could become active in Federal small business programs, this may entail some additional administrative costs to the Federal Government associated with additional bidders for Federal small business procurement programs, additional firms seeking SBA guaranteed lending programs, and additional firms eligible for enrollment in SBA's PRO-Net data base program. Among businesses in this group seeking SBA assistance, there could be some additional costs associated with compliance and verification of small business status and protests of small business status. These costs are likely to generate minimal incremental administrative costs since mechanisms are currently in place to handle these administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts as a result of this rule. However, any analysis of costs is dependent on contracting in this industry and the last three fiscal years have had no Federal contracting in this industry. The SBA is assuming that this trend will continue and there will be no contracting activity in this industry in the near future.

The SBA believes that there will be no distributional effects among large and small businesses, nor will there be any equity or uncertainty considerations as

a result of this rule. With the small amount of lending to tour operators discussed above, it is unlikely that they would be denied SBA financial assistance due to a larger pool of eligible small businesses. Also, there is little or no Federal contracting in this industry to have an effect on another business.

The revision to the current size standard for tour operators is consistent with the SBA's statutory mandate to assist small business. This regulatory action promotes the Administrator's objectives. One of the SBA's goals in support of the Administrator's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Reviewing and modifying size standards, when appropriate, ensures that intended beneficiaries have access to small business programs designed to assist them. Size standards do not interfere with State, local, and tribal governments in the exercise of their government functions. In a few cases, state and local governments have voluntarily adopted the SBA's size standards for their programs to eliminate the need to establish an administrative mechanism to develop their own size standards.

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities engaged in the Tour Operators industry. As described in the Regulatory Impact Analysis, this rule may impact small entities seeking SBA (7a) Guaranteed Loans or EIDL loans, but it is unlikely to affect SBA's procurement preference programs because of the absence of Federal contracting in this industry. Newly defined small businesses would benefit from the SBA's 7(a) Guaranteed Loan Program. The SBA estimates that three additional loans totaling approximately $0.6 million in new Federal loan guarantees could be made to these newly defined small businesses. This represents 21 percent (the percentage increase in coverage of sales in the industry by firms under the higher ''real'' size standard) of the $2.9 million yearly average in loans that were guaranteed by the SBA in this industry under these two financial programs in fiscal years 1999–2001. These additional loan guarantees, because of their limited magnitude, will have virtually no impact on the overall availability of loans for SBA's loan programs, which have averaged about 50,000 loans totaling more than $12 billion per year in recent years.

The size standard may also affect small businesses participating in programs of other agencies that use the SBA size standards. As a practical matter, however, the SBA cannot estimate the impact of a size standard change on each and every Federal program that uses its size standards. However, discussions with a major tour operators association indicate that there are no Federal laws or regulations using SBA's size standards for defining small tour operators. In cases where an SBA size standard is not appropriate, the Small Business Act and SBA's regulations allow Federal agencies to develop different size standards with the approval of the SBA Administrator (13 CFR 121.902). For purposes of a regulatory flexibility analysis, agencies must consult with SBA's Office of Advocacy when developing different size standards for their programs. (13 CFR 121.902(b)(4)).

Immediately below, SBA sets forth a final regulatory flexibility analysis (RFA) of this rule on the Tour Operators industry addressing the reasons and objectives of the rule; the SBA's description and estimate of small entities to which the rule will apply; the projected reporting, record keeping, and other compliance requirements of the rule; the relevant Federal rules which may duplicate, overlap or conflict with the rule; and alternatives to the final rule considered by the SBA that minimize the impact on small businesses.

(1) What Is the Need for and Objective of the Rule?

The revision to the size standard for tour operators to exclude third party reimbursements more accurately measures the magnitude of operations of a tour operator. The SBA has developed five criteria to assess whether businesses in an industry should be allowed to exclude funds held in trust for third parties. These five criteria were discussed in detail in the October 2, 2002, proposed rule. Tour Operators met the test for each criterion. The SBA found that tour operators consistently act as agents for their clients by arranging travel and related activities provided by third parties. Well over a majority of a tour operator's receipts collected from clients are provided to third party providers. Therefore, a size standard allowing for the exclusion of third party reimbursements is considered a better measure of a tour operator's size than gross receipts.

(2) What Significant Issues Were Raised by the Public Comments in Response to the Initial Regulatory Flexibility Act (IRFA)?

All of the commentators suggested that the SBA should extend the application period for its EIDL program for 60 days after this size standard is revised. The SBA is considering this suggestion. However, this decision is not related to this rule which focuses on the measure of size and the appropriate size standard for the Tour Operators industry. All of the commentators also recommended that the SBA clarify that ''trust receipts'' do not require the creation of a formal legal trust. However, there is no reference in the SBA's regulations requiring a formal legal trust, and the SBA follows the law of agency in determining whether receipts are excluded. Thus, the current provision does not require that excludable funds be passed through a legal trust.

(3) What Is SBA's Description and Estimate of the Number of Small Entities to Which the Rule Will Apply?

Within the Tour Operators industry, 2,722 businesses out of 3,222 (84.5 percent) have been defined as small using unadjusted annual receipts. The SBA estimates 238 additional tour operators would be considered small as a result of this rule based on the U.S. Census Bureau's special tabulation of the 1997 Economic Census for SBA's Office of Size Standards. These businesses would be eligible to seek available SBA assistance provided that they meet other program requirements. Firms becoming eligible for SBA assistance as a result of this rule cumulatively generate $600 million in this industry, out of a total of $2.8 billion in annual receipts. The small business coverage in this industry would increase by 21 percent of total industry receipts and by 7.4 percent of the total number of tour operators. Only a small proportion of these newly eligible businesses are likely to utilize SBA programs, however, almost exclusively in the area of financial assistance. For fiscal years 1999—2001, only 63 loans totaling $8.7 million were made under SBA's 7(a) program. As a result of the terrorist attacks of September 11, 2001, the SBA made 121 EIDL loans totaling $12.3 million.

(4) Will This Rule Impose Any Additional Reporting or Record Keeping, or Other Compliance Requirements on Small Business?

A new size standard does not impose any additional reporting, record keeping

or other compliance requirements on small entities for SBA programs. A change in a size standard would not create additional costs on a business to determine whether or not it qualifies as a small business. A business needs to only examine existing information to determine its size, such as Federal tax returns, payroll records, and accounting records. Size standards determines ''voluntary'' access to the SBA and other Federal programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior. In addition, this rule does not impose any new information collecting requirements from the SBA which requires approval by OMB under the Paperwork Reduction Act of 1980, U.S.C. 3501–3520.

(5) What Are the Steps the SBA Has Taken To Minimize the Significant Economic Impact on Small Business?

Most of the economic impact on small businesses will be positive. The most significant benefits to businesses that will obtain small business status as a result of this rule are eligibility for SBA's financial assistance programs such as 7(a) business loans, 504 business loans, and EIDL assistance. Normally, firms gain from eligibility for the Federal Government's procurement preference programs for small businesses. In this case, however, the SBA anticipates no impact based on the fact that there has been no Federal contracting in this industry over the last three completed fiscal years. In addition, the projected increase in 7(a) business loans of three additional loans totaling approximately $0.6 million in new Federal loan guarantees will have virtually no impact on the overall availability of loans for SBA's loan programs, which have averaged about 50,000 loans totaling more than $12 billion per year in recent years.

(6) What Alternatives Were Considered by the SBA To Accomplish Its Regulatory Objectives While Minimizing the Impact on Small Entities?

The SBA initially considered two alternatives in its proposed rule (67 FR 61829, dated October 2, 2002). First, it considered the $3 million size standard proposed for the Travel Agencies industry that the SBA also measures on an adjusted receipts basis. The SBA also considered retaining gross receipts to measure the size of a tour operator and adjusting the size standard to a higher level. These two alternatives were discussed in the proposed rule.

The SBA decided not to adopt either of these alternatives in this final rule. The industry characteristics of the Tour Operators industry clearly show that a $3 million size standard is too low. Also, an appropriate size standard based on gross receipts may harm small businesses. The SBA calculates the size of a tour operator from its Federal tax returns. Some tour operators may report receipts differently for tax purposes, which could result in two tour operators doing the same amount of business being treated differently for small business status. No comments were received, however, in favor of these alternatives, and all of the commentators supported the change in receipts definition.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business. Loan programs'business, Small businesses.

■ For the reasons set forth in the preamble, the U.S. Small Business Administration amends part 121 of title 13 of the Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c) and 662(5) and Sec. 304, Pub.L. 103–403, 108 Stat.4175, 4188.

■ 2. In § 121.201, in the table under ''Small Business Size Standards by NAICS Industry'':

a. Under the heading Subsector 561—Administrative and Support Services, revise entry 561520 to read as follows; and

b. Revise footnote 10 to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
* * *	* * *	*	*
Subsector 561—Administrative and Support Services			
* * *	* * *	*	*
561520	Tour Operators[10]	[10] $6.0	
* * *	* * *	*	*

* * * * *

Footnotes

* * * * *

10. NAICS codes 488510 (part) 531210, 541810, 561510, 561520, and 561920—As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenues.

* * * * *

Dated: March 6, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–8169 Filed 4–3–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14600; Airspace Docket No. 03–ACE–23]

Modification of Class E Airspace; Knoxville, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Knoxville, IA revealed a discrepancy in the legal description for the Knoxville, IA Class E airspace. This action corrects the discrepancy by modifying the Knoxville, IA Class E airspace and by incorporating the change into the Class E airspace legal description.

DATES: This direct final rule is effective on 0901 UTC, July 10, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 15, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14600/Airspace Docket No. 03–ACE–23, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Knoxville, IA. It brings the legal description of this airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will 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 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this 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 both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–14600/Airspace Docket No. 03–ACE–23.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' and Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 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 Federal Aviation Administration Order 7400.9K, dated August 30,

2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Knoxville, IA

Knoxville Municipal Airport, IA
(Lat. 41°17′56″ N., long. 93°06′50″ W.)
Knoxville NDB
(Lat. 41°17′45″ N., long. 93°06′51″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Knoxville Municipal Airport and within 2.6 miles each side of the 145° bearing from the Knoxville NDB extending from the 6.8-mile radius to 7 miles southeast of the airport and within 2.6 miles each side of the 340° bearing from the Knoxville NDB extending from the 6.8-mile radius to 7 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on March 24, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–8142 Filed 4–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14601; Airspace Docket No. 03–ACE–24]

Modification of Class E Airspace; Marshalltown, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Marshalltown, IA revealed a discrepancy in the legal description for the Marshalltown, IA Class E airspace. This action corrects the discrepancy by modifying the Marshalltown, IA Class E airspace and by incorporating the change into the Class E airspace legal description.

DATES: This direct final rule is effective on 0901 UTC, July 10, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 15, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14601/Airspace Docket No. 03–ACE–24, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Marshalltown, IA. It correctly identifies the facilities which are used to define Marshalltown, IA Class E airspace area and brings the legal description of this airspace asrea into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will 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 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this 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 both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–14601/Airspace Docket No. 03–ACE–24.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 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 Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Marshalltown, IA

Marshalltown Municipal Airport, IA
(Lat. 42°06′46″ N., long. 92°55′04″ W.)
Elmwood VOR/DME
(Lat. 42°06′41″ N., long. 92°54′32″ W.)
Marshalltown NDB
(Lat. 42°06′36″ N., long 92°55′01″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Marshalltown Municipal Airport and within 2.6 miles each side of the 135° radial of the Elmwood VOR/DME extending from the 6.4-mile radius to 7 miles southeast of the airport and within 2.6 miles each side of the 313° bearing from the Marshalltown NDB extending from the 6.4-mile radius to 7 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on March 24, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–8141 Filed 4–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30361; Amdt. No. 3052

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective April 4, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 4, 2003.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.
4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: PO Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances

which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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. For the same reason, the FAA certifies that this amendment 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 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on March 28, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instruction Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENTS APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV, SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective upon publication*

FDC Date	State	City	Airport	FDC Number	Subject
03/12/03	CA	Calipatria	Cliff Hatfield Memorial	3/2008	RNAV (GPS) Rwy 8, Orig.
03/13/03	WV	Huntington	Tri-State/Milton J. Ferguson Field	3/2029	ILS Rwy 30, Amdt 48.
03/17/03	SC	Columbia	Columbia Metropolitan	3/2104	RNAV (GPS) Rwy 11, Orig.
03/18/03	MD	Elkton	Cecil County	3/2137	RNAV (GPS) Rwy 31, Orig–A.
03/18/03	MD	Elkton	Cecil County	3/2138	VOR/DME Rwy 31, Orig–A.
03/19/03	OK	Tulsa	Richard Lloyd Jones, Jr.	3/2150	ILS Rwy 1L, Orig–A.
03/19/03	OK	Tulsa	Richard Lloyd Jones, Jr.	3/2151	VOR/DME–A, Amdt 6A.
03/19/03	OK	Tulsa	Richard Lloyd Jones, Jr.	3/2189	VOR Rwy 1L, Amdt 4A.
03/20/03	MN	Brainerd	Brainerd Lakes Regional	3/2235	ILS Rwy 23, Amdt 6.
03/20/03	OH	Cleveland	Cleveland–Hopkins Intl	3/2257	RNAV (GPS) Z Rwy 6L, Orig–A.
03/21/03	VT	Burlington	Burlington Intl	3/2273	ILS/DME Rwy 33, Orig–D.
03/21/03	NH	Portsmouth	Pease Intl Tradeport	3/2275	ILS Rwy 16, Orig.
03/21/03	NH	Portsmouth	Pease Intl Tradeport	3/2288	ILS Rwy 34, Amdt 1B.
03/24/03	NY	Plattsburgh	Plattsburgh Intl	3/2334	ILS Rwy 17, Amdt 1.
03/25/03	IL	Belleville	Scott AFB/Midamerica	3/2350	ILS Rwy 14R, Orig.
03/25/03	UT	Kanab	Kanab Muni	3/2356	RNAV (GPS) Rwy 1, Orig.
03/25/03	OK	Sand Springs	William R. Pogue Muni	3/2370	GPS Rwy 35, Orig–A.
03/26/03	PA	Johnstown	John Murtha Johnstown-Cambria County.	3/2401	RNAV (GPS) Rwy 33, Orig.
03/27/03	IL	Chicago	Chicago Midway Intl	3/2411	ILS Rwy 4R, Amdt 9B.

[FR Doc. 03–8138 Filed 4–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30360; Amdt. No. 3051]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective April 4, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of April 4, 2003.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: PO Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 997) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(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. For the same reason, the FAA certifies that this amendment 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 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on March 28, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs; identified as follows:

** * * Effective April 17, 2003*

Buffalo, NY, Buffalo Niagara Intl, RNAV (GPS) RWY 14, Orig.
Portland, OR, Portland-Hillsboro, ILS RWY 12, Amdt 7.

** * * Effective May 15, 2003*

Show Low, AZ, Show Low Muni, NDB–A, Amdt 1.
Show Low, AZ, Show Low Muni, RNAV (GPS) RWY 24, Orig.
Blythe, CA, Blythe, VOR/DME–A, Orig.
Blythe, CA, Blythe, VOR OR GPS–A, Amdt 6B, Cancelled.
Blythe, CA, Blythe, VOR/DME RWY 26, Amdt 6.
Blythe, CA, Blythe, RNAV (GPS) RWY 26, Orig.
Port Lauderdale, FL, Fort Lauderdale Executive, RNAV (GPS) RWY 26, Orig.
Orlando, FL, Orlando Sanford, NDB–B, Orig.
Orlando, FL, Orlando Sanford, NDB–C, Orig.
Orlando, FL, Orlando Sanford, NDB RWY 9L, Amdt 1, Cancelled.
Orlando, FL, Orlando Sanford, NDB RWY 27R, Amdt 1, Cancelled.
Agana, Guam, Guam International, ILS RWY 6L, Amdt 3
Agana, Guam, Guam International, RNAV (GPS) Y RWY 6L, Orig.
Agana, Guam, Guam International, RNAV (GPS) Z RWY 6L, Orig.
Agana, Guam, Guam International, RNAV (GPS) Y RWY 6R, Orig.

Agana, Guam, Guam International, RNAV (GPS) Z RWY 6R, Orig.
Agana, Guam, Guam International, RNAV (GPS) RWY 24L, Orig.
Agana, Guam, Guam International, RNAV (GPS) RWY 24R, Orig.
Agana, Guam, Guam International, GPS RWY 6L, Orig. Cancelled.
Agana, Guam, Guam International, GPS RWY 24R, Orig. Cancelled.
Lihue, HI, Lihue, ILS RWY 35, Amdt 6.
Lihue, HI, Lihue, RNAV (GPS) RWY 17, Orig.
Lihue, HI, Lihue, RNAV (GPS) RWY 21, Orig.
Lihue, HI, Lihue, RNAV (GPS) RWY 35, Orig.
Mansfield, MA, Mansfield Muni, NDB RWY 32, Admt 7.
Mansfield, MA, Mansfield Muni, RNAV (GPS) RWY 32, Orig.
Mansfield, MA, Mansfield Muni, GPS RWY 32, Orig, Cancelled.
Cheboygan, MI, Cheboygan County, VOR RWY 9, Amdt 8.
Cheboygan, MI, Cheboygan County, RNAV (GPS) RWY 9, Orig.
Cheboygan, MI, Cheboygan County, RNAV (GPS) RWY 27, Orig.
Fargo, ND, Hector Intl, RNAV (GPS) RWY 13, Orig, Cancelled.
Fargo, ND, Hector Intl, RNAV (GPS) RWY 31, Orig, Cancelled.
Bradford, PA, Bradford Regional, VOR RWY 14, Orig.
Bradford, PA, Bradford Regional, VOR/DME RWY 14, Amdt 9.
Bradford, PA, Bradford Regional, ILS RWY 32, Amdt 11.
Bradford, PA, Bradford Regional, RNAV (GPS) Y RWY 14, Orig.
Bradford, PA, Bradford Regional, RNAV (GPS), Z WY 14, Orig.
Bradford, PA, Bradford Regional, RNAV (GPS) RWY 32, Orig.
Lock Haven, PA, William T. Piper Memorial, RNAV (GPS)–A Orig.
Selinsgrove, PA, Penn Valley, RNAV (GPS) RWY 17, Orig, Cancelled.
Babelthuap Island, PS, Babelthuap/Koror, GPS RWY 9, Amdt 1B, Cancelled.
Babelthuap Island, PS, Babelthuap/Koror, GPS RWY 27, Amdt 1B, Cancelled.
Fort Atkinson, WI, Fort Atkinson Muni, VOR–A, Orig-B.
Fort Atkinson, WI, Fort Atkinson Muni, RNAV (GPS) RWY 3, Orig.
Fort Atkinson, WI, Fort Atkinson Muni, GPS RWY 3, Orig, Cancelled.
Fort Atkinson, WI, Fort Atkinson Muni, RNAV (GPS) RWY 21, Orig.

[FR Doc. 03–8137 Filed 4–3–03; 8:45 am]
BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 310

Telemarketing Sales Rule

AGENCY: Federal Trade Commission.

ACTION: Stay of compliance date.

SUMMARY: In this document, the Federal Trade Commission (''FTC'' or ''Commission'') announces that in response to supplemental petitions from the Direct Marketing Association (''DMA'') and the American Teleservices Association (''ATA''), the Commission has decided to extend the date by which it will require full compliance with the amended Telemarketing Sales Rule (''amended TSR'' or ''amended Rule''), until October 1, 2003.

DATES: The rule amending the TSR, published January 29, 2003 (68 FR 4580), became effective March 31, 2003. The Commission will require full compliance with §§ 310.4(b)(1)(iv) and § 310.4(b)(4) on October 1, 2003.

ADDRESSES: Requests for copies of the amended Rule and this document should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Catherine Harrington-McBride, (202) 326–2452, Karen Leonard, (202) 326–3597, Michael Goodman, (202) 326–3071, or Carole Danielson, (202) 326–3115, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On January 29, 2003, the Federal Trade Commission published the amended TSR, 16 CFR part 310, and its Statement of Basis and Purpose in the **Federal Register.**[1] The document stated that the Amended Rule would become effective March 31, 2003; that full compliance with § 310.4(a)(7), the caller identification transmission provision, would be required by January 29, 2004; and that the Commission would announce at a future time the date by which full compliance with § 310.4(b)(1)(iii)(B), the ''do-not-call'' registry provision, would be required.

In response to petitions filed February 27, 2003, by DMA and February 27, 2003, by ATA, the Commission determined to extend the date by which it will require full compliance with § 310.4(b)(4)(iii) (the recording requirement of the call abandonment safe harbor provision) until October 1, 2003. The Commission also stayed until October 1, 2003, the date by which it will require full compliance with the safe harbor record retention requirement, § 310.4(b)(4)(iv), to the extent it would require record keeping to document the use of a recorded message in instances of call abandonment.

At that time, the Commission determined not to stay the requirement of full compliance with the prohibition on call abandonment (§ 310.4(b)(1)(iv)) or the other requirements of the call abandonment safe harbor provision (§§ 310.4(b)(4)(i), (ii) & (iv)) because the petitioners had not demonstrated that telemarketers would be unable to comply with these call abandonment provisions.

Subsequently, on March 25, 2003, DMA renewed its request to stay the compliance date of the call abandonment provisions.[2] DMA submitted numerous affidavits from manufacturers and users of predictive dialers containing information not previously submitted to the Commission, either in the rulemaking proceeding or in the initial petitions to stay various provisions of the amended TSR. These affidavits stated that, as a practical matter, compliance with the call abandonment safe harbor by March 31, 2003, would be very difficult or impossible for some telemarketers. Specifically, these affidavits stated that it is difficult if not impossible to set some predictive dialer equipment currently in use to a maximum abandonment rate of 3% of answered calls, as required by § 310.4(b)(4)(i). According to the DMA petition and supporting affidavits, this equipment incorporates hardware or software designed to calculate the abandonment rate on the basis of all calls placed, not all calls answered. This means that the equipment cannot, or cannot easily, be set to abandon no more than 3% of all calls answered by the called consumer, as required by § 310.4(b)(i). According to DMA, additional time is therefore necessary for some telemarketers to comply with § 310.4(b)(4)(i), given this limitation on their current predictive dialer equipment. The ATA supplemental petition echoes similar arguments.

Based on information newly submitted by DMA, together with information obtained from other sources, the Commission has determined that full compliance with the requirement in the call abandonment safe harbor that no more than 3% of all calls answered by a consumer be abandoned (§ 310.4(b)(4)(i)) by March 31, 2003, may constitute an undue burden on some telemarketers and sellers, who need to

[1] 68 FR 4580 (Jan. 29, 2003).

[2] On March 26, 2003, the United States District Court for the Western District of Oklahoma denied petitioner DMA's motion for a preliminary injunction based on the same arguments and facts presented here. *U.S. Security* v. *FTC,* Case No. CIV–03–122–W. Although the Commission believes that this was the correct decision under the legal standards for obtaining a preliminary injunction, the Commission notes that it has broad discretionary authority to grant a stay where it believes that the goals of the rule making will be served.

reprogram or purchase software for their equipment, or replace their current equipment.

The Commission weighs the burden on industry against the reasons for implementing the amended Rule provisions. Evidence on the record establishes that abandoned calls ''frighten consumers, invade their privacy, cause some of them to struggle to answer the phone only to be hung up on, and waste the time and resources of consumers working from home.'' 68 FR 4580, 4642 (Jan. 29, 2003) (footnotes omitted). The Commission therefore determined that the abandoned call provisions of the amended TSR are necessary to remedy the abusive practice of call abandonment that can result from the use of predictive dialers.

Given the information on the record, however, the Commission concludes that the economic harm to industry that is likely to occur narrowly outweighs the harm to consumers of a brief delay in implementing the abandoned call provision. Therefore, the Commission has determined to extend the date by which it will require full compliance with §§ 310.4(b)(1)(iv) and § 310.4(b)(4) until October 1, 2003.[3]

Given the impact on consumers of abandoned calls, the Commission encourages the industry to use its best efforts to come into full compliance with the abandoned call provisions as soon as possible. After six months (*i.e.*, October 1, 2003), the Commission believes that the balance of equities weighs in favor of preventing further consumer harm by requiring compliance with the abandoned call provisions; and, therefore, it is unlikely that the Commission will provide a further stay of their implementation. The additional six months should give industry ample time to make the changes in their operations necessary to comply with the recording requirement of the call abandonment safe harbor.

The Commission has now announced that it will require full compliance on October 1, 2003 with: (1) § 310.4(b)(1)(iv) (the prohibition on abandoned calls); (2) § 310.4(b)(4) (the safe harbor for call abandonment) as well as any record keeping requirements associated with the safe harbor; and (3) § 310.4(b)(1)(iii)(B) (the national ''do-not-call'' registry provisions of the amended Rule). The Commission will require full compliance on January 29, 2004 with § 310.4(a)(7) (the caller identification provisions). Full compliance with all other provisions of the amended TSR will be required by the date on which the amended Rule is effective, March 31, 2003.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–8233 Filed 4–3–03; 8:45 am]

BILLING CODE 6750–01–P

[3] The decision to stay the requirement of full compliance with two key components of the safe harbor provision (§§ 310.4(b)(4)(i) & (iii)) as well as the record keeping component of the safe harbor insofar as it would require records of compliance with the two stayed components, compels that full compliance with the prohibition on call abandonment, § 310.4(b)(1)(iv) also be stayed. Otherwise, industry members would be liable for a rule violation if they abandoned any calls and would have no safe harbor enabling them to continue use of predictive dialers. As noted in the Statement of Basis and Purpose, ''a total ban on abandoned calls, which would amount to a ban on predictive dialers, would not strike the proper balance between addressing an abusive practice and allowing for the use of a technology that provides substantially reduced costs for telemarketers.'' 68 FR 4643 (Jan. 29, 2003). Further, having stayed the requirement of full compliance with the prohibition on call abandonment, the final element of the safe harbor, § 310.4(b)(4)(ii) (requiring that the seller or telemarketer allow the telephone to ring for at least fifteen seconds or four rings before disconnecting an unanswered call) would have no application. The requirement of full compliance with the entire safe harbor provision, § 310.4(b)(4), is therefore stayed until October 1, 2003.

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 408

[Regulation No. 8]

RIN 0960–AF61

Special Benefits for Certain World War II Veterans

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: We are adding to our regulations a new part 408 that sets forth our rules applicable to claims for special veterans benefits (SVB) under title VIII of the Social Security Act (the Act). The title VIII program was effective in May 2000 and provides monthly benefits to certain World War II (WWII) veterans who were previously eligible for supplemental security income (SSI) payments under title XVI of the Act and reside outside the United States. These final rules include five new subparts that describe: what the new part is about, how we determine whether you qualify for and are entitled to SVB, how you file for SVB, how we evaluate evidence under the SVB program, and how we compute and pay SVB.

In addition to these subparts, we are developing additional proposed subparts describing other aspects of the title VIII program that we will publish at a later date.

EFFECTIVE DATES: These regulations are effective May 5, 2003.

FOR FURTHER INFORMATION CONTACT: Robert J. Augustine, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–0020 or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778 or visit our Internet site, Social Security Online, at *http://www.ssa.gov.*

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** on the internet site for the Government Printing Office: *http://www.access.gpo.gov/sudocs/aces/aces140.html.* It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at *http://www.ssa.gov/regulations.*

SUPPLEMENTARY INFORMATION:

Statutory Provisions

Section 251 of the Foster Care Independence Act of 1999 (Pub. L. 106–169), enacted on December 14, 1999, added a new title VIII to the Act (Special Benefits for Certain World War II Veterans). Title VIII authorizes SSA to pay special veterans benefits (SVB) to certain WWII veterans who reside outside the United States. Establishing SVB entitlement is a two-step process: first, you need to show that you meet certain qualifying requirements; once we determine that you qualify for SVB, you will be entitled to SVB payments after you begin residing outside the United States.

How to Qualify for SVB

Section 802 of the Act provides that, in order to be entitled to SVB, you must first establish that you are a ''qualified individual.'' You qualify for SVB if you file an application for SVB and are:

- Age 65 on or before December 14, 1999 (the date the title VIII program was enacted);
- A WWII veteran;
- Eligible for SSI for both December 1999 (the month of enactment) and the month you file your application for SVB; and
- Receiving total monthly benefit income from other sources that is less than 75 percent of the Federal benefit rate (FBR) under SSI (title XVI of the Act).

However, even if you meet all the above requirements, section 804 of the

Act specifies certain conditions that will still prevent you from qualifying for SVB or, if you have already qualified for SVB, will prevent us from paying you benefits. Specifically, the following events will prevent you from qualifying for or receiving SVB:

- Removal (including deportation) from the United States under section 237(a) or 212(a)(6)(A) of the Immigration and Nationality Act.
- Flight to avoid prosecution, or custody or confinement after conviction, for a crime or an attempt to commit a crime that is a felony under the laws of the United States or the jurisdiction of the United States from which you fled or, in the case of the State of New Jersey, is a high misdemeanor.
- Violation of a condition of probation or parole imposed under Federal or State law.
- Residence in a country to which payments are withheld by the Treasury Department under 31 U.S.C. 3329.

WWII Veteran Status

As explained above, section 802 of the Act specifies that you must be a WWII veteran to qualify for SVB. Section 812(1) of the Act defines a WWII veteran as a person who served during WWII in:

- The active military, naval, or air service of the United States during the period beginning on September 16, 1940 and ending on July 24, 1947; or
- The organized military forces of the Government of the Commonwealth of the Philippines, while the forces were in the service of the U.S. Armed Services under the military order of the President dated July 26, 1941, including organized guerrilla forces under commanders appointed by the Commander in Chief, Southwest Pacific Area, or other competent authority in the U.S. Army. This service must have been rendered at any time during the period beginning July 26, 1941 and ending on December 30, 1946.

In addition to meeting either of these requirements, you must have been discharged or released from this service under conditions other than dishonorable after serving at least 90 days or, if your service was less than 90 days, because of a disability or injury incurred or aggravated in the line of active duty.

How We Evaluate Evidence

Sections 806 and 810 of the Act authorize us to establish rules about the kinds of information you must give us to show that you qualify for SVB and that you are entitled to receive benefits. Section 806 also specifies that we cannot pay you SVB based only on your statements about whether you qualify for benefits. Instead, you must give us documents or other evidence that we will verify with independent sources.

How We Calculate and Pay SVB

Section 805 of the Act specifies that your monthly SVB payment is equal to 75 percent of the Federal benefit rate (FBR) under title XVI of the Act, reduced by the amount of any other benefit income you receive for that month. As used in title VIII, ''other benefit income'' means any recurring payments you receive such as an annuity, pension, retirement, or disability benefit, but only if you received a similar payment from the same (or a related) source during the 12-month period before the month you file an application for SVB.

Applying for SVB

As indicated above, section 802 of the Act requires you to file an application in order to establish that you qualify for SVB. Section 806 of the Act authorizes SSA to prescribe the requirements for filing such an application. In order to maintain consistency throughout the benefit programs we administer, we have attempted, where possible, to use the same requirements we use for filing applications under the titles II and XVI programs. These rules were established in order to ensure that individuals have every reasonable opportunity to file a claim for benefits at the earliest possible time without loss of benefits, and we believe those same considerations apply to claims for title VIII benefits.

Explanation of New Part 408

New part 408 will initially consist of 5 subparts. (As indicated above, we will propose additional subparts in a subsequent notice of proposed rulemaking (NPRM).) Following is a list of each subpart that includes a brief description of the contents of each section in the subpart.

Subpart A (Introduction, General Provision and Definitions)

- Section 408.101 introduces the title VIII program and contains a list of each subpart in part 408, and gives a brief description of the topics covered in those subparts.
- Section 408.105 briefly explains the purpose of the title VIII program and that the program is administered by SSA.
- Section 408.110 defines certain terms that are used throughout part 408.
- Section 408.120 explains how we calculate time periods in which you must take a required action under the SVB program when they end on a day, any part of which is a nonworkday for Federal employees. This is the same as the rule we use under both the title II and title XVI programs.

Subpart B (SVB Qualification and Entitlement)

As explained above, you must meet certain requirements to qualify for SVB (*i.e.*, you must be age 65 on or before December 14, 1999, a WWII veteran, SSI eligible for December 1999 and the month in which you file for SVB, not receiving other benefit income that is 75% or more of the SSI FBR, and you must file an application for SVB). In addition, even if you meet these requirements, certain other conditions will prevent you from qualifying for SVB or, if you are already qualified, will prevent us from making SVB payments to you. Subpart B discusses these qualifying and entitlement requirements. Specifically:

- Section 408.201 describes what subpart B is about and gives a general explanation of how you qualify for and establish entitlement to SVB payments.
- Section 408.202 gives a list of the specific requirements you must meet to qualify for SVB.
- Section 408.204 describes the conditions that will prevent you from qualifying for SVB or prevent you from being entitled to receive SVB payments even if you meet the requirements in § 408.202.
- Section 408.206 explains that when you apply for SVB, we will first determine if you qualify for benefits. If you do not qualify, we will deny your claim. If you do qualify, we will send you a written notice of qualification that explains you have 4 calendar months after the date of the notice in which to begin residing outside the U.S. or we will deny your claim. If you begin residing outside the U.S. within that 4-month period, your SVB payments will begin with the first full month in which you resided outside the U.S. on the first day of the month.
- Section 408.208 explains that, if you begin residing outside the U.S. within 4 calendar months after the date of the written notice of SVB qualification, we will send you a notice of SVB entitlement, including the date your entitlement begins, the amount of your monthly SVB payment, and the amount of any reduction in your payment because you are receiving other benefit income.
- Section 408.210 explains that if you do not begin residing outside the U.S. within 4 calendar months after the date of the written notice of SVB qualification, we will deny your SVB claim.

• Section 408.212 explains what happens if you are residing outside the U.S. at the time you file for SVB. If you meet all the requirements for qualification and none of the SVB disqualifying events applies to you, we will ask you for evidence of your residence outside the U.S. After your foreign residence is established, we will send you a notice of SVB entitlement, including the date your entitlement begins, the amount of your monthly SVB payment, and the amount of any reduction in your payment because you are receiving other benefit income.

• Section 408.214 explains that, in order to qualify for SVB, you must have been age 65 on or before December 14, 1999.

• Section 408.216 explains the service and discharge requirements you must meet to be considered to be a WWII veteran.

• Section 408.218 explains what we mean by eligible for SSI. Under this section, anyone whose SSI eligibility has not been terminated or whose SSI benefits are not subject to a penalty under § 416.1340 of our SSI regulations will be considered to be eligible for SSI, whether or not the person is actually receiving SSI payments.

• Section 408.220 explains what we mean by ''other benefit income'' and includes examples of payments we consider to be ''other benefit income.'' It also explains that your other benefit income will only affect your entitlement to SVB if you received a similar payment from the same or a related source at any time during the 12-month period before you file for SVB.

• Section 408.222 explains how your other benefit income affects SVB qualification and the amount of your SVB payment. If you are receiving other benefit payments when you file for SVB, we will deny your claim if these payments equal or exceed 75 percent of the FBR payable to individual SSI recipients with no income; otherwise we will reduce your monthly SVB payment by the amount of the other benefit income you receive in that month.

• Section 408.224 explains how we determine the monthly payment of your other benefit income if the payments are not made on a monthly basis.

• Section 408.226 explains that, once you begin receiving SVB, we will reduce your SVB payments if you begin receiving additional other benefit income, but only if you received similar benefits from the same or a related source during the 12-month period before you applied for SVB.

• Section 408.228 explains when we will consider you to be residing outside the U.S. It also explains that, for SVB purposes, you can be a resident of only one country at a time.

• Section 408.230 explains when you must establish residence outside the U.S. Under the rulemaking authority provided by the law, we propose to establish a 4-month time limit within which you need to establish residence outside the U.S. Generally, the 4-month period would begin with the month after the month in which the notice that you qualify for SVB is dated. However, this section also explains that we will extend the 4-month period if you are in the U.S. to appeal a decision on your title VIII claim or on a title II and/or a title XVI claim that affects your SVB qualification. We believe this 4-month time period takes into account the fact that you generally need to be residing in the U.S. in order to be SSI eligible (and therefore are residing in the U.S. when you apply for SVB) but still gives you sufficient time in which to make arrangements to leave the U.S. and to begin residing outside the U.S.

• Section 408.232 explains that you lose your foreign resident status and we will stop paying you SVB if you enter the U.S. and stay here for more than 1 full calendar month. We will not resume your SVB payments until you establish that you are again residing outside the U.S. In recognition of the fact that many individuals receiving SVB benefits may wish to return to the U.S. for short periods (*e.g.*, to visit friends or relatives), we propose to permit them to continue receiving SVB while in the U.S. provided they do not stay in the U.S. for more than 1 full calendar month.

• Section 408.234 explains that you may continue to receive SVB payments even if you are in the U.S. for more than 1 full calendar month if you are prevented from returning to your home abroad by circumstances beyond your control or you are in the U.S. to appeal an SSA decision on a claim filed under title II, VIII, or XVI of the Act.

Subpart C (Filing Applications)

This subpart contains our rules on filing applications under the SVB program. Specifically:

• Section 408.301 explains what subpart C is about.

• Section 408.305 explains that you must file an application to receive SVB.

• Section 408.310 explains what makes an application a claim for SVB.

• Section 408.315 explains that you must file your own application for SVB unless you are mentally incompetent or physically unable to sign your own application. In that case, certain other individuals may sign the application on your behalf.

• Section 408.320 explains the kinds of evidence an individual must give us to show that he or she has authority to sign an application on your behalf.

• Section 408.325 explains when we consider you to have filed your application.

• Section 408.330 explains how long your application for SVB will remain in effect.

• Section 408.340 explains when we will use the date of a written statement as your application filing date.

• Section 408.345 explains the circumstances under which we will establish your filing date based on an oral inquiry about qualifying for SVB.

• Section 408.351 explains the circumstances under which we will establish your filing date if we give you misinformation about qualifying for SVB.

• Section 408.355 explains what happens if you request to withdraw your application for SVB.

• Section 408.360 explains how you can cancel your request to withdraw your application for SVB.

Subpart D (Evidence Requirements)

Subpart D sets forth the rules we will use to evaluate evidence under the title VIII program. Specifically:

• Section 408.401 explains that, in addition to your statements, we may need documentary evidence to confirm that you meet all the SVB qualification requirements and ensure that we pay you the correct amount of benefits.

• Section 408.402 explains when you need to give us evidence.

• Section 408.403 explains where you should give us the evidence we need to process your SVB claim.

• Section 408.404 explains if you fail to give us evidence we need in connection with your claim by a specified date, we may decide you do not qualify for SVB or, if you are already receiving SVB, we may stop or reduce your payments until we receive the necessary evidence. This section also explains when we will give you more time to give us the evidence.

• Section 408.405 explains that when you need to give us evidence to establish that you qualify for SVB or may continue receiving SVB payments, the evidence must be an original document or record or a certified copy of the original document or record. In the case of certified copies, this section also includes a list of the people who may certify the document or record to be a true and exact copy of the original. The section also explains that when you give us an original record, we will

photocopy it and return the original record to you.

• Section 408.406 explains how we evaluate the evidence you give us.

• Section 408.410 explains that you must submit evidence of your age to qualify for SVB unless we have already established your age in connection with a claim for benefits under title II or title XVI of the Act.

• Section 408.412 explains what kinds of documents you need to give us to show that you were born on or before December 15, 1934.

• Section 408.413 explains how we evaluate the evidence of age you give us.

• Section 408.420 explains that your evidence of WWII service must show your name, your branch of service, the dates of your service, your military service number, the character of your discharge and, if you were in the organized military forces (including organized guerrilla forces) of the Government of the Commonwealth of the Philippines, that your service is considered to have been in the service of the U.S. Armed Forces. This section also explains the kind of evidence you can give us to show you are a WWII veteran.

• Section 408.425 explains that we will use our data records to determine your SSI eligibility.

• Section 408.430 explains that we need evidence of your other benefit income if the income is less than 75 percent of the FBR.

• Section 408.432 explains what is evidence of your other benefit income.

• Section 408.435 explains the evidence you need to give us to show that you are residing outside the U.S.

• Section 408.437 explains the evidence you need to give us to show that you had good cause for remaining in the U.S. for more than one full month after you begin receiving SVB. It includes a description of the kinds of evidence you can give to show both that you made a good faith effort to return to your home abroad and the circumstances that prevented you from doing so.

Subpart E (Amount and Payment of Benefits)

Subpart E explains how we determine the amount of and pay SVB. Specifically:

• Section 408.501 explains what subpart E is about.

• Section 408.505 explains that the maximum SVB payment is equal to 75 percent of the SSI FBR for an individual with no income. It explains that whenever there is a cost-of-living allowance (COLA) increase in the FBR, we will increase your SVB to reflect the COLA increase. It also explains that we will reduce the maximum SVB payable by the amount of your other benefit income.

• Section 408.510 explains that, when you are receiving other benefit income, we do not round the amount of your SVB payment. This section also explains that the minimum SVB payable is $1.00.

• Section 408.515 explains that we make SVB payments on the first day of the month for which they are due. We also explain that when the first day of the month is a Saturday, Sunday, or Federal legal holiday, we will make your payment on the first preceding day that is not a Saturday, Sunday or Federal legal holiday.

Public Comments

On August 30, 2002, we published an NPRM in the **Federal Register** at 67 FR 55744 and provided a 60-day period for interested individuals and organizations to comment on the proposed rules. We received only the following comment from an individual.

Comment: The commenter recommends that we revise § 408.420, which deals with evidence of military service, to specify that we will accept only such evidence from a United States Government source.

Response: We are adopting this comment. In order to qualify for benefits, the applicant must be a World War II (WWII) veteran as described in § 408.216. That section provides, in part, that a WWII veteran is someone who served in the U.S. Armed Forces or in the military forces of the Commonwealth of the Philippines, while those forces were in the service of the U.S. Armed Forces. Since the requirement is service in the U.S. Armed Forces or Philippine forces that were in service to the U.S. Armed Forces, it is appropriate that evidence of such service is acceptable only if it is issued by a U.S. Government agency. We have revised § 408.420 accordingly.

We have also made some editorial changes for purposes of clarification. We have not made any additional substantive changes to the NPRM.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules do not meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were not subject to OMB review.

Regulatory Flexibility Act

We certify that these final rules will not have a significant impact on a substantial number of small entities because they affect only individuals filing for benefits under title VIII of the Act. Therefore, a regulatory flexibility analysis, as provided for in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final rules contain information collection requirements in subparts B, C, and D of part 408 that require clearance from OMB. These requirements were approved by OMB under OMB No. 0960–0658, which expires on November 30, 2005.

(Catalog of Federal Domestic Assistance Program No. 96.020, Special Benefits for Certain World War II Veterans)

List of Subjects in 20 CFR Part 408

Administrative practice and procedure, Aged, Reporting and recordkeeping requirements, Social security, Special veterans benefits, Veterans.

Dated: March 27, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are adding a new part 408 to chapter III of title 20 of the Code of Federal Regulations as follows:

PART 408—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS

Subpart A—Introduction, General Provision and Definitions

Subpart B—SVB Qualification and Entitlement

Subpart A—Introduction, General Provision and Definitions

Authority: Secs. 702(a)(5) and 801–813 of the Social Security Act (42 U.S.C. 902(a)(5) and 1001–1013).

§ 408.101 What is this part about?

The regulations in this part 408 (Regulation No. 8 of the Social Security Administration) relate to the provisions of title VIII of the Social Security Act as added by Pub. L. 106–169 enacted December 14, 1999. Title VIII (Special Benefits for Certain World War II Veterans) established a program for the payment of benefits to certain World War II veterans. The regulations in this part are divided into the following subparts according to subject content.

(a) Subpart A contains this introductory section, a statement of the general purpose underlying the payment of special benefits to World War II veterans, general provisions applicable to the program and its administration, and defines certain terms that we use throughout part 408.

(b) Subpart B contains the requirements for qualification and entitlement to monthly title VIII benefits.

(c) Subpart C contains the provisions relating to the filing and withdrawal of applications.

(d) Subpart D contains the provisions relating to the evidence required for establishing qualification for and entitlement to monthly title VIII benefits.

(e) Subpart E contains the provisions about the amount and payment of monthly benefits.

§ 408.105 Purpose and administration of the program.

The purpose of the title VIII program is to assure a basic income level for certain veterans who are entitled to supplemental security income (SSI) and who want to leave the United States to live abroad. The title VIII program is administered by the Social Security Administration.

§ 408.110 General definitions and use of terms.

(a) *Terms relating to the Act and regulations.* (1) *The Act* means the Social Security Act as amended (42 U.S.C. Chap.7).

(2) *Title* means the title of the Act.

(3) *Section or §* means a section of the regulations in part 408 of this chapter unless the context indicates otherwise.

(b) *Commissioner; Appeals Council; Administrative Law Judge defined.* (1) *Commissioner* means the Commissioner of Social Security.

(2) *Appeals Council* means the Appeals Council of the Office of Hearings and Appeals of the Social Security Administration or a member or members of the Council designated by the Chairman.

(3) *Administrative Law Judge* means an Administrative Law Judge in the Office of Hearings and Appeals in the Social Security Administration.

(c) *Miscellaneous.* (1) *A calendar month.* The period including all of 24 hours of each day of January, February, March, April, May, June, July, August, September, October, November, or December.

(2) *Federal benefit rate (FBR).* The amount of the cash benefit payable under title XVI for the month to an eligible individual who has no income. The FBR does not include any State supplementary payment that is paid by the Commissioner pursuant to an agreement with a State under section 1616(a) of the Act or section 212(b) of Public Law 93–66.

(3) *Qualified individual.* An individual who meets all the requirements for qualification for SVB in § 408.202 and does not meet any of the conditions that prevent qualification in § 408.204.

(4) *Special veterans benefits (SVB).* The benefits payable to certain veterans of World War II under title VIII of the Act.

(5) *State.* Unless otherwise indicated, this means:

(i) A State of the United States

(ii) The District of Columbia; or

(iii) The Northern Mariana Islands.

(6) *Supplemental Security Income (SSI).* SSI is the national program for providing a minimum level of income to aged, blind, and disabled individuals under title XVI of the Act.

(7) *United States.* When used in the geographical sense, this is:

(i) The 50 States;

(ii) The District of Columbia; and

(iii) The Northern Mariana Islands.

(8) *We, us* or *our* means the Social Security Administration (SSA).

(9) *World War II.* The period beginning September 16, 1940 and ending on July 24, 1947.

(10) *You* or *your* means, as appropriate, the person who applies for benefits, the person for whom an application is filed, or the person who is considering applying for benefits.

§ 408.120 Periods of limitations ending on Federal nonworkdays.

Title VIII of the Act and the regulations in this part require you to take certain actions within specified time periods or you may lose your right to a portion or all of your benefits. If any such period ends on a Saturday, Sunday, Federal legal holiday, or any other day all or part of which is declared to be a nonworkday for Federal employees by statute or Executive Order, you will have until the next Federal workday to take the prescribed action.

Subpart B—SVB Qualification and Entitlement

Authority: Secs. 702(a)(5), 801, 802, 803, 804, 806, 810 and 1129A of the Social Security Act (42 U.S.C. 902(a)(5), 1001, 1002, 1003, 1004, 1006, 1010 and 1320a–8a); Sec. 251, Pub. L. 106–169, 113 Stat. 1844.

§ 408.201 What is this subpart about?

You are qualified for SVB if you meet the requirements listed in § 408.202 and if none of the conditions listed in § 408.204 exist. However, you cannot be entitled to receive benefits for any month before the first month in which you reside outside the United States on the first day of the month and meet all the qualification requirements. You must give us any information we request and evidence to prove that you meet these requirements. You continue to be qualified for SVB unless we determine that you no longer meet the requirements for qualification in § 408.202 or we determine that you are not qualified because one of the conditions listed in § 404.204 of this chapter exists. You continue to be entitled to receive benefits unless we determine you are no longer residing outside the United States.

§ 408.202 How do you qualify for SVB?

You qualify for SVB if you meet all of the following requirements.

(a) *Age.* You were age 65 or older on December 14, 1999 (the date on which Pub. L. 106–169 was enacted into law).

(b) *World War II veteran.* You are a World War II veteran as explained in § 408.216.

(c) *SSI eligible.* You were eligible for SSI, as explained in § 408.218, for both December 1999 (the month in which Pub. L. 106–169 was enacted into law) and for the month in which you file your application for SVB.

(d) *Application.* You file an application for SVB as explained in subpart C of this part.

(e) *Other benefit income.* You do not have other benefit income, as explained in § 408.220, which is equal to, or more than, 75 percent of the current FBR.

§ 408.204 What conditions will prevent you from qualifying for SVB or being entitled to receive SVB payments?

(a) *General rule.* Even if you meet all the qualification requirements in § 408.202, you will not be qualified for SVB for or entitled to receive SVB payments for any of the following months.

(1) *Removal from the United States.* Any month that begins after the month in which we are advised by the Attorney General that you have been removed (including deported) from the United States pursuant to section 237(a) or 212(a)(6)(A) of the Immigration and Nationality Act and before the month in which you are subsequently lawfully admitted to the United States for permanent residence.

(2) *Fleeing felon.* Any month during any part of which you are fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the United States or the jurisdiction in the United States from which you fled, for a crime or an attempt to commit a crime that is a felony under the laws of the place from which you fled, or in the case of the State of New Jersey, is a high misdemeanor.

(3) *Parole violation.* Any month during any part of which you violate a condition of probation or parole imposed under Federal or State law.

(4) *Residence in certain countries.* Any month during which you are not a citizen or national of the United States and reside in a country to which payments to residents of that country are withheld by the Treasury Department under section 3329 of title 31, United States Code.

(b) *Condition occurs before we determine that you are qualified.* If one of the conditions in paragraph (a) of this section occurs before we determine that you are qualified, we will deny your claim for SVB.

(c) *Condition occurs after we determine that you are qualified.* If one of the conditions in paragraph (a) of this section occurs after we determine that you are qualified for SVB, you cannot receive SVB payments for any month in which the condition exists.

§ 408.206 What happens when you apply for SVB?

(a) *General rule.* When you apply for SVB, we will ask you for documents and other information that we need to determine if you meet all the requirements for qualification. You must give us complete information (*see* subpart D of this part for our rules on evidence). If you do not meet all of the requirements for qualification listed in § 408.202, or if one of the conditions listed in § 408.204 exists, we will deny your claim.

(b) *If you are a qualified individual residing in the United States.* If you meet all the requirements for qualification listed in § 408.202 and if none of the conditions listed in §408.204 exist, we will send you a letter telling you the following:

(1) You are qualified for SVB;

(2) In order to become entitled to SVB, you will have to begin residing outside the United States by the end of the fourth calendar month after the month in which your notice of qualification is dated. For example, if our letter is dated May 15, you must establish residence outside the United States before October 1 of that year; and

(3) What documents and information you must give us to establish that you are residing outside the United States.

§ 408.208 What happens if you establish residence outside the United States within 4 calendar months?

If you begin residing outside the United States within 4 calendar months after the month in which your SVB qualification notice is dated, we will send you a letter telling you that you are entitled to SVB and the first month for which SVB payments can be made to you. The letter will also tell you the amount of your monthly benefit payments, whether your payments are reduced because of your other benefit

income, and what rights you have to a reconsideration of our determination.

§ 408.210 What happens if you do not establish residence outside the United States within 4 calendar months?

If you do not establish residence outside the United States within 4 calendar months after the month in which your SVB qualification notice is dated, we will deny your SVB claim. We will send you a notice explaining what rights you have to a reconsideration of our determination. You will have to file a new application and meet all the requirements for qualification and entitlement based on the new application to become entitled to SVB.

§ 408.212 What happens if you are a qualified individual already residing outside the United States?

If you meet all the requirements for qualification listed in § 408.202 and if none of the conditions listed in § 408.204 exist, we will ask you for documents and information to establish your residence outside the United States. If you establish that you are residing outside the United States, we will send you a letter telling you that you are entitled to SVB and the first month for which SVB payments can be made to you. The letter will also tell you the amount of your monthly benefit payments, whether your payments are reduced because of your other benefit income, and what rights you have to a reconsideration of our determination.

Age

§ 408.214 Are you age 65?

You become age 65 on the first moment of the day before the anniversary of your birth corresponding to age 65. Thus, you must have been born on or before December 15, 1934 to be at least age 65 on December 14, 1999 and to qualify for SVB.

Military Service

§ 408.216 Are you a World War II veteran?

(a) Service requirements. For SVB purposes, you are a World War II veteran if you:

(1) Served in the active military, naval or air service of the United States during World War II at any time during the period beginning on September 16, 1940 and ending on July 24, 1947; or

(2) Served in the organized military forces of the Government of the Commonwealth of the Philippines, while the forces were in the service of the U.S. Armed Forces pursuant to the military order of the President dated July 26, 1941, including among the military forces organized guerrilla forces under commanders appointed, designated, or subsequently recognized by the Commander in Chief, Southwest Pacific Area, or other competent authority in the U.S. Army. This service must have been rendered at any time during the period beginning July 26, 1941 and ending on December 30, 1946.

(b) *Discharge requirements.* You must have been discharged or released from this service under conditions other than dishonorable after service of 90 days or more or, if your service was less than 90 days, because of a disability or injury incurred or aggravated in the line of active duty.

SSI Eligibility

§ 408.218 Do you meet the SSI eligibility requirements?

For SVB purposes, you are eligible for SSI for a given month if all of the following are met:

(a) You have been determined to be eligible for SSI (except as noted in paragraph (c) of this section); you do not have to actually receive a payment for that month;

(b) Your SSI eligibility has not been terminated for that month; and

(c) Your SSI benefits are not subject to a penalty under § 416.1340 of this chapter. This includes months in which a penalty has been imposed, as well as months in which a penalty cannot be imposed because you are in SSI nonpay status for some other reason.

Other Benefit Income

§ 408.220 Do you have other benefit income?

(a) *Description of other benefit income.* Other benefit income is any regular periodic payment (such as an annuity, pension, retirement or disability benefit) that you receive. For other benefit income to affect your SVB eligibility, you must have been receiving the other benefit income in any part of the 12-month period before the month in which you filed your application for SVB. Payments received after you become entitled to SVB can be included as other benefit income only if you received a similar payment from the same or a related source during any part of the 12-month period before the month in which you filed your application for SVB.

(b) *When other benefit payments are considered to be similar payments from the same or a related source.* Payments are similar payments from the same or a related source if they are received from sources substantially related to the sources of income received before you became entitled to SVB. For example, if you received U.S. Social Security spouse's benefits in the 12-month period before you filed your application for SVB and these were changed to widower's benefits after you became entitled to SVB, we would consider this to be from the same or a related source.

(c) *Examples of other benefit income.* Other benefit income can come from a source inside or outside the United States. It includes, but is not limited to, any of the following:

(1) Veterans' compensation or pension,

(2) Workers' compensation,

(3) U.S. or foreign Social Security benefits (not including SSI payments from the U.S.),

(4) Railroad retirement annuity or pension,

(5) Retirement or disability pension,

(6) Individual Retirement Account (IRA) payments, and

(7) Unemployment insurance benefit.

(d) *If you receive a lump-sum payment.* Regular periodic payments can also include lump-sum payments made at your request or as an administrative convenience or practice in place of more frequent payments. See § 408.224(e) for an explanation of how we determine the monthly amount of your benefit income if you receive a lump-sum payment.

§ 408.222 How does your other benefit income affect your SVB?

(a) *Income began before you qualify for SVB.* If, at the time you file your application for SVB, your other benefit income is equal to, or more than, the maximum SVB payment possible (see § 408.505), we will deny your SVB claim. If it is less, we will reduce any monthly SVB payments you become entitled to by the amount of your other benefit income (see § 408.510 for a description of how we make the reduction).

(b) *Income begins after you qualify for SVB.* If you have been determined to be qualified for SVB, we will reduce any monthly SVB payments you become entitled to by the amount of your other benefit income (see § 408.510 for a description of how we make the reduction).

§ 408.224 How do we determine the monthly amount of your other benefit income?

If your other benefit income is paid in other than monthly amounts, we will compute the equivalent monthly amount as follows:

(a) *Weekly payments.* We multiply the amount of the weekly payment by 52 and divide by 12 to determine the equivalent monthly payment amount.

(b) *Bi-weekly payments.* We multiply the amount of the bi-weekly payment by

26 and divide by 12 to determine the equivalent monthly payment amount.

(c) *Quarterly payments.* We multiply the amount of the quarterly payment by 4 and divide by 12 to determine the equivalent monthly payment amount.

(d) *Semi-annual payments.* We multiply the amount of the semi-annual payment by 2 and divide by 12 to determine the equivalent monthly payment amount.

(e) *Lump sum payment.* If the paying agency will not prorate the lump sum to determine the monthly amount, we will compute the amount as follows:

(1) *If the payment is for a specific period.* We divide the lump sum by the number of months in the period for which the payment was made to determine the equivalent monthly payment amount.

(2) *If the payment is for a lifetime or for an unspecified period.* We divide the lump sum amount by your life expectancy in months at the time the lump sum is paid.

§ 408.226 What happens if you begin receiving other benefit income after you become entitled to SVB?

If you begin receiving other benefit income after you become entitled to SVB, we will reduce your SVB by the amount of those payments only if you were receiving similar benefits from the same or a related source during the 12-month period before you filed for SVB. (See § 408.220(b) for a description of when we consider other benefit income to be from the same or a related source.)

Residence Outside the United States

§ 408.228 When do we consider you to be residing outside the United States?

(a) *Effect of residency on SVB eligibility.* You can be paid SVB only for those months in which you are residing outside the United States but you can not be paid for a month that is earlier than the month in which you filed your application for SVB. You are residing outside the United States in a month only if you reside outside the United States on the first day of that month. For SVB purposes, you can be a resident of only one country at a time. You cannot, for example, maintain a residence in the United States and a residence outside the United States at the same time.

(b) *Definition of residing outside the United States.* We consider you to be residing outside the United States if you:

(1) Have established an actual dwelling place outside the United States; and

(2) Intend to continue to live outside the United States.

(c) *When we will assume you intend to continue living outside the United States.* If you tell us, or the evidence shows, that you intend to reside outside the United States for at least 6 months, we will assume you meet the intent requirement in paragraph (b)(2) of this section. Otherwise we will assume, absent convincing evidence to the contrary, that your stay is temporary and that you are not residing outside the United States.

§ 408.230 When must you begin residing outside the United States?

(a) *4-month rule.* Except as provided in paragraph (b) of this section, you must begin residing outside the United States by the end of the fourth calendar month after the month in which the notice explaining that you are qualified for SVB is dated, as explained in § 408.206. If you do not establish residence outside the United States within this 4-month period, we will deny your claim for SVB. You will have to file a new application and meet all the requirements for qualification and entitlement based on the new application to become entitled to SVB.

(b) *When we will extend the 4-month period.* We will extend the 4-month period for establishing residence outside the United States if you are in the United States and are appealing either:

(1) A determination that we made on your SVB claim, or

(2) A determination that we made on a title II and/or a title XVI claim but only if the determination affects your SVB qualification.

(c) *How we extend the 4-month period.* If the requirements in paragraph (b) of this section are met, the 4-month period begins with the month after the month in which your notice of our decision on your appeal is dated or the month in which your appeal rights have expired.

§ 408.232 When do you lose your foreign resident status?

(a) *General rule.* We consider you to have lost or abandoned your residence outside the United States if you:

(1) Enter the United States and stay for more than 1 full calendar month (see § 408.234 for exceptions to this rule);

(2) Tell us that you no longer consider yourself to be residing outside the United States; or

(3) Become eligible (as defined by title XVI) for SSI benefits.

(b) *Resumption of SVB following a period of U.S. residence.* Once you lose or abandon your residence outside the United States, you cannot receive SVB again until you meet all the requirements for SVB qualification and reestablish your residence outside the United States.

Example: You leave your home outside the United States on June 15 to visit your son in the United States and return to your home abroad on August 15. Your SVB payments will continue for the months of June and July. However, because you were in the United States for the entire calendar month of July (*i.e.*, all of the first day through all of the last day of July), you are not entitled to an SVB payment for the month of August. Your SVB payments resume with September, the month you reestablished your residence outside the United States.

§ 408.234 Can you continue to receive SVB payments if you stay in the United States for more than 1 full calendar month?

(a) *When we will consider your foreign residence to continue.* We will continue to consider you to be a foreign resident and will continue to pay you SVB payments even if you have been in the United States for more than 1 full calendar month if you—

(1) Made a good faith effort to return to your home abroad within that 1-month period but were prevented from doing so by circumstances beyond your control (*e.g.*, sickness, a death in the family, a transportation strike, etc.); or

(2) Are exercising your option to be personally present in the United States to present testimony and other evidence in the appeal of an SSA decision on a claim filed under any SSA-administered program. This extension applies only as long as you are participating in activities where you are providing testimony and other evidence in connection with a determination or decision at a specific level of the appeals process (*e.g.*, a hearing before an administrative law judge).

(b) *When you must return to your home abroad.* When the circumstance/event that was the basis for the continuation of your SVB payments ceases to exist, you must return to your home abroad within 1 full calendar month. If you do not return to your home abroad within this 1-calendar-month period, we will consider you to have lost or abandoned your foreign resident status for SVB purposes and we will stop your SVB payments with the first day of the month following the first full calendar month you remain in the United States.

Subpart C—Filing Applications

Authority: Secs. 702(a)(5), 802, 806, and 810 of the Social Security Act (42 U.S.C. 902(a)(5), 1102, 1106 and 1110); Sec. 251, Pub. L. 106–169, 113 Stat. 1844.

Filing Your Application

§ 408.301 What is this subpart about?

This subpart contains our rules about filing applications for SVB. It explains what an application is, who may sign it, where and when it must be signed and filed, the period of time it is in effect, and how it may be withdrawn. This subpart also explains when a written statement or an oral inquiry may be considered to establish your application filing date.

§ 408.305 Why do you need to file an application to receive benefits?

In addition to meeting other requirements, you must file an application to become entitled to SVB. If you believe you may be entitled to SVB, you should file an application. Filing an application will—

(a) Permit us to make a formal decision on whether you qualify for SVB;

(b) Assure that you receive SVB for any months you are entitled to receive payments; and

(c) Give you the right to appeal if you are dissatisfied with our determination.

§ 408.310 What makes an application a claim for SVB?

To be considered a claim for SVB, an application must generally meet all of the following conditions:

(a) It must be on the prescribed SVB application form (SSA–2000–F6, Application for Special Benefits for World War II Veterans).

(b) It must be completed and filed with SSA as described in § 408.325.

(c) It must be signed by you or by someone who may sign an application for you as described in § 408.315.

(d) You must be alive at the time it is filed.

§ 408.315 Who may sign your application?

(a) *When you must sign.* If you are mentally competent, and physically able to do so, you must sign your own application.

(b) *When someone else may sign for you.* (1) If you are mentally incompetent, or physically unable to sign, your application may be signed by a court-appointed representative or a person who is responsible for your care, including a relative. If you are in the care of an institution, the manager or principal officer of the institution may sign your application.

(2) If it is necessary to protect you from losing benefits and there is good cause why you could not sign the application, we may accept an application signed by someone other than you or a person described in paragraph (b)(1) of this section.

Example: Mr. Smith comes to a Social Security office a few days before the end of a month to file an application for SVB for his neighbor, Mr. Jones. Mr. Jones, a 68-year-old widower, just suffered a heart attack and is in the hospital. He asked Mr. Smith to file the application for him. We will accept an application signed by Mr. Smith because it would not be possible to have Mr. Jones sign and file the application until the next calendar month and a loss of one month's benefits would result.

§ 408.320 What evidence shows that a person has authority to sign an application for you?

(a) A person who signs an application for you will be required to give us evidence of his or her authority to sign the application for you under the following rules:

(1) If the person who signs is a court-appointed representative, he or she must give us a certificate issued by the court showing authority to act for you.

(2) If the person who signs is not a court-appointed representative, he or she must give us a statement describing his or her relationship to you. The statement must also describe the extent to which the person is responsible for your care.

(3) If the person who signs is the manager or principal officer of an institution which is responsible for your care, he or she must give us a statement indicating the person's position of responsibility at the institution.

(b) We may, at any time, require additional evidence to establish the authority of a person to sign an application for you.

§ 408.325 When is your application considered filed?

(a) *General rule.* We consider an application for SVB filed on the day it is received by an SSA employee at one of our offices, by an SSA employee who is authorized to receive it at a place other than one of our offices, or by any office of the U.S. Foreign Service or by the Veterans Affairs Regional Office in the Philippines.

(b) *Exceptions.* (1) When we receive an application that is mailed, we will use the date shown by the United States postmark as the filing date if using the date we receive it would result in your entitlement to additional benefits. If the postmark is unreadable, or there is no United States postmark, we will use the date the application is signed (if dated) or 5 days before the day we receive the signed application, whichever date is later.

(2) We consider an application to be filed on the date of the filing of a written statement or the making of an oral inquiry under the conditions in §§ 408.340 and 408.345.

(3) We will establish a deemed filing date of an application in a case of misinformation under the conditions described in § 408.351. The filing date of the application will be a date determined under § 408.351(b).

§ 408.330 How long will your application remain in effect?

Your application for SVB will remain in effect from the date it is filed until we make a final determination on it, unless there is a hearing decision on your application. If there is a hearing decision, your application will remain in effect until the hearing decision is issued.

Filing Date Based on Written Statement or Oral Inquiry

§ 408.340 When will we use a written statement as your filing date?

If you file with us under the rules stated in § 408.325 a written statement, such as a letter, indicating your intent to claim SVB, we will use the filing date of the written statement as the filing date of your application. If the written statement is mailed, we will use the date the statement was mailed to us as shown by the United States postmark. If the postmark is unreadable or there is no United States postmark, we will use the date the statement is signed (if dated) or 5 days before the day we receive the written statement, whichever date is later, as the filing date. In order for us to use your written statement to protect your filing date, the following requirements must be met:

(a) The statement indicates your intent to file for benefits.

(b) The statement is signed by you, your spouse, or a person described in § 408.315.

(c) You file an application with us on an application form as described in § 408.310(a), or one is filed for you by a person described in § 408.315, within 60 days after the date of a notice we will send advising of the need to file an application. The notice will say that we will make an initial determination of your qualification if an application form is filed within 60 days after the date of the notice. We will send the notice to you. However, if it is clear from the information we receive that you are mentally incompetent, we will send the notice to the person who submitted the written statement.

(d) You are alive when the application is filed.

§ 408.345 When will we use the date of an oral inquiry as your application filing date?

We will use the date of an oral inquiry about SVB as the filing date of your

application for SVB if the following requirements are met:

(a) The inquiry asks about your entitlement to SVB.

(b) The inquiry is made by you, your spouse, or a person who may sign an application on your behalf as described in § 408.315.

(c) The inquiry, whether in person or by telephone, is directed to an office or an official described in § 408.325(a).

(d) You, or a person on your behalf as described in § 408.315, file an application on a prescribed form within 60 days after the date of the notice we will send telling of the need to file an application. The notice will say that we will make an initial determination on whether you qualify for SVB if an application form is filed within 60 days after the date of the notice. However, if it is clear from the information we receive that you are mentally incompetent, we will send the notice to the person who made the inquiry.

(e) You are alive when the prescribed application is filed.

Deemed Filing Date Based on Misinformation

§ 408.351 What happens if we give you misinformation about filing an application?

(a) *General rule.* You may have considered applying for SVB, for yourself or another person and you may have contacted us in writing, by telephone or in person to inquire about filing an application for SVB. It is possible that in responding to your inquiry, we may have given you misinformation about qualification for such benefits that caused you not to file an application at that time. If this happened and use of that date will result in entitlement to additional benefits, and you later file an application for SVB with us, we may establish an earlier filing date as explained in paragraphs (b) through (f) of this section.

(b) *Deemed filing date of an application based on misinformation.* Subject to the requirements and conditions in paragraphs (c) through (f) of this section, we may establish a deemed filing date of an application for SVB under the following provisions.

(1) If we determine that you failed to apply for SVB because we gave you misinformation about qualification for or entitlement to such benefits, we will deem an application for such benefits to have been filed with us on the later of—

(i) The date on which we gave you the misinformation; or

(ii) The date on which all of the requirements for qualification to SVB were met, other than the requirement of filing an application.

(2) Before we may establish a deemed filing date of an application for SVB under paragraph (b)(1) of this section, you or a person described in § 408.315 must file an application for such benefits.

(c) *Requirements concerning the misinformation.* We apply the following requirements for purposes of paragraph (b) of this section.

(1) The misinformation must have been provided to you by one of our employees while he or she was acting in his or her official capacity as our employee. For purposes of this section, an employee includes an officer of SSA, an employee of a U.S. Foreign Service office, and an employee of the SSA Division of the Veterans Affairs Regional Office in the Philippines who is authorized to take and develop Social Security claims.

(2) Misinformation is information which we consider to be incorrect, misleading, or incomplete in view of the facts which you gave to the employee, or of which the employee was aware or should have been aware, regarding your particular circumstances. In addition, for us to find that the information you were given was incomplete, the employee must have failed to provide you with the appropriate, additional information which he or she would be required to provide in carrying out his or her official duties.

(3) The misinformation may have been provided to you orally or in writing.

(4) The misinformation must have been provided to you in response to a specific request by you to us for information about your qualification for SVB.

(d) *Evidence that misinformation was provided.* We will consider the following evidence in making a determination under paragraph (b) of this section.

(1) *Preferred evidence.* Preferred evidence is written evidence which relates directly to your inquiry about your qualification for SVB and which shows that we gave you misinformation which caused you not to file an application. Preferred evidence includes, but is not limited to, the following—

(i) A notice, letter or other document which was issued by us and addressed to you; or

(ii) Our record of your telephone call, letter or in-person contact.

(2) *Other evidence.* In the absence of preferred evidence, we will consider other evidence, including your statements about the alleged misinformation, to determine whether we gave you misinformation, which caused you not to file an application. We will not find that we gave you misinformation, however, based solely on your statements. Other evidence which you provide or which we obtain must support your statements. Evidence which we will consider includes, but is not limited to, the following—

(i) Your statements about the alleged misinformation, including statements about—

(A) The date and time of the alleged contact(s);

(B) How the contact was made, e.g., by telephone or in person;

(C) The reason(s) the contact was made;

(D) Who gave the misinformation; and

(E) The questions you asked and the facts you gave us, and the questions we asked and the information we gave you, at the time of the contact;

(ii) Statements from others who were present when you were given the alleged misinformation, e.g., a neighbor who accompanied you to our office;

(iii) If you can identify the employee or the employee can recall your inquiry about benefits—

(A) Statements from the employee concerning the alleged contact, including statements about the questions you asked, the facts you gave, the questions the employee asked, and the information provided to you at the time of the alleged contact; and

(B) Our assessment of the likelihood that the employee provided the alleged misinformation;

(iv) An evaluation of the credibility and the validity of your allegations in conjunction with other relevant information; and

(v) Any other information regarding your alleged contact.

(e) *Information which does not constitute satisfactory proof that misinformation was given.* Certain kinds of information will not be considered satisfactory proof that we gave you misinformation which caused you not to file an application. Examples of such information include—

(1) General informational pamphlets that we issue to provide basic program information;

(2) General information which we review or prepare but which is disseminated by the media, *e.g.*, radio, television, magazines, and newspapers; and

(3) Information provided by other governmental agencies, *e.g.*, the Department of Veterans Affairs (except for certain employees of the SSA Division of the Veterans Affairs Regional Office in the Philippines as provided in paragraph (c)(1) of this section), the Department of Defense,

State unemployment agencies, and State and local governments.

(f) *Claim for benefits based on misinformation.* You may make a claim for SVB based on misinformation at any time. Your claim must contain information that will enable us to determine if we did provide misinformation to you about qualification for SVB which caused you not to file an application. Specifically, your claim must be in writing and it must explain what information was provided, how, when and where it was provided and by whom, and why the information caused you not to file an application. If you give us this information, we will make a determination on such a claim for benefits if all of the following conditions are also met.

(1) An application for SVB is filed with us by you or someone described in § 408.315 who may file. The application must be filed after the alleged misinformation was provided. This application may be—

(i) An application on which we have made a previous final determination or decision awarding SVB, but only if the claimant continues to be entitled to benefits based on that application;

(ii) An application on which we have made a previous final determination or decision denying the benefits, but only if such determination or decision is reopened; or

(iii) A new application on which we have not made a final determination or decision.

(2) The establishment of a deemed filing date of an application for benefits based on misinformation could result in entitlement to benefits or payment of additional benefits.

(3) We have not made a previous final determination or decision to which you were a party on a claim for benefits based on alleged misinformation involving the same facts and issues. This provision does not apply, however, if the final determination or decision may be reopened.

Withdrawal of Application

§ 408.355 Can you withdraw your application?

(a) Request for withdrawal filed before a determination is made. You may withdraw your application for SVB before we make a determination on it if—

(1) You, or a person who may sign an application for you under § 408.315, file a written request for withdrawal at a place described in § 408.325; and

(2) You are alive at the time the request is filed.

(b) *Request for withdrawal filed after a determination is made.* An application may be withdrawn after we make a determination on it if you repay all benefits already paid based on the application being withdrawn or we are satisfied that the benefits will be repaid.

(c) *Effect of withdrawal.* If we approve your request to withdraw your application, we consider that the application was never filed. If we disapprove your request for withdrawal, we treat your application as though you did not file a request for withdrawal.

§ 408.360 Can you cancel your request to withdraw your application?

You may request to cancel your request to withdraw your application and have your application reinstated if all of the following requirements are met:

(a) You, or someone who may sign an application for you under § 408.315, file a written request for cancellation at a place described in § 408.325;

(b) You are alive at the time you file your request for cancellation; and

(c) A cancellation request received after we have approved your withdrawal must be filed no later than 60 days after the date of the notice of approval.

Subpart D—Evidence Requirements

Authority: Secs. 702(a)(5), 806, and 810 of the Social Security Act (42 U.S.C. 902(a)(5), 1006, and 1010); sec. 251, Pub. L. 106–169, 113 Stat. 1844.

General Information

§ 408.401 What is this subpart about?

We cannot determine your entitlement to SVB based solely on your statements about your qualification for benefits or other facts concerning payments to you. We will ask you for specific evidence or additional information. We may verify the evidence you give us with other sources to ensure that it is correct. This subpart contains our rules about the evidence you need to give us when you claim SVB.

§ 408.402 When do you need to give us evidence?

When you apply for SVB, we will ask you for any evidence we need to make sure that you meet the SVB qualification and entitlement requirements. After you begin receiving SVB, we may ask you for evidence showing whether your SVB payments should be reduced or stopped. We will help you get any documents you need but do not have. If your evidence is a foreign-language record or document, we can have it translated for you. The evidence you give us will be kept confidential and not disclosed to anyone but you except under the rules set out in part 401 of this chapter. You should also be aware that section 811 of the Act provides criminal penalties for misrepresenting the facts or for making false statements to obtain SVB payments for yourself or someone else, or to continue entitlement to benefits.

§ 408.403 Where should you give us your evidence?

You should give your evidence to the people at a Social Security Administration office. In the Philippines, you should give your evidence to the people at the Veterans Affairs Regional Office. Elsewhere outside the United States, you should give your evidence to the people at the nearest U.S. Social Security office or a United States Foreign Service Office.

§ 408.404 What happens if you fail to give us the evidence we ask for?

(a) *You have not yet qualified for SVB.* Generally, we will ask you to give us specific evidence or information by a certain date to prove that you qualify for SVB or to prove your foreign residence. If we do not receive the evidence or information by that date, we may decide that you do not qualify for SVB or may not receive SVB and deny your claim.

(b) *You have qualified for or become entitled to SVB.* If you have already qualified for or become entitled to SVB, we may ask you to give us information by a specific date to decide whether you should receive benefits or, if you are already receiving benefits, whether your benefits should be stopped or reduced. If you do not give us the requested evidence or information by the date given, we may decide that you are no longer entitled to benefits or that your benefits should be stopped or reduced.

(c) *If you need more time.* You should let us know if you are unable to give us the evidence or information within the specified time and explain why there will be a delay. If this delay is due to illness, failure to receive timely evidence you have asked for from another source, or a similar circumstance, we will give you additional time to give us the evidence.

§ 408.405 When do we require original records or copies as evidence?

(a) *General rule.* To prove your qualification for or continuing entitlement to SVB, you may be asked to show us an original document or record. These original documents or records will be returned to you after we have photocopied them. We will also accept copies of original records that are properly certified and some uncertified birth certifications. These types of

records are described in paragraphs (b) and (c) of this section.

(b) *Certified copies of original records.* You may give us copies of original records or extracts from records if they are certified as true and exact copies by:

(1) The official custodian of the record;

(2) A Social Security Administration employee authorized to certify copies;

(3) A Veterans Affairs employee if the evidence was given to that agency to obtain veteran's benefits;

(4) An employee of the Veterans Affairs Regional Office, Manila, Philippines who is authorized to certify copies; or

(5) A U.S. Consular Officer or employee of the Department of State authorized to certify evidence received outside the United States.

(c) *Uncertified copies of original birth records.* You may give us an uncertified photocopy of a birth registration notification as evidence of age where it is the practice of the local birth registrar to issue them in this way.

§ 408.406 How do we evaluate the evidence you give us?

When you give us evidence, we examine it to see if it is convincing evidence. This means that unless we have information in our records that raises a doubt about the evidence, other evidence of the same fact will not be needed. If the evidence you give us is not convincing by itself, we may ask you for additional evidence. In evaluating whether the evidence you give us is convincing, we consider such things as whether:

(a) The information contained in the evidence was given by a person in a position to know the facts;

(b) There was any reason to give false information when the evidence was created;

(c) The information in the evidence was given under oath, or with witnesses present, or with the knowledge that there was a penalty for giving false information;

(d) The evidence was created at the time the event took place or shortly thereafter;

(e) The evidence has been altered or has any erasures on it; and

(f) The information contained in the evidence agrees with other available evidence including our records.

Age

§ 408.410 When do you need to give us evidence of your age?

To qualify for SVB you must establish that you were age 65 or older on December 14, 1999, the date on which Public Law 106–169 was enacted into law. If we have already established your age or date of birth in connection with your claim for other benefit programs that we administer, you will not have to give us evidence of your age for your SVB claim. If we have not established your age or date of birth, you must give us evidence of your age or date of birth. In the absence of information to the contrary, we generally will not ask for additional evidence of your age or date of birth if you state that you are at least age 68, and you submit documentary evidence that is at least 3 years old when the application is filed and supports your statement.

§ 408.412 What kinds of evidence of age do you need to give us?

For a description of the kinds of evidence of age you may need to give us, see § 416.802 of this chapter.

§ 408.413 How do we evaluate the evidence of age you give us?

In evaluating the evidence of age you give us, we use the rules in § 416.803 of this chapter.

Military Service

§ 408.420 What evidence of World War II military service do you need to give us?

(a) *Kinds of evidence you can give us.* To show that you are a World War II veteran as defined in § 408.216, you can give us any of the documents listed in § 404.1370(b)(1) through (5) of this chapter that were issued by a U.S. Government agency. However, depending on the type of document you give us and what the document shows, we may verify your military service, or the dates of your service, with the National Personnel Records Center (NPRC) in St. Louis, Missouri. If we do, we will use the information in NPRC's records to determine whether you meet the military service requirements for SVB.

(b) *What the evidence must show.* When you file an application for SVB, you must give us evidence of your World War II military service. The evidence you give us must show:

(1) Your name;

(2) The branch of service in which you served;

(3) The dates of your military service;

(4) Your military service serial number;

(5) The character of your discharge; and

(6) If your service was in the organized military forces of the Government of the Commonwealth of the Philippines (including the organized guerrilla forces), the period of your service that was under the control of U.S. Armed Forces.

SSI Eligibility

§ 408.425 How do we establish your eligibility for SSI?

To qualify for SVB, you must have been eligible for SSI for the month of December 1999, the month in which Public Law 106–169 was enacted, and for the month in which you filed your application for SVB. You do not have to submit evidence of this. We will use our SSI record of your eligibility to determine if you meet these requirements.

Other Benefit Income

§ 408.430 When do you need to give us evidence of your other benefit income?

If you tell us or if we have information indicating that you are receiving other benefit income that could affect your qualification for or the amount of your SVB payments, we will ask you to give us evidence of that income as explained in § 408.432.

§ 408.432 What kind of evidence of your other benefit income do you need to give us?

As evidence of your other benefit income, we may require a document such as an award notice or other letter from the paying agency or written notification from the former employer, insurance company, etc. The evidence should show the benefit payable, the current amount of the payment, and the date the payment began.

Residence

§ 408.435 How do you prove that you are residing outside the United States?

(a) *General rule.* To establish that you are residing outside the United States for SVB purposes, you must give us all of the following:

(1) Evidence of the date on which you arrived in the country in which you are residing;

(2) A statement signed by you showing the address at which you are living and that you intend to continue living there; and

(3) Evidence that you are actually living at the address given in your signed statement.

(b) *Evidence of the date you entered the foreign country.* To establish the date you arrived in the country in which you are residing, you can give us evidence such as:

(1) A visa or passport showing the date you entered that country;

(2) Your plane ticket showing the date you arrived in that country; or

(3) An entry permit showing the date you entered that country.

(c) *Evidence of your actual place of residence.* To establish your actual place

of residence, you can give us evidence such as:

(1) A lease agreement showing where you live;

(2) Rental or mortgage receipts;

(3) Utility or other bills addressed to you at the address where you live;

(4) A signed statement from a local official showing that he or she knows where you live, when you began living there and how he or she knows this information; or

(5) A Standard Form 1199A, Direct Deposit Sign-Up Form, showing your address abroad and signed by an official of the financial institution after the date you arrived in the country in which you will be residing.

§ 408.437 How do you prove that you had good cause for staying in the United States for more than 1 full calendar month?

(a) *General rule.* If you believe that you meet the requirements in § 408.234 and that you should continue to receive SVB payments even though you have been in the United States for more than 1 full calendar month, you must give us evidence that you had good cause for staying in the United States.

(b) *Circumstances prevent you from returning to your home abroad.* To prove that you had good cause for staying in the United States for more than 1 full calendar month, you must give us evidence of your good faith effort to return to your home abroad before the 1-month period had elapsed and of the circumstances/event which prevented your return to your home abroad.

(1) *Evidence of your good faith effort to return to your home abroad.* Evidence of your plans to return to your home abroad can include, but is not limited to:

(i) A plane ticket showing that you intended to return to your home abroad before the expiration of 1 full calendar month; or

(ii) Notice from a travel agency or airline confirming the cancellation of your reservation to return to your home abroad on a date within 1 full calendar month.

(2) *Evidence of the circumstances preventing your return to your home abroad.* The evidence we will accept from you to support the circumstance or event that prevented you from returning to your home abroad will depend on the reason you are staying in the United States. It can include, but is not limited to, a:

(i) Newspaper article or other publication describing the event or natural disaster which prevented your return; or

(ii) Doctor's statement, etc. showing that you are unable to travel; or

(iii) Death certificate or notice if you are staying in the United States to attend the funeral of a member of your family.

(c) *You are appealing a decision we made.* To establish that you had good cause to stay in the United States for more than 1 full calendar month because you want to appear in person at the appeal of a decision on a claim filed under a program administered by the Social Security Administration, you must submit evidence of this. The evidence must identify the appeal proceeding and the dates you are scheduled to attend.

(d) *When we may ask for more evidence.* If you stay in the United States for several months, we may ask you to give us more evidence to prove that you are still unable to return to your home abroad.

Subpart E—Amount and Payment of Benefits

Authority: Secs. 702(a)(5), 801, 805, and 810 of the Social Security Act (42 U.S.C. 902(a)(5), 1001, 1005, and 1010); Sec. 251, Pub. L. 106–169, 113 Stat. 1844.

§ 408.501 What is this subpart about?

This subpart explains how we compute the amount of your monthly SVB payment, including how we reduce your payments if you receive other benefit income. It also explains how we pay benefits under the SVB program.

§ 408.505 How do we determine the amount of your SVB payment?

(a) *Maximum SVB payment.* The maximum monthly SVB payment is equal to 75% of the FBR for an individual under title XVI of the Act. See § 416.410 of this chapter.

(b) *Cost-of-living adjustments in the FBR.* The maximum SVB amount will increase whenever there is a cost-of-living increase in the SSI FBR under the provisions of § 416.405 of this chapter. The basic SVB amount following such an increase is equal to 75 percent of the increased FBR.

(c) *When we will reduce the amount of your basic benefit.* We will reduce your basic benefit by the amount of the other benefit income you receive in that month, as explained in § 408.510.

§ 408.510 How do we reduce your SVB when you receive other benefit income?

(a) *Amount of the reduction.* If you receive other benefit income as defined in § 408.220, we will reduce your SVB payment by the amount of the other benefit income you receive in that month. The reduction is on a dollar-for-dollar and cents-for-cents basis. We do not round SVB payment amounts except as described in paragraph (b) of this section.

(b) *Minimum benefit amount.* If the reduction described in paragraph (a) of this section results in a benefit amount that is greater than zero but less than $1.00, we will pay you a benefit of $1.00 for that month.

§ 408.515 When do we make SVB payments?

SVB payments are made on the first day of each month and represent payment for that month. If the first day of the month falls on a Saturday, Sunday, or Federal legal holiday, payment will be made on the first day preceding such day that is not a Saturday, Sunday, or Federal legal holiday.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–238F]

Schedules of Controlled Substances: Temporary Placement of alpha-methyltryptamine and 5-methoxy-N,N-diisopropyltryptamine into Schedule I

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Final rule.

SUMMARY: The Deputy Administrator of the Drug Enforcement Administration (DEA) is issuing this final rule to temporarily place alpha-methyltryptamine (AMT) and 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT) into Schedule I of the Controlled Substances Act (CSA) pursuant to the temporary scheduling provisions of the CSA. This final action is based on a finding by the DEA Deputy Administrator that the placement of AMT and 5-MeO-DIPT into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety. As a result of this rule, the criminal sanctions and regulatory controls of Schedule I substances under the CSA will be applicable to the manufacture, distribution, and possession of AMT and 5-MeO-DIPT.

EFFECTIVE DATE: April; 4. 2003.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, (202) 307–7183.

SUPPLEMENTARY INFORMATION:

Under What Authority Are AMT and 5-MeO-DIPT Being Temporarily Scheduled?

The Comprehensive Crime Control Act of 1984 (Pub. L. 98–473), which was signed into law on October 12, 1984, amended section 201 of the CSA (21 U.S.C. 811) to give the Attorney General the authority to temporarily place a substance into Schedule I of the CSA for one year without regard to the requirements of 21 U.S.C. 811(b) if he finds that such action is necessary to avoid an imminent hazard to the public safety. The Attorney General may extend the temporary scheduling up to 6 months. A substance may be temporarily scheduled under the emergency provisions of the CSA if that substance is not listed in any other schedule under section 202 of the CSA (21 U.S.C. 812) or if there is no exemption or approval in effect under 21 U.S.C. 355 for the substance. The Attorney General has delegated his authority under 21 U.S.C. 811 to the Administrator of DEA (28 CFR 0.100). The Administrator has redelegated this function to the Deputy Administrator, pursuant to 28 CFR 0.104.

A notice of intent to temporarily place AMT and 5-MeO-DIPT into Schedule I of the CSA was published in the **Federal Register** on January 28, 2003 (68 FR 4127). The Deputy Administrator transmitted notice of his intention to temporarily place AMT and 5-MeO-DIPT into Schedule I of the CSA to the Assistant Secretary for Health of the Department of Health and Human Services (HHS). In response to this notification, the Food and Drug Administration has advised DEA that there are no exceptions or approvals in effect under 21 U.S.C. 355 of the Food, Drug and Cosmetic Act for AMT and 5-MeO-DIPT and HHS has no objection to DEA's intention to temporarily place alpha-methyltryptamine and 5-methoxy-N,N-diisopropytryptamine into Schedule I of the CSA.

What Factors Were Considered in the Determination To Temporarily Schedule AMT and 5-MeO-DIPT?

As set forth under 21 U.S.C. 811(h), the Deputy Administrator has considered the available data and the following three factors under the CSA (21 U.S.C. 811(c)) that are required for a determination to temporarily schedule a substance:

4. Its history and current pattern of abuse;

5. The scope, duration, and significance of abuse; and

6. What, if any, risk there is to the public health.

Additionally, DEA has considered the three criteria for placing a substance into Schedule I of the CSA (21 U.S.C. 812). The data available and reviewed for AMT and 5-MeO-DIPT indicate that they have a high potential for abuse, no currently accepted medical use in treatment in the United States and are not safe for use under medical supervision.

What Are AMT and 5-MeO DIPT?

Alpha-methyltryptamine (AMT) and 5-methosy-N, N-diisopropytryptamine (5-MeO-DIPT) are tryptamine (indoleethylamine) derivatives and share several similarities with the Schedule I tryptamine hallucinogens, alpha-ethyltryptamine (AET) and N, N-demethyltryptamine (DMT), respectively. Several other tryptamines also produce hallucinogenic/stimulant effects and are controlled as Schedule I substances under the CSA (bufotenine, diethyltryptamine, psilocybin and psilocyn). Although tryptamine itself appears to lack consistent hallucinogenic/stimulant effects, substitutions on the indole ring and the ethylamine side-chain of this molecule result in pharmacologically active substances (McKenna and Towers, J. Psychoactive Drugs, 16:347–358, 1984).

The chemical structures of AMT and 5-MeO-DIPT possess the critical features necessary for hallucinogenic/stimulant activity. Thus, both AMT and 5-MeO-DIPT are likely to have a pharmacological profile substantially similar to other Schedule I tryptamine derivatives such as DMT and AET. In drug discrimination studies, both AMT and 5-MeO-DIPT substitute for 1-(2,5-dimethosy-4-methylphenyl)-aminopropane (DOM), a phenethylamine-based hallucinogen in Schedule I of the CSA. The potencies of DOM-like discriminative stimulus effects of these and several other similar tryptamine derivatives correlate well with their hallucinogenic potencies in humans (Glennon *et al.,* Eur. J. Pharmacol. 86: 453–459, 1983).

AMT shares other pharmacological properties with Schedule I hallucinogens such as AET, AMT increases systolic and diastolic arterial blood pressures. The behavioral effects of orally administered AMT (20 mg) in humans are slow in onset, occurring after 3 to 4 hours, and gradually subsiding after 12 to 24 hours, but may last up to 2 days in some subjects. The majority of the subjects report nervous tension, irritability, restlessness, inability to sleep, blurry vision, mydriasis and equate the effects of a 20 mg dose to those of 50 micrograms of lysergic acid diethylamide (LSD) (Hollister *et al.,* J. Nervous Ment. Dis., 131:428–434, 1960; Murphree et al., Clin. Pharmacol. Ther., 2: 722–726, 1961). AMT also produces hallucinations and dextroamphetamine-like mood elevating effects.

5-MeO-DIPT also produces pharmacological effects similar to those of other Schedule I hallucinogens such as DMT. The synthesis and preliminary human psychopharmacology study on 5-MeO-DIPT was first published in 1981 (Shulgin and Carter, Comm. Physhopharmacol. 4: 363–369, 1981), 5-MeO-DIPT is an orally active hallucinogen. Following oral administration of 6–10 mg. 5-MeO-DIPT produces subjective effects with an onset at about 20–30 minutes, a peak at about 1–1.5 hours and a duration of about 3–6 hours. Subjects who have been administered 5-MeO-DIPT are talkative and disinhibited. 5-MeO-DIPT causes mydriasis. High doses of 5-MeO-DIPT produce nausea, jaw clenching, muscle tension and overt hallucinations with both auditory and visual distortions.

Why Are AMT and 5-MeO-DIPT Being Controlled?

The continued trafficking and abuse of AMT and 5-;MeO-DIPT pose an imminent hazard to public safety. The popularity and use of hallucinogenic/stimulant substances at raves (all-night dance parties) and other social venues have been a major problem in Europe since the 1990s. In the past several years, this activity has spread to the United States. The Schedule I controlled substance 3,4-methylendioxymethamphetamine (MDMA or Ecstasy) and its analogues are the most frequently abused drugs at these raves. Their abuse has been associated with both acute and long-term public health and safety problems. Raves have also become venues for the trafficking and abuse of new, non-controlled substances distributed as legal substitutes for, or in addition to, MDMA. 5-MeO-DIPT and AMT belong to such a group of substances.

Data gathered from published studies, supplemented by reports on Internet websites indicate that these are often administered orally at doses ranging from 15–40 mg for AMT ant 6–20 mg for 5-MeO-DIPT . Other routes of administration include smoking and snorting. Data from law-enforcement officials indicate that 5-MeO-DIPT is often sold as ''Foxy'' or ''Foxy Methoxy'', while MAT has been sold as ''Spirals'' at lease in one case. Both substances have been commonly

encountered in tablet and capsule forms.

According to forensic laboratory data, the first encounter of AMT and 5-MeO-DIPT occurred in 1999. Since then, law enforcement officials in Arizona, California, Colorado, Delaware, Florida, Idaho, Illinois, Iowa, New Jersey, Oregon, Texas, Virginia, Washington, Wisconsin and the District of Columbia have encountered these substances. According to the Florida Department of Law Enforcement (FDLE), the abuse by teens and young adults of AMT and 5-MeO-DIPT is an emerging problem. There have been reports of abuse of AMT and 5-MeO-DIPT at clubs and raves in Arizona, California, Florida and New York. Many tryptamine-based substances are illicitly available from United States and foreign chemical companies and from individuals through the Internet. A gram of AMT or 5-MeO-DIPT as bulk powdered costs less than $150 from illicit sources on the Internet. DEA is not aware of any legitimate medical or scientific use of AMT and 5-MeO-DIPT. There is recent evidence suggesting the attempted clandestine production of AMT and 5-MeO-DIPT in Nevada, Virginia and Washington, DC.

AMT and 5-MeO-DIPT share substantial chemical and pharmacological similarities with other Schedule I tryptamine-based hallucinogens in Schedule I of the CSA (AET and DMT). This makes it likely that these drugs cause similar health hazards. Tryptamine, the parent molecule of AMT and 5-MeO-DIPT, is known to produce convulsions and death in animals (Tedeschi *et al.,* J. Pharmacol. Exp. Ther. 126:223–232, 1959). AMT and 5-MeO-DIPT, similar to other tryptamine- or phenethylamine-based hallucinogens, through the alteration of sensory perception and judgement can pose serious health risks to the user and the general public. further, there have been several self-reports on Internet Web sites describing the reported abuse of these substances in combination with other controlled drugs, namely MDMA, marijuana, gamma hydroxybutyric acid (GHB) and 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7). This practice of drug abuse involving combinations poses additional health risks to the users and the general public. Available information indicates that AMT and 5-MeO-DIPT lack any approved therapeutic use in the United States. The safety of these substances for use in humans has not been studied.

What Is the Effect of This Final Rule?

With the issuance of this final order, AMT and 5-MeO-DIPT become subject to regulatory controls and administrative, civil and criminal sanctions applicable to the manufacture, distribution, dispensing, importing and exporting of a Schedule I controlled substance.

1. *Registration.* Any person who manufactures, distributes, dispenses, imports or exports AMT and 5-MeO-DIPT or who engages in research or conducts instructional activities with respect to AMT and 5-MeO-DIPT or who proposes to engage in such activities must submit an application for Schedule I registration in accordance with part 1301 of Title 21 of the Code of Federal Regulations (CFR) by May 5, 2003.

2. *Security.* AMT and 5-MeO-DIPT are subject to Secheule I security requirements and must be manufactured, distributed and stored in accordance with §§ 1301.71, 1301.72(a), (c), and (d), 1301.73, 1301.74, 1301.75 (a) and (c) and 1301.76 of Title 21 Code of Federal Regulations.

3. *Labeling and packaging.* All labels and labeling for commercial containers of AMT and 5-MeO-DIPT which are distributed on or after May 5, 2003 shall comply with requirements of §§ 1302.03–1302.07 of Title 21 of the Code Federal Regulations.

4. *Quotas.* Quotas for AMT and 5-MeO-DIPT are established pursuant to part 1303 of title 21 of the code of Federal Regulations.

5. *Inventory.* Every registrant required to keep records who possesses any quantity of AMT and 5-MeO-DIPT is required to keep inventory of all stocks of the substances on hand pursuant to §§ 1304.03, 1304.04 and 1304.11 of Title 21 of the Code of Federal Regulations. Every registrant who desires registration in Schedule I for AMT and 5-MeO-DIPT shall conduct an inventory of all stocks of AMT and 5-MeO-DIPT on or before May 5, 2003.

6. *Records.* All registrants are required to keep records pursuant to §§ 1304.03, 1304.04 and §§ 1304.21–1304.23 of Title 21 of the Code of Federal Regulations.

7. *Reports.* All registrants required to submit reports in accordance with §§ 1304.31 through §§ 1304.33 of Title 21 of the Code Federal Regulations shall do so regarding AMT and 5-MeO-DIPT.

8. *Order Forms.* All registrants involved in the distribution of AMT and 5-MeO-DIPT must comply with the order form requirements of part 1305 of Title 21 of the Code of Federal Regulations.

9. *Importation and Exportation.* All importation and exportation of AMT and 5-MeO-DIPT shall be in compliance with part 1312 of Title 21 of the Code of Federal Regulations.

10. *Criminal Liability.* Any activity with AMT and 5-MeO-DIPT not authorized by, or in violation of, the CSA or the Controlled Substances Import and Export Act occurring on or after April 4, 2003 is unlawful.

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This action temporarily places AMT and 5-MeO-DIPT into Schedule I of the Controlled Substances Act.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive order 12988 Civil Justice Reform.

Executive Order 13132 Federalism

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based

companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs, Reporting and Record keeping requirements.

■ Under the authority vested in the Attorney General by section 201(h) of the CSA (21 U.S.C. 811(h)), and delegated to the Administrator of the DEA by 28 CFR 0.100, and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby amends 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES [Amended]

■ 1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871b, unless otherwise noted.

■ 2. Section 1308.11 is amended by adding paragraphs (g)(6) and (g)(7) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(g) * * *

(6) Alpha-methyltryptamine (AMT), its isomers, salts and salts of isomers—7432.

(7) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT), its isomers, salts and salts of isomers—7439.

Dated: March 27, 2003.

John B. Brown III,

Deputy Administrator.

[FR Doc. 03–8171 Filed 4–3–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9048]

RIN 1545–BB95

Guidance Under Section 1502; Suspension of Losses on Certain Stock Dispositions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Corrections to final and temporary regulations.

SUMMARY: This document corrects final and temporary regulations published in the **Federal Register** on March 14, 2003 (68 FR 12287). The final and temporary regulations redetermine the basis of stock of a subsidiary member of a consolidated group immediately prior to certain transfers of such stock and certain deconsolidations of a subsidiary member and also suspend certain losses recognized on the disposition of stock of a subsidiary member.

DATES: This document is effective on March 14, 2003.

FOR FURTHER INFORMATION CONTACT: Aimee K. Meacham, (202) 622–7530 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of these corrections are under section 1502 of the Internal Revenue Code.

Need for Correction

As published, the final and temporary regulations contain errors that may prove to be misleading and are in need of clarification. In particular, this document supplies text omitted from § 1.1502–35T(b)(3)(i)(C) and (b)(3)(ii)(C), and clarifies § 1.1502–35T(f)(1). In addition, the final and temporary regulations inadvertently removed the text for §§ 1.1502–21T(b)(3)(ii)(C) and 1.1502–32T(b)(4)(v). The missing text is supplied.

Correction of Publication

Accordingly, the publication of the final and temporary regulations (TD 9048) that were the subject of FR Doc. 03–6119, is corrected as follows:

■ 1. On page 12288, column 3, second full paragraph, in the preamble under the paragraph heading *''Basis Reduction Rule for Worthless Stock and Stock of a Subsidiary With No Separate Return Year'',* second full paragraph, lines 17 and 18 from the bottom of the paragraph, the language ''as expired, but not as absorbed by the group, as of the beginning of the group's'' is corrected to read ''as expired, but not as a noncapital, nondeductible expense for purposes of § 1.1502–32,''.

■ 2. On page 12291, column 2, § 1.1502–21T, paragraphs (b)(2) through (b)(3)(iv) is corrected to read as follows:

§ 1.1502–21T Net operating losses (temporary).

* * * * *

(b)(2) through (b)(3)(ii)(B) [Reserved]. For further guidance, see § 1.1502–21(b)(2) through (b)(3)(ii)(B).

(b)(3)(ii)(C) *Partial waiver of carryback period for 2001 and 2002 losses—(1) Application.* The acquiring group may make the elections described in paragraphs (b)(3)(ii)(C)(*2*) and (*3*) of this section with respect to an acquired member or members only if it did not file a valid election described in § 1.1502–21(b)(3)(ii)(B) with respect to such acquired member or members on or before May 31, 2002.

(*2*) *Partial waiver of entire pre-acquisition carryback period.* If one or more members of a consolidated group become members of another consolidated group after June 25, 1999, then, with respect to all consolidated net operating losses attributable to the member for the taxable year ending during either 2001 or 2002, or both, the acquiring group may make an irrevocable election to relinquish the portion of the carryback period for such losses for which the corporation was a member of another group, provided that any other corporation joining the acquiring group that was affiliated with the member immediately before it joined the acquiring group is also included in the waiver and that the conditions of this paragraph are satisfied. The acquiring group cannot make the election described in this paragraph with respect to any consolidated net operating losses arising in a particular taxable year if any carryback is claimed, as provided in paragraph (b)(3)(ii)(C)(*4*) of this section, with respect to any such losses on a return or other filing by a group of which the acquired member was previously a member and such claim is filed on or before the date the election described in this paragraph is filed. The election must be made in a separate statement entitled ''THIS IS AN ELECTION UNDER SECTION 1.1502–21T (b)(3)(ii)(C)(*2*) TO WAIVE THE PRE-[insert first day of the first taxable year for which the member (or members) was a member of the acquiring group] CARRYBACK PERIOD FOR THE CNOLS ATTRIBUTABLE TO THE [insert taxable year of losses] TAXABLE YEAR(S) OF [insert names and employer identification numbers of members].'' Such statement must be filed as provided in paragraph (b)(3)(ii)(C)(*5*) of this section.

(*3*) *Partial waiver of pre-acquisition extended carryback period.* If one or more members of a consolidated group become members of another consolidated group, then, with respect to all consolidated net operating losses attributable to the member for the taxable year ending during either 2001 or 2002, or both, the acquiring group may make an irrevocable election to relinquish the portion of the carryback period for such losses for which the corporation was a member of another group to the extent that such carryback period includes one or more taxable

years that are prior to the taxable year that is 2 taxable years preceding the taxable year of the loss, provided that any other corporation joining the acquiring group that was affiliated with the member immediately before it joined the acquiring group is also included in the waiver and that the conditions of this paragraph are satisfied. The acquiring group cannot make the election described in this paragraph with respect to any consolidated net operating losses arising in a particular taxable year if a carryback to one or more taxable years that are prior to the taxable year that is 2 taxable years preceding the taxable year of the loss is claimed, as provided in paragraph (b)(3)(ii)(C)(*4*) of this section, with respect to any such losses on a return or other filing by a group of which the acquired member was previously a member and such claim is filed on or before the date the election described in this paragraph is filed. The election must be made in a separate statement entitled ''THIS IS AN ELECTION UNDER SECTION 1.1502–21T (b)(3)(ii)(C)(*3*) TO WAIVE THE PRE-[insert first day of the first taxable year for which the member (or members) was a member of the acquiring group] EXTENDED CARRYBACK PERIOD FOR THE CNOLS ATTRIBUTABLE TO THE [insert taxable year of losses] TAXABLE YEAR(S) OF [insert names and employer identification numbers of members].'' Such statement must be filed as provided in paragraph (b)(3)(ii)(C)(*5*) of this section.

(*4*) *Claim for a carryback.* For purposes of paragraphs (b)(3)(ii)(C)(*2*) and (*3*) of this section, a carryback is claimed with respect to a consolidated net operating loss if there is a claim for refund, an amended return, an application for a tentative carryback adjustment, or any other filing that claims the benefit of the net operating loss in a taxable year prior to the taxable year of the loss, whether or not subsequently revoked in favor of a claim based on a 5-year carryback period.

(*5*) *Time and manner for filing statement.* A statement described in paragraph (b)(3)(ii)(C)(*2*) or (*3*) of this section that relates to consolidated net operating losses attributable to a taxable year ending during 2001 must be filed with the acquiring consolidated group's timely filed (including extensions) original or amended return for the taxable year ending during 2001, provided that such original or amended return is filed on or before October 31, 2002. A statement described in paragraph (b)(3)(ii)(C)(*2*) or (*3*) of this section that relates to consolidated net operating losses attributable to a taxable year ending during 2002 must be filed with the acquiring consolidated group's timely filed (including extensions) original or amended return for the taxable year ending during 2001 or 2002, provided that such original or amended return is filed on or before September 15, 2003.

(b)(3)(iii) and (b)(3)(iv) [Reserved]. For further guidance, see § 1.1502–21(b)(3)(iii) and (b)(3)(iv).

* * * * *

■ 3. On page 12292, column 1, § 1.1502–32T, paragraphs (b)(4) through (b)(4)(v) is corrected to read as follows:

§ 1.1502–32T Investment adjustments (temporary).

* * * * *

(b)(4) through (b)(4)(iv) [Reserved]. For further guidance, see § 1.1502–32(b)(4) through (b)(4)(iv).

(b)(4)(v) *Special rule for loss carryovers of a subsidiary acquired in a trasaction for which an election under § 1.1502–20T(i)(2) is made*—(A) *Expired losses.* Notwithstanding § 1.1502–32(b)(4)(iv), to the extent that S's loss carryovers are increased by reason of an election under § 1.1502–20T(i)(2) and such loss carryovers expire or would have been properly used to offset income in a taxable year for which the refund of an overpayment is prevented by any law or rule of law as of the date the group files its original return for the taxable year in which S receives the notification described in § 1.1502–20T(i)(3)(iv) and at all times thereafter, the group will be deemed to have made an election under § 1.1502–32(b)(4) to treat all of such expired loss carryovers as expiring for all Federal income tax purposes immediately before S became a member of the consolidated group.

(B) *Available losses.* Notwithstanding § 1.1502–32(b)(4)(iv), to the extent that S's loss carryovers are increased by reason of an election under § 1.1502–20T(i)(2) and such loss carryovers have not expired and would not have been properly used to offset income in a taxable year for which the refund of an overpayment is prevented by any law or rule of law as of the date the group files its original return for the taxable year in which S receives the notification described in § 1.1502–20T(i)(3)(iv) and at all times thereafter, the group may make an election under § 1.1502–32(b)(4) to treat all or a portion of such loss carryovers as expiring for all Federal income tax purposes immediately before S became a member of the consolidated group. Such election must be filed with the group's original return for the taxable year in which S receives the notification described in § 1.1502–20T(i)(3)(iv).

(C) *Effective date.* This paragraph (b)(4)(v) is applicable on and after March 7, 2002.

* * * * *

§ 1.1502–35T [Corrected]

■ 4. On page 12293, column 1, § 1.1502–35T, paragraph (b)(3)(i)(C), line 2 from the bottom of the paragraph, the language ''distributee), section 351, or section 361'' is corrected to read ''distributee), section 351, section 354, or section 361''.

■ 5. On page 12293, column 1, § 1.1502–35T, paragraph (b)(3)(ii)(B), line 3 from the bottom of the paragraph, the language ''of subsidiary member stock that they'' is corrected to read ''of the subsidiary member stock that they''.

■ 6. On page 12293, column 1, § 1.1502–35T, paragraph (b)(3)(ii)(C) is correctly designated paragraph (b)(3)(ii)(D).

■ 7. On page 12293, column 1, § 1.1502–35T, new paragraph (b)(3)(ii)(C) is added to read as follows.

■ 8. On page 12293, column 2, § 1.1502–35T, paragraph (b)(6)(ii), line 2 from the bottom of the paragraph, the language ''and paragraph (c) of this section are'' is corrected to read ''and paragraphs (c) and (f) of this section are''.

■ 9. On page 12295, column 2, § 1.1502–35T, paragraph (e), the first sentence is revised to read as follows.

■ 10. On page 12297, column 2, § 1.1502–35T, paragraph (f)(1), lines 4 and 5 from the bottom of the paragraph, the language ''as expired, but not as absorbed by the group, as of the beginning of the group's'' is corrected to read ''as expired, but shall not be treated as a noncapital, nondeductible expense for purposes of § 1.1502–32(b)(3)(iii), as of the beginning of the group's''.

§ 1.1502–35T Transfers of subsidiary member stock and deconsolidations of subsidiary members (temporary).

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(C) The members of the group are allowed a worthless stock loss under section 165(g) with respect to all of the shares of the subsidiary member stock that they own immediately before the deconsolidation; or

* * * * *

(e) *Examples.* For purposes of the examples in this section, unless otherwise stated, all groups file consolidated returns on a calendar-year basis, the facts set forth the only corporate activity, all transactions are

between unrelated persons, and tax liabilities are disregarded. * * *

* * * * *

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 03–8312 Filed 4–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC89

Virgin Islands Coral Reef National Monument and Buck Island Reef National Monument

AGENCY: National Park Service, Interior.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule relates to the prohibition on extractive uses contained in Presidential Proclamation No. 7399, which established the Virgin Islands Coral Reef National Monument (VICR), and Presidential Proclamation No. 7392, which expanded the boundaries of the existing Buck Island Reef National Monument (BUIS). This interim rule prohibits extractive uses, with some exceptions, and anchoring within VICR. For the purposes of protecting the objects identified in BUIS, Proclamation No. 7392 supersedes the limited authorization for extractive uses that was included in Proclamation 3443 of December 28, 1961, which created BUIS. Pursuant to Proclamation No. 7392, this interim rule prohibits all extractive uses and boat anchoring within BUIS except in deep sand areas or in emergencies (all other anchoring is subject to permit). This interim rule replaces the BUIS regulations stated in 36 CFR 7.73, which allowed for certain types of fishing and collecting, operation of watercraft, and anchoring. Proclamation Nos. 7399 and 7392 require the National Park Service to prepare management plans, which are to include guidelines for the management of vessels in the monument, within three years for VICR and two years for BUIS.

DATES: This interim rule becomes effective on May 5, 2003. This interim rule will remain in effect until final regulations are adopted. Written comments on this interim rule are solicited from all interested parties, and these comments will be considered in developing the General Management Plans (GMP) and final regulations. Final regulations will be adopted upon completion of the GMPs and review of all comments.

ADDRESSES: Comments should be addressed to: John H. King, Superintendent, Virgin Islands National Park, 1300 Cruz Bay Creek, St. John, Virgin Islands 00830. E-mail: *John_H_King@nps.gov.* Mr. Joel A. Tutein, Superintendent, Buck Island Reef National Monument, 2100 Church Street, Lot #100, Christiansted, St. Croix, Virgin Islands 00820–4611. E-mail: *CHRI_Superintendent@nps.gov.*

FOR FURTHER INFORMATION CONTACT: For Virgin Islands Coral Reef: Contact Superintendent's Office, Virgin Islands National Park, between 8 a.m. and 5 p.m., Monday–Friday by phone at 340/776–6201 or by Fax at 340/693–9301. For Buck Island: Contact Superintendent's Office, Buck Island Reef National Monument, between 8 a.m. and 5 p.m., Monday–Friday, at 340/773–1460.

SUPPLEMENTARY INFORMATION:

Background

On January 17, 2001, President Clinton established Virgin Islands Coral Reef National Monument (VICR) and enlarged and modified Buck Island Reef National Monument (BUIS). Presidential Proclamation Nos. 7399 and 7392, respectively.

In establishing VICR, Proclamation No. 7399 assigns management to the Secretary of the Interior through the National Park Service (NPS) under its existing authorities, but subject to the overriding purpose of protecting the monument's objects of historic or scientific interest. The acreage included is the smallest area compatible with the proper care and management of the objects to be protected. Proclamation No. 7399 contains six major provisions:

(1) It reserves only lands owned or controlled by the United States in the area.

(2) It is subject to valid existing rights in the federal lands or resources within the area, if any, although the exercise of those rights could be regulated in order to protect the purposes of the monument.

(3) The area is withdrawn from mineral and geothermal entry, location, sale, leasing or other disposition.

(4) Boat anchoring is prohibited, except for emergency and authorized administrative uses.

(5) All extractive uses are prohibited, except for bait fishing at Hurricane Hole and for blue runner (hardnose) line fishing in the area south of St. John, both by permit only. The Secretary may issue permits only ''to the extent that such fishing is consistent with the protection of the objects identified in this proclamation.''

(6) A management plan, including vessel management planning, is to be prepared within three years.

Proclamation No. 7392, the ''Buck Island Reef National Monument Boundary Enlargement'', added approximately 18,135 marine acres to the existing Buck Island Reef National Monument. This acreage is the smallest area compatible with the proper care and management of the objects to be protected. The Proclamation added extensive coral reef and fisheries resources not originally within the monument boundaries including deep reefs, sea grass beds, shelf edge communities, and oceanic habitats. The area also contains significant cultural and historic objects including possible shipwrecks from the slave era. The Buck Island Proclamation states that:

> For the purposes of protecting the objects identified above, the Secretary shall prohibit all boat anchoring, provided that the Secretary may permit exceptions for emergency or authorized administrative purposes, and may issue permits for anchoring in deep sand bottom areas, to the extent that it is consistent with the protection of the objects.
>
> For the purposes of protecting the objects identified above, the Secretary shall prohibit all extractive uses. This prohibition supersedes the limited authorization for extractive uses included in Proclamation 3443 of December 28, 1961.

The Proclamations give the Secretary limited discretion in what activities and uses she may allow. She must prohibit all extractive uses, but she may allow very limited fishing in two areas at VICR and may permit certain very limited kinds of boat anchoring at BUIS.

The Proclamations differ from current regulations governing the areas. Note that NPS general regulations prohibit all commercial fishing in any unit of the National Park System except where specifically authorized by federal statutory law. However, NPS regulations at 36 CFR 2.3 allow recreational fishing under state law in all park units unless otherwise prohibited. The Proclamations and this interim regulation are generally more restrictive for both VICR and BUIS.

Commercial and recreational fishing were previously authorized by Territorial Government permit within the boundaries of the area that now constitutes VICR, with regulations on the taking of some species (*i.e.,* area and seasonal closures, size limits, gear restrictions, etc.) and prohibitions on the harvest or possession of others. Title 12, chapter 9A VIRR. The harvest of

certain pelagic species (*e.g.,* swordfish, shark and tuna), was generally regulated by the National Marine Fisheries Service. Mooring and anchoring within the boundaries of VICR were previously authorized by the Territory pursuant to title 25, chapter 16 VIRR.

This interim rule prohibits all extractive uses including fishing within VICR, except for bait fishing at Hurricane Hole and blue runner (hardnose) line fishing in the area south of St. John as permitted by the Secretary (and only where consistent with the protection of the objects identified in Proclamation No. 7399). The interim rule also prohibits dredging, excavations, or filling operations; protects all wrecks or abandoned waterborne craft and cargo; regulates boats and anchoring to prevent them from causing any damage to any underwater features; and requires boats to follow Coast Guard and Territorial regulations. Although this regulation does not specifically prohibit the use of personal watercraft (PWC) within these units, under the PWC regulations located at 36 CFR 3.24, PWC are prohibited from operating within these units and have been prohibited since April 2000. The interim rule does permit anchoring in emergency situations to protect life and property.

BUIS originally permitted the continuation of ''the existing fishing (including the landing of boats and the laying of fishpots outside of the marine garden), bathing or recreational privileges by inhabitants of the Virgin Islands''. Proclamation No. 3443. The regulations for BUIS, codified at 36 CFR 7.73, have prohibited dredging, excavations, or filling operations; protected all wrecks or abandoned waterborne craft and cargo; regulated boats and anchoring to prevent them from causing any damage to any underwater features, prevented boats from anchoring or maneuvering near marked swimming trails, and required boats to follow Coast Guard and Territorial regulations. The previous regulations provided that fishing was prohibited except by handheld rod or line or conventional Virgin Islands fish pots or traps, or nets for bait fish; use or possession of spearfishing equipment was banned; special rules and limits applied to Florida spiny lobster, whelk, and conch; and all fishing was prohibited in the ''Marine Garden''.

This interim rule leaves in place the existing regulatory provisions regarding dredging, protection of wrecks, and boat regulation. It adds a prohibition of all anchoring except as authorized by the Superintendent in deep sand bottom areas, in emergencies, or for limited administrative purposes. It also adds a prohibition on all extractive uses. The interim rule eliminates the previous provisions on fishing, and instead prohibits all fishing and bans the use or possession of fishing equipment within BUIS.

Because the Secretary's discretion under the Proclamations is limited, and because the Proclamations supersede existing law over the areas, it is in the public interest to promulgate these interim regulations in order to provide notice to interested and affected parties of the designations, prohibitions, and change in management, and to carry out the Proclamations' purpose to protect objects of historic and scientific interest. The National Park Service finds that this interim rule is both necessary and prudent in order to achieve the goals stated in the Proclamations and make them effective.

Impairment Finding

NPS Management Policies 1.4 requires the Superintendent to consider the impacts of a proposed action before approving it and determine, in writing, that the activity will not lead to an impairment of park resources and values.

Fishing Exceptions

Exceptions to the prohibitions established for VICR include bait fishing at Hurricane Hole by permit and for blue runner (hardnose) line fishing, also by permit, in the area south of St. John. These exceptions are determined to produce no impairment of the objects protected by the proclamation.

The bait fish found in Hurricane Hole are seasonal, migratory species using this area for refuge. This is not a reproductive site for these species and limited harvest, by permit, will not depopulate this resource. This rule establishes limits on harvest to three gallons of bait fish per fisherman per day, and require that nets not be used within ten feet of the seaward edge of the mangrove prop root system (to avoid disturbing the invertebrate communities that live on the prop roots).

The hardnose found south of St. John are a coastal migratory pelagic fish. These fish stay primarily near the surface while feeding and migrating through the Monument. Harvest, by permit, of this pelagic resource will not impair objects protected under the designation. The most effective way to fish for hardnose involves anchoring. Since anchoring in this area is not allowed, the NPS will be installing several moorings for use by fishermen.

Anchoring/Mooring

Hurricane Hole has long been used by the marine community as a safe shelter for vessels during hurricanes. Pursuant to maritime law and practice, access to this shelter cannot be denied during an emergency situation. The establishment of a hurricane mooring system in these bays would resolve conflicts between resource protection and hurricane shelter for boats. The installation of a mooring system, after survey for submerged cultural resources, would not impair protected objects.

The Proclamation for BUIS does not have any exceptions to the prohibition except that boat anchoring may be permitted for emergency or authorized administrative purposes, and the Superintendent ''may issue permits for anchoring in deep sand bottom areas, to the extent that is consistent with the protection of the objects''. This ensures that any such anchoring would not impair protected objects.

This impairment determination will sunset upon adoption of the respective GMPs, which will further evaluate impacts to monument resources and values.

The GMP process will evaluate further the exceptions to the general prohibition on extractive uses. The public will have further opportunity to comment on extractive uses during the GMP process, however, the Secretary's discretion under the Proclamations is limited and only a few exceptions can be modified.

Public Participation: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to: Superintendent, Virgin Islands National Park; 1300 Cruz Bay Creek, St. John, Virgin Islands 00830, or Superintendent, Buck Island Reef National Monument; 2100 Church Street, Lot #100; Christiansted, VI 00820. You may also comment via the Internet to: *John_H_King@nps.gov* or *CHRI_Superintendent@nps.gov.* Please also include ''Attn: RIN 1024–AC89'', your name and return address in your Internet message. Finally, you may hand-deliver comments to the Virgin Islands National Park Visitor Information Center, Cruz Bay, St. John or to the Buck Island Reef National Monument Superintendent's Office at the Danish Customs House, Christiansted, St. Croix. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the

rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment and state the reason for your request. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. All comments will be considered as part of the GMP process. There will be further opportunity for public comment during the GMP process. Final regulations will be adopted after the completion of the GMP process.

Drafting Information: The principal authors of this interim rule are John H. King, Superintendent, Virgin Islands National Park and Joel A. Tutein, Superintendent, Buck Island Reef National Monument.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866.

(a) This rule will not have an effect of $100 million or more on the economy. It 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.

(b) This rule does not interfere with actions taken or planned by another agency. The Territorial Submerged Lands Act of 1974 transferred the waters surrounding the Virgin Islands from the Department of the Interior to the Government of the Virgin Islands; however, all submerged lands adjacent to federal lands from mean high water out to three miles remained the property of the Department of the Interior. The Proclamations authorize NPS to manage these lands around VICR and BUIS for the American people.

The Proclamation for BUIS complements plans of the Territorial government to ban all fishing within the monument waters according to the St. Croix Coral Reef System Area of Particular Concern Management Plan (1993) (APC Plan) approved by the Government of the Virgin Islands, Department of Planning and Natural Resources. The APC Plan states, on page 40:

> Move to establish, as part of the territorial marine park system, an expanded protected area around the Buck Island Reef National Monument to provide increased protection to the coral reef and fishery resources of the Monument. It is recommended that all forms of fishing be prohibited within the core and expanded area.

The Territory is willing to work with NPS to establish Memoranda of Agreement to specify resource management goals, objectives, standard protocol, and agency responsibilities. The Proclamations have declared the monument areas as non-extractive, coinciding with Territorial plans for the same action. The Territory is also in the process of developing a Virgin Islands Marine Park, which will abut both new monuments and hopefully provide further protection for the natural resources in the area.

(c) This rule does not alter the budgetary effects of entitlements, grants, user fees, or monetary loan programs or the rights or obligations of their recipients. The Proclamations establishing VICR and enlarging BUIS do not affect current NPS-authorized concession operations (concession fees) or other commercial operations (*e.g.*, day use excursions) occurring in the monuments. These operations are non-extractive in nature, provide the public the means to experience these unique and delicate marine resources, and allow the public a first-hand opportunity to see the benefits of a fully protected coral reef area.

(d) This rule does not raise novel legal or policy issues. It implements two validly issued Presidential Proclamations, which leave little discretion as to the purposes for the creation of the monuments or uses of the area.

Regulatory Flexibility Act

The Department of the Interior certifies that this interim 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.*). The economic effects of this rule are local in nature and negligible in scope.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. The Department has determined that this rule meets the applicable standards provided in section 3(a) and 3(b)(2) of Executive Order 12988.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. No property acquisition or impacts on private property owners are expected due to the administrative nature of the rule. The Proclamations identify federal submerged lands surrounding Virgin Islands National Park and around the original Buck Island Reef National Monument for management by the National Park Service. These lands were held in reservation in the Submerged Lands Act of 1974 and not transferred to the Territorial government.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The NPS is exercising jurisdiction over submerged federal lands for which control has never been relinquished.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This rule does not require an information collection from 10 or more parties. It does not require submissions under the Paperwork Reduction Act or OMB form 83–I. This rule does not require any outside party to submit any information to the Department of the Interior.

National Environmental Policy Act

The NPS has determined that this rule will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase human uses that would compromise the nature and characteristics of any park area or cause physical damage to any park area;

(b) Introduce incompatible uses that compromise the nature and characteristics of any park area or cause physical damage to it;

(c) Conflict with ownerships adjacent to parks or land uses adjacent to parks; or

(d) Cause a nuisance to owners or occupants of areas adjacent to parks.

Based upon this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental Guidelines in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared specifically for this rule. The GMPs will be accompanied by proper NEPA documentation.

Government-to-Government Relationship With Tribes

In accordance with Executive Order 13175 ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249), the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), and 512 DM 2 we have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects.

Administrative Procedures Act

The Secretary of the Interior has determined under 5 U.S.C. 553(b)(B) and 318 DM 5.3 that it is not in the public interest to delay the effective date of this interim regulation to accommodate notice and comment procedures. There are 4 reasons for this decision:

(a) The Proclamations clearly outline the limits of the Secretary's discretion in disallowing extractive uses at the Monuments. This regulation simply codifies the prohibitions of extractive uses outlined in the Proclamations and public comment will be useful only as to the few narrow exceptions allowed under the Proclamations.

(b) Delaying implementation of the Proclamations may lead to confusion about what law applies in the units and could result in harm to the objects protected by the Proclamations.

(c) Immediate action is necessary in order to effectuate the purpose for which the Proclamations were issued; that is, protecting the objects within the monuments.

(d) Immediate action is necessary in order to implement the exceptions providing for limited, permitted extraction in VICR.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, the National Park Service amends 36 CFR part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

■ 1. The authority citation for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); sec. 7.96 also issued under DC Code 8–137 (1981) and DC Code 40–721 (1981).

■ 2. Add § 7.46 to read as follows:

§ 7.46 Virgin Islands Coral Reef National Monument.

(a) *Extractive uses.* (1) All extractive uses are prohibited within the boundaries of the Monument, including, but not limited to, harvest or collection of fish, coastal migratory pelagic fish, baitfish, lobsters, conch, whelk, corals, sponges and all associated reef invertebrates, and sand, water, plants, seeds, fruit, marine mammals, marine birds, gas, minerals, and rocks.

(2) All submerged cultural resources are protected under the Archeological Resource Protection Act and the Abandoned Shipwrecks Act.

(b) *Exceptions.* (1) Exceptions to prohibited extractive uses are limited to bait fishing at Hurricane Hole and blue runner (hardnose) line fishing in the area south of St. John. The Superintendent shall issue permits for such uses.

(2) Bait fishing shall be permitted with cast net at a distance greater than ten feet from the seaward edge of the mangrove prop root system.

(3) A maximum of three gallons of baitfish is allowed per fisherman per day.

(4) Blue runner shall be caught using hand lines and chum (a mixture of ground up baitfish and sand to attract the fish).

(5) Any fish caught other than blue runner shall be released.

(6) Vessels involved in the catch of blue runner may use moorings designated for that purpose.

(c) *Marine Operations.* No dredging, excavating, or filling operations of any kind are permitted, and no equipment, structures, by-product or excavated materials associated with such operations may be deposited in or on the waters or ashore within the boundaries of the monument.

(d) *Wrecks.* No person shall destroy or molest, remove, deface, displace or tamper with wrecked or abandoned waterborne craft of any type or condition, submerged cultural resources, or any cargo pertaining thereto, unless permitted in writing by an authorized official of the National Park Service.

(e) *Boats.* (1) No watercraft shall operate in such a manner, nor shall anchors or any other mooring device be cast or dragged or placed, so as to strike or otherwise cause damage to any underwater feature.

(2) All watercraft, carrying passengers, for hire, shall comply with applicable regulations and laws of the U.S. Coast Guard and Territory of the Virgin Islands.

(3) Anchoring will only be permitted in emergency situations to protect life and property.

(4) Anchoring shall only be permitted from 48 hours prior to landfall of the hurricane to 48 hours following passage of the hurricane.

(5) No lines or ropes shall be attached to mangroves or other shoreline vegetation.

■ 3. Amend § 7.73 to add paragraph (a), and revise paragraphs (d) and (e) to read as follows:

§ 7.73 Buck Island Reef National Monument.

(a) *Extractive uses.* All extractive uses are prohibited within the boundaries of the Monument, including but not limited to harvest or collection (on the land or in the water) of fish for any use, marine mammals, coastal migratory pelagic fish, baitfish, lobsters, conch, whelk, hermit crabs (soldier crabs), seashells, corals, dead coral, sea fans, sponges and all associated reef invertebrates, plants, fruits and seeds, firewood, driftwood, rocks, sand, gas, oil, and minerals.

* * * * *

(d) *Boats.* (1) No watercraft shall operate in such a manner, nor shall anchors or any other mooring device be cast or dragged or placed, so as to strike or otherwise cause damage to any underwater features.

(2) Anchoring or maneuvering watercraft within the waters that contain underwater marked swimming trails and interpretive signs is prohibited.

(3) Anchoring is prohibited except by permit issued by the Superintendent for

deep sand bottom areas or for administrative purposes.

(4) Anchoring will be allowed in emergency situations only to protect life and property.

(5) All watercraft, carrying passengers, for hire, shall comply with applicable regulations and laws of the U.S. Coast Guard and Territory of the Virgin Islands.

(e) *Fishing.* (1) All forms of fishing are prohibited including, but not limited to, spearfishing, rod and reel, hand-line, nets, gill or trammel, traps or pots, snares, hooks, poison, cast nets, trawl, seine, and long-line.

(2) The use or possession of any type of fishing equipment or any of the items listed in paragraph (a) of this section is prohibited within the boundaries of the Monument.

Dated: February 12, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–8190 Filed 4–3–03; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0217; FRL–7298–4]

Lactic acid, ethyl ester and Lactic acid, n-butyl ester; Exemptions from the Requirement of a Tolerance; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: EPA issued a final rule in the **Federal Register** of September 3, 2002, establishing tolerance exemptions for lactic acid, ethyl ester and lactic acid, n-butyl ester. In the codified text of that document, the CAS number for lactic acid, ethyl ester was incorrectly listed. This document is being issued to correct the CAS number for lactic acid, ethyl ester.

DATES: This document is effective on April 4, 2003.

FOR FURTHER INFORMATION CONTACT: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–305–6304; e-mail address: *boyle.kathryn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the September 3, 2002 final rule a list of those who may be potentially affected by this action. 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 Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0217. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_ 40/40cfr[180]_00.html*, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. What Does this Correction Do?

A tolerance exemption for lactic acid, ethyl ester was established in the **Federal Register** of September 3, 2002 (67 FR 56225) (FRL– 7196–6) (OPP–2002–0217). In the codified text of that document, the CAS number was incorrectly listed as ''197–64–3.'' The CAS number should have read ''97–64–3'' as expressed in the preamble.

III. Why is this Correction Issued as a Final Rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's technical correction final without prior proposal and opportunity for comment, because EPA is merely correcting a typographical error. The CAS number for lactic acid, ethyl ester was correctly listed in the preamble, but erroneously listed in the codified text. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

IV. Do Any of the Regulatory Assessment Requirements Apply to this Action?

This final rule implements a technical correction to the CFR, and it does not otherwise impose or amend any requirements. As such, the Office of Management and Budget (OMB) has determined that a technical correction is not a ''significant regulatory action'' subject to review by OMB under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Nor does this final rule contain any information collection requirements that require review and approval by OMB pursuant to the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). Since the Agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the APA or any other statute (see Unit III.), this action is not subject to provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments 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). This final rule will not have substantial direct effects on the States or on one or more Indian tribes, on the relationship between the national government and the States or one or more Indian tribes, or on the

distribution of power and responsibilities among the various levels of government or between the Federal government and Indian tribes. As such, this action does not have any ''federalism implications'' as described in Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999), or any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Since this direct final rule is not a ''significant regulatory action'' as defined by Executive Order 12866, it does not require 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), and 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 action does not involve any technical standards that require the Agency's 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). This action will not result in environmental justice related issues and does not, therefore, require special consideration 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 Executive Order 12630, entitled*Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988). In issuing this final rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

V. Congresssional Review Act

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: March 21, 2003.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR part 180 is corrected 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.

■ 2. Section 180.950 is amended by revising the entry for ''Lactic acid, ethyl ester'' in paragraph (e) to read as follows:

§ 180.950 Tolerance exemptions for minimal risk active and inert ingredients.

* * * * *

(e) * * *

Chemical Name	CAS No.
* * * *	*
Lactic acid, ethyl ester	97–64–3
* * * *	*

[FR Doc. 03–7973 Filed 4–3–03; 8:45 am]

BILLING CODE 6560–50–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 2506

RIN 3045–AA20

Debt Collection

AGENCY: Corporation for National and Community Service.

ACTION: Final rule.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation'') is issuing regulations governing the collection of debts owed to it and other Federal agencies. Federal agencies are required to try to collect debts owed to the Federal government. These regulations describe actions that the Corporation may take to collect debts; they apply, with certain exceptions, to any person or entity. These regulations conform the Corporation's interim regulations to the amended procedures in the revised Federal Claims Collection Standards (FCCS) issued by the Department of the Treasury (Treasury) and the Department of Justice (DOJ) and adopt by reference Treasury's administrative wage garnishment procedures. These regulations also provide that the Corporation has entered into a cross-servicing agreement with Treasury under which Treasury will take authorized action to collect amounts owed to the Corporation.

DATES: This rule is effective on May 5, 2003.

ADDRESSES: Comments must be sent to Corporation for National and Community Service, William L. Anderson, III, Deputy Chief Financial Officer, 1201 New York Avenue, NW., Room 7207, Washington, DC 20525, e-mail *WAnderso@cns.gov*, telefax number (202) 565–2780; the TTY number is (202) 565–2799.

FOR FURTHER INFORMATION CONTACT: Suzanne Dupré, telephone number (202) 606–5000, extension 396; *sdupre@cns.gov*; or telefax number (202) 565–2796.

SUPPLEMENTARY INFORMATION: Under these regulations, the Corporation may collect debts owed to it through a number of actions, including the following:

- Making offsets against amounts, including salary payments, owed to the debtor by the Corporation or other Federal agencies;
- Referring the debt to a private collection contractor;
- Referring the matter to the U.S. Department of Justice (DOJ) for initiation of a judicial proceeding against the debtor; and
- Referring the matter to the Treasury to take all of the above-listed actions to collect debts for the Corporation, pursuant to a cross-servicing agreement.

In addition, these regulations describe the actions necessary for the Corporation to take collection actions on behalf of another Federal agency. These actions could include making offsets against the salary of a Corporation employee or against any other amounts owed by the Corporation to the debtor. These regulations implement the requirements of the Federal Claims Collection Act of 1966 (Pub. L. 89–508, 80 Stat. 308) as amended by the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749) and the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321, 31 U.S.C. 3720A). These regulations are issued in conformity with the Federal Claims Collection Standards issued by DOJ and

the Treasury (31 CFR Chapter IX, parts 900–904, 65 FR 70390 (11/22/2000)). The regulations in this part are also issued in conformity with the regulations of the Office of Personnel Management (OPM) on offsets against Federal employee salaries (5 CFR part 550, subpart K), and the Treasury regulations on Administrative Wage Garnishment (31 CFR 285.11).

The Corporation has determined that these regulations pertain to agency practice and procedure and are interpretative in nature. The procedures contained in these regulations for salary, tax refund, and administrative offsets and for administrative wage garnishment are mandated by law and by regulations promulgated by OPM, the Treasury Financial Management Service, and jointly by the DOJ and the Treasury. Therefore, under 5 U.S.C. 553(b)–(d), these regulations are not subject to the Administrative Procedures Act (APA) and the requirements of the APA for a notice and comment period and a delayed effective date.

Comments on proposed rule. On January 29, 1999 (64 FR 4315), the Corporation published interim claims collection regulations that conformed to the DCIA and to the FCCS. The comment period expired on March 29, 1999. No comments were received on the interim regulations. These regulations are somewhat expanded to be more clear; and they incorporate by reference the procedures for administrative wage garnishment in Treasury regulations. There are no other substantive changes.

This rule is a significant regulatory action for the purpose of Executive Order 12866 and has been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that these regulations will not have a significant economic impact on a substantial number of small entities. This rule has no federalism implications. This rule is not a major rule.

List of Subjects in 45 CFR Part 2506

Administrative practice and procedures; Claims; Debts; Government employees; Garnishment of Wages; Salaries; Wages.

■ For the reasons stated in the preamble, the Corporation revises part 2506 of 45 CFR Chapter XXV to read as follows:

PART 2506—COLLECTION OF DEBTS

Subpart A—Introduction

Sec.

Authority: 5 U.S.C. 5514; 31 U.S.C. 3701–3720A, 3720D; 44 U.S.C. 2104(a).

Subpart A—Introduction

§ 2506.1 Why is the Corporation issuing these regulations?

(a) The Corporation is issuing these regulations to inform the public of procedures that may be used by the Corporation for the collection of debt.

(b) These regulations provide that the Corporation will attempt to collect debts owed to it or other Government agencies either directly, or by other means including salary offsets, administrative offsets, tax refund offsets, or administrative wage garnishment.

(c) These regulations also provide that the Corporation has entered into a cross-servicing agreement with the U.S. Department of the Treasury (Treasury) under which the Treasury will take authorized action to collect amounts owed to the Corporation.

§ 2506.2 Under what authority does the Corporation issue these regulations?

(a) The Corporation is issuing the regulations in this part under the authority of 31 U.S.C. chapter 37, 3701–3720A and 3720D. These sections implement the requirements of the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996.

(b) The Corporation is also issuing the regulations in this part to conform to the Federal Claims Collection Standards (FCCS), which prescribe standards for handling the Federal Government's claims for money or property. The FCCS are issued by the Department of Justice (DOJ) and the Treasury at 31 CFR chapter IX, parts 900–904. The Corporation adopts those standards without change. The regulations in this part supplement the FCCS by prescribing procedures necessary and appropriate for the Corporation's operations.

(c) The Corporation is also issuing the regulations in this part to conform to the standards for handling Administrative Wage Garnishment processing by the Federal Government. The standards are issued by the Treasury at 31 CFR 285.11. The Corporation adopts those standards without change. The regulations in this part supplement the standards by prescribing procedures necessary and appropriate for the Corporation's operations.

(d) The Corporation is further issuing the regulations in this part under the authority of 5 U.S.C. 5514, and the salary offset regulations published by the Office of Personnel and Management at 5 CFR part 550, subpart K.

(e) All of these debt collection regulations are issued under the Corporation's authority under 42 U.S.C. 12651c(c).

§ 2506.3 What definitions apply to the regulations in this part?

As used in this part:

Administrative offset means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a debt.

Administrative wage garnishment means a process whereby a Federal agency may, without first obtaining a court order, order an employer to withhold up to 15 percent of your disposable pay for payment to the Federal agency to satisfy a delinquent non-tax debt.

Agency means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of government, including a government corporation.

Certification means a written statement received by a paying agency or disbursing official from a creditor agency that requests the paying agency or disbursing official to offset the salary of an employee and specifies that required procedural protections have been afforded the employee.

Chief Executive Officer means the Chief Executive Officer of the Corporation, or his or her designee.

Claim (see definition of *Debt* in this section).

Compromise means the settlement of a debt for less than the full amount owed.

Corporation means the Corporation for National and Community Service.

Creditor agency means the agency to which the debt is owed, including a debt collection center when acting on behalf of the creditor agency.

Cross-servicing agreement is a letter of agreement entered into between the Corporation and the Financial Management Service (FMS) of the Treasury in which the Corporation has authorized FMS to take all appropriate actions to enforce collection of debts or groups of debts referred to FMS by the Corporation. These debt collection services are provided by FMS on behalf of the Corporation in accordance with all statutory and regulatory requirements.

Day means calendar day. To count days, include the last day of the period unless it is a Saturday, a Sunday, or a Federal legal holiday.

Debt and claim are deemed synonymous and interchangeable. These terms mean an amount of money, funds, or property that has been determined by an agency official to be due the United States from any person, organization, or entity except another Federal agency. For the purpose of administrative offset under 31 U.S.C. 3716 and subpart E of these regulations, the terms, ''debt'' and ''claim'' also include money, funds or property owed by a person to a State (including past-due support being enforced by a State); the District of Columbia; American Samoa; Guam; the United States Virgin Islands; the Commonwealth of the Northern Mariana Islands; or the Commonwealth of Puerto Rico.

Debt collection center means the Treasury or any other agency or division designated by the Secretary of the Treasury with authority to collect debts on behalf of creditor agencies.

Debtor means a person, organization, or entity, except another Federal agency, who owes a debt. Use of the terms ''I,'' ''you,'' ''me,'' and similar references to the reader of the regulations in this part are meant to apply to debtors as defined in this paragraph.

Delinquent debt means a debt that has not been paid by the date specified in the Corporation's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement), unless other satisfactory payment arrangements have been made.

Disposable pay means the part of an employee's pay that remains after deductions that are required to be withheld by law have been made.

Employee means a current employee of an agency, including a current member of the Armed Forces or Reserve of the Armed Forces of the United States.

Federal Claims Collection Standards (FCCS) means the standards currently published by DOJ and the Treasury at 31 CFR parts 900–904.

Paying agency means any agency that is making payments of any kind to a debtor. In some cases, the Corporation may be both the creditor agency and the paying agency.

Payroll office means the office that is primarily responsible for payroll records and the coordination of pay matters with the appropriate personnel office.

Person includes a natural person or persons, profit or non-profit corporation, partnership, association, trust, estate, consortium, state or local government, or other entity that is capable of owing a debt to the United States; however, agencies of the United States are excluded.

Private collection contractor means a private debt collector under contract with an agency to collect a non-tax debt owed to the United States.

Salary offset means a payroll procedure to collect a debt under 5 U.S.C. 5514 and 31 U.S.C. 3716 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee, without his or her consent.

Tax refund offset means the reduction of a tax refund by the amount of a past-due legally enforceable debt owed to the Corporation or any other Federal agency.

Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt.

Withholding order means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body.

§ 2506.4 What types of debts are excluded from these regulations?

The following types of debts are excluded:

(a) Debts or claims arising under the Internal Revenue Code (26 U.S.C. 1 *et seq.*) or the tariff laws of the United States, or the Social Security Act (42 U.S.C. 301 *et seq.*); except as provided under sections 204(f) and 1631 (42 U.S.C. 404(f) and 1383(b)(4)(A)).

(b) Any case to which the Contract Disputes Act (41 U.S.C. 601 *et seq.*) applies;

(c) Any case where collection of a debt is explicitly provided for or provided by another statute, *e.g.*, travel advances under 5 U.S.C. 5705 and employee training expenses under 5 U.S.C. 4108, or, as provided for by title 11 of the United States Code, when the claims involve bankruptcy;

(d) Any debt based in whole or in part on conduct in violation of the antitrust laws or involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim, as described in the FCCS, unless DOJ authorizes the Corporation to handle the collection;

(e) Claims between Federal agencies;

(f) Unless otherwise provided by law, administrative offset of payments under the authority of 31 U.S.C. 3716 to collect a debt may not be initiated more than 10 years after the Government's right to collect the debt first accrued. (Exception: The 10-year limit does not apply if facts material to the Federal Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts.) The 10-year limitation also does not apply to debts reduced to a judgment; and

(g) Unless otherwise stated, debts which have been transferred to the Treasury or referred to the DOJ will be collected in accordance with the procedures of those agencies.

§ 2506.5 If a debt is not excluded from these regulations, may it be compromised, suspended, terminated, or waived?

Nothing in this part precludes:

(a) The compromise, suspension, or termination of collection actions, where appropriate under the FCCS, or the use of alternative dispute resolution methods if they are consistent with applicable law and regulations.

(b) An employee from requesting waiver of an erroneous payment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716; or any debtor from questioning the amount or validity of a debt, in the manner set forth in this part.

§ 2506.6 What is a claim or debt?

A claim or debt is an amount of money, funds, or property that has been determined by an agency official to be due the United States from any person, organization, or entity except another Federal agency (see § 2506.3).

§ 2506.7 Why does the Corporation have to collect debts?

Federal agencies are required to try to collect claims or debts of the Federal Government for money, funds, or property arising out of the agency's activities.

§ 2506.8 What action might the Corporation take to collect debts?

(a) There are a number of actions that the Corporation is permitted to take when attempting to collect debts. These actions include:

(1) Salary, tax refund or administrative offset, or administrative wage garnishment (see subparts C, D, E, and F of this part respectively); or

(2) Using the services of private collection contractors.

(b) In certain instances, usually after collection efforts have proven unsuccessful, the Corporation transfers debts to the Treasury for collection or refers them to the DOJ for litigation (see §§ 2506.10 and 2506.11).

§ 2506.9 What rights do I have as a debtor?

As a debtor you have several basic rights. You have a right to:

(a) Notice as set forth in these regulations (see § 2506.14);

(b) Inspect the records that the Corporation has used to determine that you owe a debt (see § 2506.14);

(c) Request review of the debt and possible payment options (see § 2506.17);

(d) Propose a voluntary repayment agreement (see § 2506.19); and/or

(e) Question if the debt is excluded from these regulations (see § 2506.5(b)).

Subpart B—General Provisions.

§ 2506.10 Will the Corporation use its cross-servicing agreement with Treasury to collect its debts?

(a) The Corporation entered into a cross-servicing agreement on March 26, 1999, with Treasury Financial Management Services (FMS) that authorizes the Treasury to take the collection actions described in this part on behalf of the Corporation (see § 2506.3). The Corporation will refer debts or groups of debts to FMS for collection action. The debt collection procedures that the Treasury FMS uses are based on 31 U.S.C. chapter 37 and this part.

(b) The Corporation must transfer to the Treasury any debt that has been delinquent for a period of 180 days or more, so that the Secretary of the Treasury may take appropriate action to collect the debt or terminate collection action. This is pursuant to § 901.3 of the FCCS.

(c) Paragraph (b) of this section will not apply to any debt or claim that:

(1) Is in litigation or foreclosure;

(2) Will be disposed of under an approved asset sales program;

(3) Has been referred to a private collection contractor for collection for a period of time acceptable to the Secretary of the Treasury;

(4) Is at a debt collection center for a period of time acceptable to the Secretary of the Treasury;

(5) Will be collected under internal offset procedures within 3 years after the date the debt or claim is first delinquent; or

(6) Is exempt from this requirement based on a determination by the Secretary of the Treasury.

§ 2506.11 Will the Corporation refer debts to the Department of Justice?

The Corporation will refer to DOJ for litigation debts on which aggressive collection actions have been taken, but which could not be collected, compromised, suspended, or terminated. Referrals will be made as early as possible, consistent with aggressive Corporation collection action, and within the period for bringing a timely suit against the debtor.

§ 2506.12 Will the Corporation provide information to credit reporting agencies?

(a) The Corporation will report certain delinquent debts to appropriate consumer credit reporting agencies by providing the following information:

(1) A statement that the debt is valid and overdue;

(2) The name, address, taxpayer identification number, and any other information necessary to establish the identity of the debtor;

(3) The amount, status, and history of the debt; and

(4) The program or pertinent activity under which the debt arose.

(b) Before disclosing debt information to a credit reporting agency, the Corporation:

(1) Takes reasonable action to locate the debtor if a current address is not available;

(2) Provides the notice required under § 2506.14(a) if a current address is available; and

(3) Obtains satisfactory assurances from the credit reporting agency that it complies with the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*) and other Federal laws governing the provision of credit information.

(c) At the time debt information is submitted to a credit reporting agency, the Corporation provides a written statement to the reporting agency that all required actions have been taken. In addition, the Corporation thereafter ensures that the credit reporting agency is promptly informed of any substantive change in the conditions or amount of the debt, and promptly verifies or

corrects information relevant to the debt.

(d) If a debtor disputes the validity of the debt, the credit reporting agency refers the matter to the appropriate Corporation official. The credit reporting agency excludes the debt from its reports until the Corporation certifies in writing that the debt is valid.

(e) The Corporation may disclose to a commercial credit bureau information concerning a commercial debt, including the following:

(1) Information necessary to establish the name, address, and employer identification number of the commercial debtor;

(2) The amount, status, and history of the debt; and

(3) The program or pertinent activity under which the debt arose.

§ 2506.13 How will the Corporation contract for private collection services?

The Corporation uses the services of a private collection contractor when it determines that such use is in the Corporation's best interest. When the Corporation determines that there is a need to contract for private collection services, the Corporation:

(a) Retains sole authority to:

(1) Resolve any dispute with the debtor regarding the validity of the debt;

(2) Compromise the debt;

(3) Suspend or terminate collection action;

(4) Refer the debt to the DOJ for litigation; and

(5) Take any other action under this part;

(b) Requires the contractor to comply with the:

(1) Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m);

(2) Fair Debt Collection Practices Act (15 U.S.C. 1692–1692o); and

(3) Other applicable Federal and State laws pertaining to debt collection practices and applicable regulations of the Corporation in this part;

(c) Requires the contractor to account accurately and fully for all amounts collected; and

(d) Requires the contractor to provide to the Corporation, upon request, all data and reports contained in its files related to its collection actions on a debt.

§ 2506.14 What should I expect to receive from the Corporation if I owe a debt to the Corporation?

(a) The Corporation will send you a written notice when we determine that you owe a debt to the Corporation. The notice will be hand-delivered or sent to you at the most current address known to the Corporation. The notice will inform you of the following:

(1) The amount, nature, and basis of the debt;

(2) That a designated Corporation official has reviewed the debt and determined that it is valid;

(3) That payment of the debt is due as of the date of the notice, and that the debt will be considered delinquent if you do not pay it within 30 days of the date of the notice;

(4) The Corporation's policy concerning interest, penalty charges, and administrative costs (see § 2506.18), including a statement that such assessments must be made against you unless excused in accordance with the FCCS and this part;

(5) That you have the right to inspect and copy disclosable Corporation records pertaining to your debt, or to receive copies of those records if personal inspection is impractical;

(6) That you have the opportunity to enter into an agreement, in writing and signed by both you and the designated Corporation official, for voluntary repayment of the debt (see § 2506.19);

(7) The address, telephone number, and name of the Corporation official available to discuss the debt;

(8) Possible collection actions that might be taken if the debt is not paid within 60 days of the notice, or arrangements to pay the debt are not made within 60 days of the notice (see § 2506.15 for a fuller description of possible actions);

(9) That the Corporation may suspend or revoke any licenses, permits, or other privileges for failure to pay a debt; and

(10) Information on your opportunity to obtain a review concerning the existence or amount of the debt, or the proposed schedule for offset of Federal employee salary payments (*see* § 2506.16).

(b) The Corporation will respond promptly to communications from you.

(c) Exception to entitlement to notice, hearing, written responses, and final decisions. With respect to the regulations covering internal salary offset collections (*see* § 2506.32), the Corporation excepts from the provisions of paragraph (a) of this section—

(1) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over 4 pay periods or less;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the 4 pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amounting to $50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

§ 2506.15 What will the notice tell me regarding collection actions that might be taken if the debt is not paid within 60 days of the notice, or arrangements to pay the debt are not made within 60 days of the notice?

The notice provided under § 2506.14 will advise you that, within 60 days of the date of the notice, your debt (including any interest, penalty charges, and administrative costs) must be paid or you must enter into a voluntary repayment agreement. If you do not pay the debt or enter into the agreement within that deadline, the Corporation may enforce collection of the debt by any or all of the following methods:

(a) By transferring the debt to the Treasury for collection, including under a cross-servicing agreement with the Treasury (*see* § 2506.10);

(b) By referral to a credit reporting agency (*see* § 2506.12), private collection contractor (*see* § 2506.13), or the DOJ (*see* § 2506.11);

(c) If you are a Corporation employee, by deducting money from your disposable pay account until the debt (and all accumulated interest, penalty charges, and administrative costs) is paid in full (*see* subpart C of this part). The Corporation will specify the amount, frequency, approximate beginning date, and duration of the deduction. 5 U.S.C. 5514 and 31 U.S.C. 3716 govern such proceedings;

(d) If you are an employee of a Federal agency other than the Corporation, by initiating certification procedures to implement a salary offset by that Federal agency (*see* subpart C of this part). 5 U.S.C. 5514 governs such proceedings;

(e) By referring the debt to the Treasury for offset against any refund of overpayment of tax (*see* subpart D of this part);

(f) By administrative offset (*see* subpart E of this part);

(g) By administrative wage garnishment (*see* subpart F of this part); or

(h) By liquidation of security or collateral. The Corporation has the right

to hold security or collateral, liquidate it, and apply the proceeds to your debt through the exercise of a power of sale in the security instrument or a foreclosure. The Corporation will not follow the procedures in this paragraph (h) if the cost of disposing of the collateral will be disproportionate to its value.

§ 2506.16 What will the notice tell me about my opportunity for review of my debt?

The notice provided by the Corporation under §§ 2506.14 and 2506.15 will also advise you of the opportunity to obtain a review within the Corporation concerning the existence or amount of the debt or the proposed schedule for offset of Federal employee salary payments. The notice will also advise you of the following:

(a) The name, address, and telephone number of a Corporation official whom you may contact concerning procedures for requesting a review;

(b) The method and time period for requesting a review;

(c) That the filing of a request for a review on or before the 60th day following the date of the notice will stay the commencement of collection proceedings;

(d) The name and address of the Corporation official to whom you should send the request for a review;

(e) That a final decision on the review (if one is requested) will be issued in writing at the earliest practical date, but not later than 60 days after the receipt of the request for a review, unless you request, and the review official grants, a delay in the proceedings;

(f) That any knowingly false or frivolous statements, representations, or evidence may subject you to:

(1) Disciplinary procedures appropriate under 5 U.S.C. chapter 75, 5 CFR part 752, or any other applicable statute or regulations;

(2) Penalties under the False Claims Act (31 U.S.C. 3729–3733) or any other applicable statutory authority; and

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or any other applicable statutory authority;

(g) Any other rights available to you to dispute the validity of the debt or to have recovery of the debt waived, or remedies available to you under statutes or regulations governing the program for which the collection is being made; and

(h) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt that are later waived or found not owed will be promptly refunded to you.

§ 2506.17 What must I do to obtain a review of my debt, and how will the review process work?

(a) *Request for review.* (1) You have the right to request a review by the Corporation of the existence or the amount of your debt, the proposed schedule for offset of Federal employee salary payments, or whether the debt is past due or legally enforceable. If you want a review, you must send a written request to the Corporation official designated in the notice (*see* § 2506.16(d)).

(2) You must sign your request for review and fully identify and explain with reasonable specificity all the facts, evidence, and witnesses that support your position. Your request for review should be accompanied by available evidence to support your contentions.

(3) Your request for review must be received by the designated officer or employee of the Corporation on or before the 60th calendar day following the date of the notice. Timely filing will stay the commencement of collection procedures. The Corporation may consider requests filed after the 60-day period provided for in this section if you:

(i) Can show that the delay was the result of circumstances beyond your control; or

(ii) Did not receive notice of the filing deadline (unless you had actual notice of the filing deadline).

(b) *Inspection of the Corporation records related to the debt.* (1) If you want to inspect or copy the Corporation records related to the debt (*see* § 2506.14(a)(5)), you must send a letter to the Corporation official designated in the notice. Your letter must be received within 30 days of the date of the notice.

(2) In response to the timely request described in paragraph (b)(1) of this section, the designated Corporation official will notify you of the location and time when you may inspect and copy records related to the debt.

(3) If personal inspection of the Corporation records related to the debt is impractical, reasonable arrangements will be made to send you copies of those records.

(c) *Review official.* (1) When required by Federal law or regulation, such as in a salary offset situation, the Corporation will request an administrative law judge, or hearing official from another agency who is not under the supervision or control of the Chief Executive Officer, to conduct the review. In these cases, the hearing official will, following the review, submit the review decision to the Chief Executive Officer for the issuance of the Corporation's final decision (*see* paragraph (f) of this section for content of the review decision).

(2) When Federal law or regulation does not require the Corporation to have the review conducted by an administrative law judge, or by a hearing official from another agency who is not under the supervision or control of the Chief Executive Officer, the Corporation has the right to appoint a hearing official to conduct the review. In these cases, the hearing official will, following the review, submit the review decision to the Chief Executive Officer for the issuance of the Corporation's final decision (see paragraph (f) of this section for the content of the review decision).

(d) *Review procedure.* If you request a review, the review official will notify you of the form of the review to be provided. The review official will determine whether an oral hearing is required, or if a review of the written record is sufficient, in accordance with the FCCS. Although you may request an oral hearing, such a hearing is required only when a review of the documentary evidence cannot determine the question of indebtedness, such as when the validity of the debt turns on an issue of credibility or truthfulness. In either case, the review official will conduct the review in accordance with the FCCS. If the review will include an oral hearing, the notice sent to you by the review official will set forth the date, time, and location of the hearing.

(e) *Date of decision.* (1) The review official will issue a written decision, based upon either the written record or documentary evidence and information developed at an oral hearing. This decision will be issued as soon as practical, but not later than 60 days after the date on which the Corporation received your request for a review, unless you request, and the review official grants, a delay in the proceedings.

(2) If the Corporation is unable to issue a decision within 60 days after the receipt of the request for a hearing:

(i) The Corporation may not issue a withholding order or take other action until the review (in whatever form) is held and a decision is rendered; and

(ii) If the Corporation previously issued a withholding order to the debtor's employer, the Corporation must suspend the withholding order beginning on the 61st day after the receipt of the review request and continuing until a review (in whatever form) is held and a decision is rendered.

(f) *Content of review decision.* The review official will prepare a written decision that includes:

(1) A statement of the facts presented to support the origin, nature, and amount of the debt;

(2) The review official's findings, analysis, and conclusions; and

(3) The terms of any repayment schedule, if applicable.

(g) *Interest, penalty charge, and administrative cost accrual during review period.* Interest, penalty charges, and administrative costs authorized by law will continue to accrue during the review period.

§ 506.18 What interest, penalty charges, and administrative costs will I have to pay on a debt owed to the Corporation?

(a) *Interest.* (1) The Corporation will assess interest on all delinquent debts unless prohibited by statute, regulation, or contract.

(2) Interest begins to accrue on all debts from the date that the debt becomes delinquent. The Corporation will not recover interest if you pay the debt within 30 days of the date on which interest begins to accrue. The Corporation will assess interest at the rate established annually by the Secretary of the Treasury under 31 U.S.C. 3717, unless a different rate is either necessary to protect the interests of the Corporation or established by a contract, repayment agreement, or statute. The Corporation will notify you of the basis for its finding when a different rate is necessary to protect the interests of the Corporation.

(3) The Chief Executive Officer may extend the 30-day period for payment without interest when he or she determines that such action is in the best interest of the Corporation. A decision to extend or not to extend the payment period is final and is not subject to further review.

(b) *Penalty.* The Corporation will assess a penalty charge of 6 percent a year on any portion of a debt that is delinquent for more than 90 days.

(c) *Administrative costs.* The Corporation will assess charges to cover administrative costs incurred as a result of your failure to pay a debt before it becomes delinquent. Administrative costs include the additional costs incurred in processing and handling the debt because it became delinquent, such as costs incurred in obtaining a credit report or in using a private collection contractor, or service fees charged by a Federal agency for collection activities undertaken on behalf of the Corporation.

(d) *Allocation of payments.* A partial or installment payment by a debtor will be applied first to outstanding penalty assessments, second to administrative costs, third to accrued interest, and fourth to the outstanding debt principal.

(e) *Additional authority.* The Corporation may assess interest, penalty charges, and administrative costs on debts that are not subject to 31 U.S.C. 3717 to the extent authorized under common law or other applicable statutory authority.

(f) *Waiver.* (1) The Chief Executive Officer may (without regard to the amount of the debt) waive collection of all or part of accrued interest, penalty charges, or administrative costs, if he or she determines that collection of these charges would be against equity and good conscience or not in the best interest of the Corporation.

(2) A decision to waive interest, penalty charges, or administrative costs may be made at any time before a debt is paid. However, and unless otherwise stated in these regulations, where these charges have been collected before the waiver decision, they will not be refunded. The Chief Executive Officer's decision to waive or not waive collection of these charges is final and is not subject to further review.

§ 2506.19 How can I resolve my debt through voluntary repayment?

(a) In response to a notice of debt, you may propose to the Corporation that you be allowed to repay the debt through a voluntary repayment agreement in lieu of the Corporation taking other collection actions under this part.

(b) Your request to enter into a voluntary repayment agreement must:

(1) Be in writing;

(2) Admit the existence of the debt; and

(3) Either propose payment of the debt (together with interest, penalty charges, and administrative costs) in a lump sum, or set forth a proposed repayment schedule.

(c) The Corporation will collect debts in one lump sum whenever feasible. However, if you are unable to pay your debt in one lump sum, the Corporation may accept payment in regular installments that bear a reasonable relationship to the size of the debt and your ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the debt in three years or less.

(d) The Corporation will consider a request to enter into a voluntary repayment agreement in accordance with the FCCS. The Chief Executive Officer may request additional information from you, including financial statements if you request to make payments in installments, in order to determine whether to accept a voluntary repayment agreement. It is within the Chief Executive Officer's discretion to accept a repayment agreement instead of proceeding with other collection actions under this part, and to set the necessary terms of any voluntary repayment agreement. No repayment agreement will be binding on the Corporation unless it is in writing and signed by both you and the Chief Executive Officer. At the Corporation's option, you may be required to provide security as part of the agreement to make payments in installments. Notwithstanding the provisions of this section, 31 U.S.C. 3711 will govern any reduction or compromise of a debt.

§ 2506.20 What is the extent of the Chief Executive Officer's authority to compromise debts owed to the Corporation, or to suspend or terminate collection action on such debts?

(a) The Chief Executive Officer may compromise, suspend, or terminate collection action on those debts owed to the Corporation that do not exceed $100,000 excluding interest, in conformity with the Federal Claims Collection Act of 1966, as amended. The Corporation will follow the policies in § 902.2 of the FCCS.

(b) The uncollected portion of a debt owed to the Corporation that is not recovered as the result of a compromise will be reported to the Internal Revenue Service (IRS) as income to the debtor in accordance with IRS procedures if this uncollected amount is at least $600.00.

§ 2506.21 May the Corporation's failure to comply with these regulations be used as a defense to a debt?

No, the failure of the Corporation to comply with any standard in the FCCS or these regulations will not be available to any debtor as a defense.

Subpart C—Salary Offset

§ 2506.30 What debts are included or excluded from coverage of these regulations on salary offset?

(a) The regulations in this subpart provide the Corporation procedures for the collection by salary offset of a Federal employee's pay to satisfy certain debts owed to the Corporation or to other Federal agencies.

(b) The regulations in this subpart do not apply to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(c) Nothing in the regulations in this subpart precludes the compromise, suspension, or termination of collection actions under the Federal Claims Collection Act of 1966, as amended, or the FCCS.

(d) A levy imposed under the Internal Revenue Code takes precedence over a salary offset under this subpart, as provided in 5 U.S.C. 5514(d).

§ 2506.31 May I ask the Corporation to waive an overpayment that otherwise would be collected by offsetting my salary as a Federal employee?

Yes, the regulations in this subpart do not preclude you from requesting waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or other statutory provisions pertaining to the particular debts being collected.

§ 2506.32 What are the Corporation's procedures for salary offset?

(a) The Corporation will coordinate salary deductions under this subpart as appropriate.

(b) If you are a Corporation employee who owes a debt to the Corporation, the Corporation's payroll office in Human Resources will determine the amount of your disposable pay and will implement the salary offset.

(c) Deductions will begin within three official pay periods following receipt by the Corporation's payroll office of certification of debt from the creditor agency.

(d) The Notice provisions of these regulations do not apply to certain debts arising under this section (*see* § 2506.14(c)).

(e) Types of collection. (1) *Lump-sum offset.* If the amount of the debt is equal to or less than 15 percent of disposable pay, the debt generally will be collected through one lump-sum offset.

(2) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and your ability to pay. However, the amount deducted from any period will not exceed 15 percent of the disposable pay from which the deduction is made unless you have agreed in writing to the deduction of a greater amount. If possible, installment payments will be sufficient in size and frequency to liquidate the debt in three years or less.

(3) *Deductions from final check.* A deduction exceeding the 15 percent of disposable pay limitation may be made from any final salary payment under 31 U.S.C. 3716 and the FCCS in order to liquidate the debt, whether the employee is being separated voluntarily or involuntarily.

(4) *Deductions from other sources.* If an employee subject to salary offset is separated from the Corporation and the balance of the debt cannot be liquidated by offset of the final salary check, the Corporation may offset later payments of any kind against the balance of the debt, as allowed by 31 U.S.C. 3716 and the FCCS.

(f) *Multiple debts.* In instances where two or more creditor agencies are seeking salary offsets, or where two or more debts are owed to a single creditor agency, the Corporation's payroll office may, at its discretion, determine whether one or more debts should be offset simultaneously within the 15 percent limitation.

§ 2506.33 How will the Corporation coordinate salary offsets with other agencies?

(a) *Responsibilities of the Corporation as the creditor agency (i.e. when the debtor owes a debt to the Corporation and is an employee of another agency).* Upon completion of the procedures established in this subpart and pursuant to 5 U.S.C. 5514 and 31 U.S.C. 3716, the Corporation must submit a claim to a paying agency or disbursing official.

(1) In its claim, the Corporation must certify, in writing, the following:

(i) That the employee owes the debt;

(ii) The amount and basis of the debt;

(iii) The date the Corporation's right to collect the debt first accrued;

(iv) That the Corporation's regulations in this subpart have been approved by OPM under 5 CFR part 550, subpart K; and

(v) That the Corporation has met the certification requirements of the paying agency.

(2) If the collection must be made in installments, the Corporation's claim will also advise the paying agency of the amount or percentage of disposable pay to be collected in each installment. The Corporation may also advise the paying agency of the number of installments to be collected and the date of the first installment, if that date is other than the next officially established pay period.

(3) The Corporation will also include in its claim:

(i) The employee's written consent to the salary offset;

(ii) The employee's signed statement acknowledging receipt of the procedures required by 5 U.S.C. 5514; or

(iii) Information regarding the completion of procedures required by 5 U.S.C. 5514, including the actions taken and the dates of those actions.

(4) If the employee is in the process of separating and has not received a final salary check or other final payment(s) from the paying agency, the Corporation must submit its claim to the paying agency or disbursing official for collection under 31 U.S.C. 3716. The paying agency will (under its regulations adopted under 5 U.S.C. 5514 and 5 CFR part 550, subpart K), certify the total amount of its collection on the debt and notify the employee and the Corporation. If the paying agency's collection does not fully satisfy the debt, and the paying agency is aware that the debtor is entitled to payments from the Civil Service Retirement and Disability Fund or other similar payments that may be due the debtor employee from other Federal government sources, then (under its regulations adopted under 5 U.S.C. 5514 and 5 CFR part 550, subpart K), the paying agency will provide written notice of the outstanding debt to the agency responsible for making the other payments to the debtor employee. The written notice will state that the employee owes a debt, the amount of the debt, and that the provisions of this section have been fully complied with. However, the Corporation must submit a properly certified claim under this paragraph (a)(4) to the agency responsible for making the other payments before the collection can be made.

(5) If the employee is already separated and all payments due from his or her former paying agency have been paid, the Corporation may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement and Disability Fund or other similar funds be administratively offset to collect the debt.

(6) *Employee transfer.* When an employee transfers from one paying agency to another paying agency, the Corporation will not repeat the due process procedures described in 5 U.S.C. 5514 and this subpart to resume the collection. The Corporation will submit a properly certified claim to the new paying agency and will subsequently review the debt to ensure that the collection is resumed by the new paying agency.

(b) *Responsibilities of the Corporation as the paying agency (i.e., when the debtor owes a debt to another agency and is an employee of the Corporation).*

(1) Complete claim. When the Corporation receives a certified claim from a creditor agency (under the creditor agency's regulations adopted under 5 U.S.C. 5514 and 5 CFR part 550, subpart K), deductions should be scheduled to begin within three officially established pay intervals. Before deductions can begin, the Corporation sends the employee a written notice containing:

(i) A statement that the Corporation has received a certified claim from the creditor agency;

(ii) The amount of the debt;

(iii) The date salary offset deductions will begin; and

(iv) The amount of such deductions.

(2) Incomplete claim. When the Corporation receives an incomplete certification of debt from a creditor agency, the Corporation will return the claim with a notice that the creditor agency must:

(i) Comply with the procedures required under 5 U.S.C. 5514 and 5 CFR part 550, subpart K, and

(ii) Properly certify a claim to the Corporation before the Corporation will take action to collect from the employee's current pay account.

(3) The Corporation is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(4) Employees who transfer from the Corporation to another paying agency. If, after the creditor agency has submitted the claim to the Corporation, the employee transfers from the Corporation to a different paying agency before the debt is collected in full, the Corporation will certify the total amount collected on the debt and notify the employee and the creditor agency in writing. The notification to the creditor agency will include information on the employee's transfer.

§ 2506.34 Under what conditions will the Corporation make a refund of amounts collected by salary offset?

(a) If the Corporation is the creditor agency, it will promptly refund any amount deducted under the authority of 5 U.S.C. 5514, when:

(1) The debt is waived or all or part of the funds deducted are otherwise found not to be owed (unless expressly prohibited by statute or regulation); or

(2) An administrative or judicial order directs the Corporation to make a refund.

(b) Unless required or permitted by law or contract, refunds under this section will not bear interest.

§ 2506.35 Will the collection of a debt by salary offset act as a waiver of my rights to dispute the claimed debt?

No, your involuntary payment of all or any portion of a debt under this subpart will not be construed as a waiver of any rights that you may have under 5 U.S.C. 5514 or other provisions of a law or written contract, unless there are statutory or contractual provisions to the contrary.

Subpart D—Tax Refund Offset

§ 2506.40 Which debts can the Corporation refer to Treasury for collection by offsetting tax refunds?

(a) The regulations in this subpart implement 31 U.S.C. 3720A, which authorizes the Treasury to reduce a tax refund by the amount of a past-due, legally enforceable debt owed to a Federal agency.

(b) For purposes of this section, a past-due, legally enforceable debt referable to the Treasury for tax refund offset is a debt that is owed to the Corporation and:

(1) Is at least $25.00;

(2) Except in the case of a judgment debt, has been delinquent for at least three months and will not have been delinquent more than 10 years at the time the offset is made;

(3) With respect to which the Corporation has:

(i) Given the debtor at least 60 days to present evidence that all or part of the debt is not past due or legally enforceable;

(ii) Considered evidence presented by the debtor; and

(iii) Determined that an amount of the debt is past due and legally enforceable;

(4) With respect to which the Corporation has notified or has made a reasonable attempt to notify the debtor that:

(i) The debt is past due, and

(ii) Unless repaid within 60 days of the date of the notice, the debt may be referred to the Treasury for offset against any refund of overpayment of tax; and

(5) All other requirements of 31 U.S.C. 3720A and the Treasury regulations relating to the eligibility of a debt for tax return offset (31 CFR 285.2) have been satisfied.

§ 2506.41 What are the Corporation's procedures for collecting debts by tax refund offset?

(a) The Corporation's Accounting and Financial Management Services Division will be the point of contact with the Treasury for administrative matters regarding the offset program.

(b) The Corporation will ensure that the procedures prescribed by the Treasury are followed in developing information about past-due debts and submitting the debts to the Treasury.

(c) The Corporation will submit to the Treasury a notification of a taxpayer's liability for past-due legally enforceable debt. This notification will contain the following:

(1) The name and taxpayer identification number of the debtor;

(2) The amount of the past-due and legally enforceable debt;

(3) The date on which the original debt became past due;

(4) A statement certifying that, with respect to each debt reported, all of the requirements of § 2506.40(b) have been satisfied; and

(5) Any other information as prescribed by Treasury.

(d) For purposes of this section, notice that collection of the debt is stayed by a bankruptcy proceeding involving the debtor will bar referral of the debt to the Treasury.

(e) The Corporation will promptly notify the Treasury to correct data when the Corporation:

(1) Determines that an error has been made with respect to a debt that has been referred;

(2) Receives or credits a payment on the debt; or

(3) Receives notice that the person owing the debt has filed for bankruptcy under title 11 of the United States Code and the automatic stay is in effect or has been adjudicated bankrupt and the debt has been discharged.

(f) When advising debtors of the Corporation's intent to refer a debt to the Treasury for offset, the Corporation will also advise debtors of remedial actions (*see* §§ 2506.9 and 2506.14 through 2506.16 of this part) available to defer the offset or prevent it from taking place.

Subpart E—Administrative Offset

§ 2506.50 Under what circumstances will the Corporation collect amounts that I owe to the Corporation (or some other Federal agency) by offsetting the debt against payments that the Corporation (or some other Federal agency) owes me?

(a) The regulations in this subpart apply to the collection of any debts you owe to the Corporation, or to any request from another Federal agency that the Corporation collect a debt you owe by offsetting your debt against a payment the Corporation owes you. Administrative offset is authorized under section 5 of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3716). The Corporation will carry out administrative offset in accordance with the provisions of the Federal Claims Collection Standards. The regulations in this subpart are intended only to supplement the provisions of the FCCS.

(b) The Chief Executive Officer, after attempting to collect a debt you owe to the Corporation under section 3(a) of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711(a)), may collect the debt by administrative offset only after giving you:

(1) Written notice of the type and amount of the debt, the intention of the

Chief Executive Officer to collect the debt by administrative offset, and an explanation of the rights of the debtor;

(2) An opportunity to inspect and copy the records of the Corporation related to the debt;

(3) An opportunity for a review within the Corporation of the decision of the Corporation related to the debt; and

(4) An opportunity to make a written agreement with the Chief Executive Officer to repay the amount of the debt.

(c) No collection by administrative offset will be made on any debt that has been outstanding for more than 10 years, unless facts material to the Corporation's or the requesting Federal agency's right to collect the debt were not known, and reasonably could not have been known, by the official or officials responsible for discovering and collecting the debt.

(d) The regulations in this subpart do not apply to:

(1) A case in which administrative offset of the type of debt involved is explicitly prohibited by statute; or

(2) Debts owed to the Corporation by Federal agencies.

§ 2506.51 How will the Corporation request that my debt to the Corporation be collected by offset against some payment that another Federal agency owes me?

The Chief Executive Officer may request that funds due and payable to you by another Federal agency instead be paid to the Corporation to satisfy a debt you owe to the Corporation. The Corporation will refer debts to the Treasury for centralized administrative offset in accordance with the FCCS and the procedures established by the Treasury. Where centralized offset is not available or appropriate, the Corporation may request offset directly from the Federal agency that is holding funds for you. In requesting administrative offset, the Corporation will certify in writing to the Federal agency that is holding funds for you:

(a) That you owe the debt;

(b) The amount and basis of the debt; and

(c) That the Corporation has complied with the requirements of 31 U.S.C. 3716, its own administrative offset regulations in this subpart, the applicable administrative offset regulations of the agency holding the funds, and the applicable provisions of the FCCS with respect to providing you with due process.

§ 2506.52 What procedures will the Corporation use to collect amounts I owe to a Federal agency by offsetting a payment that the Corporation would otherwise make to me?

(a) Any Federal agency may request that the Corporation administratively offset funds due and payable to you in order to collect a debt you owe to that agency. The Corporation will initiate the requested offset only upon:

(1) Receipt of written certification from the creditor agency stating:

(i) That you owe the debt;

(ii) The amount and basis of the debt;

(iii) That the agency has prescribed regulations for the exercise of administrative offset; and

(iv) That the agency has complied with its own administrative offset regulations and with the applicable provisions of the FCCS, including providing you with any required hearing or review; and

(2) A determination by the Chief Executive Officer that offsetting funds payable to you by the Corporation in order to collect a debt owed by you would be in the best interest of the United States as determined by the facts and circumstances of the particular case, and that such an offset would not otherwise be contrary to law.

(b) *Multiple debts.* In instances where two or more creditor agencies are seeking administrative offsets, or where two or more debts are owed to a single creditor agency, the Corporation may, in its discretion, allocate the amount it owes to you to the creditor agencies in accordance with the best interest of the United States as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

§ 2506.53 When may the Corporation make an offset in an expedited manner?

The Corporation may effect an administrative offset against a payment to be made to you before completion of the procedures required by §§ 2506.51 and 2506.52 if failure to take the offset would substantially jeopardize the Corporation's ability to collect the debt and the time before the payment is to be made does not reasonably permit the completion of those procedures. An expedited offset will be followed promptly by the completion of those procedures. Amounts recovered by offset, but later found not to be owed to the United States, will be promptly refunded.

§ 2506.54 Can a judgment I have obtained against the United States be used to satisfy a debt that I owe to the Corporation?

Yes. Collection by offset against a judgment obtained by a debtor against the United States will be accomplished in accordance with 31 U.S.C. 3728 and 31 U.S.C. 3716.

Subpart F—Administrative Wage Garnishment

§ 2506.55 How will the Corporation collect debts through Administrative Wage Garnishment?

The Corporation will collect debts through Administrative Wage Garnishment in accordance with the Administrative Wage Garnishment regulations issued by the Treasury. The Corporation adopts, for purposes of this subpart, the Treasury's Administrative Wage Garnishment regulations in 31 CFR 285.11. This procedure allows the Corporation to garnish the disposable pay of a debtor without first obtaining a court order.

Dated: March 29, 2003.

Michelle Guillermin,

Chief Financial Officer.

[FR Doc. 03–8185 Filed 4–3–03; 8:45 am]

BILLING CODE 6050–$$–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[ET Docket 98–206; FCC 03–24]

Permit Operation of NGSO FSS Systems Co-Frequency With GSO and Terrestrial Systems in the Ku-Band Frequency Range

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission addresses petitions for reconsideration of its rules for sharing between geostationary satellite orbit service providers and non-geostationary satellite orbit service providers in the Ku-Band frequency range. The Commission amends several rule sections affecting the demonstration non-geostationary satellite orbit service providers must make to establish that they can meet equivalent power flux density limits designed to protect incumbent geostationary satellite orbit service providers.

DATES: Effective May 5, 2003.

FOR FURTHER INFORMATION CONTACT: J. Mark Young, Attorney Advisor, Satellite Division, International Bureau, telephone (202) 418–0762 or via the Internet at *myoung@fcc.gov.* For additional information concerning the information collections contained in this document, contact Judith B.

Herman at (202) 418–0214, or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Memorandum Opinion and Order* in ET Docket No. 98–206, FCC 03–24, adopted February 3, 2003, and released February 6, 2003. The complete text of this *Third Memorandum Opinion and Order* is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898 or via e-mail *qualexint@aol.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

Summary of the Third Memorandum Opinion and Order

1. In a December 2000 *Report and Order,* 66 FR 7607 (1/24/2001) the Federal Communications Commission adopted technical sharing rules to allow operation of non-gesotationary satellite orbit, fixed satellite service (NGSO FSS) co-frequency with incumbent Ku-Band geostationary satellite orbit (GSO), fixed satellite service providers. Co-frequency operation of the two services is made possible by a set of limits on equivalent power flux density from NGSO FSS systems into GSO antennas. On reconsideration of that *Report and Order,* the Commission amends several sub-parts of its rules regarding demonstration that NGSO FSS systems can meet the power limits specified in Commission rules.

2. Licensees of geostationary satellite orbit fixed satellite service and broadcast satellite service systems may submit up to 10 earth station test points for in the demonstration that NGSO FSS applicants can meet operational equivalent power flux density limits. The same licensees may also submit up to 10 earth station test points for the comparable demonstration that NGSO FSS applicants can meet additional operational equivalent power flux density limits. If they choose to submit earth station test points, geostationary satellite orbit licensees must do so by January 1 of each year.

Ordering Clauses

4. Pursuant to sections 4(i), 7(a), 301, 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 301, 303(c), 303(f), 303(g), and 303(r), this *Third Memorandum Opinion and Order is adopted,* and part 25 of the Commission's rules *is amended.*

5. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Third Memorandum Opinion and Order,* including the Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A); and shall also send a copy of this *Third Memorandum Opinion and Order,* including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 605(b).

List of Subjects in 47 CFR Part 25

Satellites.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 25 as follows:

PART 25—SATELLITE COMMUNICATIONS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies sections 4, 301, 302, 303; 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

■ 2. Section 25.146 is amended by revising paragraphs (a)(1)(iii), (a)(1)(v), (a)(2)(iii), (a)(2)(v), (b)(1)(v), (b)(2), (c), (f) to read as follows:

§ 25.146 Licensing and operating authorizations provisions for the non-geostationary satellite orbit satellite service (NGSO FSS) in the bands 10.7 GHz to 14.5 GHz.

(a) * * *

(1) * * *

(iii) If a computer program that has been approved by the ITU for determining compliance with the single-entry $EPFD_{down}$ validation limits is not yet available, the applicant shall provide a computer program for the single-entry $EPFD_{down}$ validation computation, including both the source code and the executable file. This computer program shall be developed in accordance with the specification stipulated in Recommendation ITU–R S.1503 (2000). If the applicant uses the ITU approved software, the applicant shall indicate the program name and the version used.

* * * * *

(v) Provide the result, the cumulative probability distribution function of EPFD, of the execution of the computer program described in paragraph (a)(1)(iii) of this section by using only the input parameters contained in paragraphs (a)(1)(i) and (a)(1)(iv) of this section.

(2) * * *

(iii) If a computer program that has been approved by the ITU for determining compliance with the single-entry $EPFD_{up}$ validation limits is not yet available, the applicant shall provide a computer program for the single-entry $EPFD_{up}$ validation computation, including both the source code and the executable file. This computer program shall be developed in accordance with the specification stipulated in Recommendation ITU–R S.1503 (2000). If the applicant uses the ITU approved software, the applicant shall indicate the program name and the version used.

* * * * *

(v) Provide the result of the execution of the computer program described in paragraph (a)(2)(iii) of this section by using only the input parameters contained in paragraphs (a)(2)(i) and (a)(2)(iv) of this section.

(b) * * *

(1) * * *

(v) Provide the result, the cumulative probability distribution function of EPFD, of the execution of the verification computer program described in paragraph (b)(1)(iii) of this section by using only the input parameters contained in paragraphs (b)(1)(i) and (b)(1)(iv) of this section for each of the submitted test points provided by the Commission. These test points are based on information from U.S.-licensed geostationary satellite orbit fixed-satellite service and broadcast satellite service operators in the bands 10.7 GHz to 14.5 GHz. Each U.S.-licensed geostationary satellite orbit fixed satellite service and broadcast satellite service operator in the bands 10.7 GHz to 14.5 GHz may submit up to 10 test points for this section containing the latitude, longitude, altitude, azimuth, elevation angle, antenna size, efficiency to be used by non-geostationary satellite orbit fixed-satellite service licensees in the bands 10.7 GHz to 14.5 GHz during the upcoming year.

(2) Operational equivalent power flux-density, space-to-Earth direction, (operational $EPFD_{down}$) limits. Using the information contained in (b)(1) of this section plus the measured space station

antenna patterns, provide the result of the execution of the computer simulation for the anticipated in-line operational $EPFD_{down}$ levels for each of the submitted test points provided by the Commission. Submitted test points are based on inputs from U.S.-licensed geostationary satellite orbit fixed-satellite service and broadcast satellite service operators in the bands 10.7 GHz to 14.5 GHz. Each U.S.-licensed geostationary satellite orbit fixed-satellite service and broadcast satellite service operator in the bands 10.7 GHz to 14.5 GHz may submit up to 10 test points for this section containing the latitude, longitude, altitude, azimuth, elevation angle, antenna size, efficiency to be used by non-geostationary satellite orbit fixed-satellite service licensees in the bands 10.7 GHz to 14.5 GHz during the upcoming year.

(c) The NGSO FSS system licensee shall, on June 30 of each year, file a report with the International Bureau and the Commission's Columbia Operations Center in Columbia, Maryland, certifying that the system continues to operate within the bounds of the masks and other input parameters specified under 25.146(a) and 25.146(b) as well as certifying the status of the additional operational $EPFD_{down}$ levels into the 3 m and 10 m geostationary satellite orbit fixed-satellite service receiving Earth station antennas, the operational $EPFD_{down}$ levels into the 3 m, 4.5 m, 6.2 m and 10 m geostationary satellite orbit fixed-satellite service receiving Earth station antennas and the operational $EPFD_{down}$ levels into the 180 cm geostationary satellite orbit broadcast satellite service receiving Earth station antennas in Hawaii and 240 cm geostationary satellite orbit broadcast satellite service receiving Earth station antennas in Alaska.

* * * * *

(f) Coordination will be required between NGSO FSS systems and GSO FSS earth stations in the frequency band 10.7–12.75 GHz when all of the following threshold conditions are met:

(1) Bandwidth overlap; and

(2) The satellite network using the GSO has specific receive earth stations which meet all of the following conditions: earth station antenna maximum isotropic gain greater than or equal to 64 dBi; G/T of 44 dB/K or higher; and emission bandwidth of 250 MHz; and the $EPFD_{down}$ radiated by the satellite system using the NGSO into the GSO specific receive earth station, either within the U.S. for domestic service or any points outside the U.S. for international service, as calculated using the ITU software for examining compliance with EPFD limits set forth in Article 22 of the ITU Radio Regulations exceeds -174.5 dB(W/(m2/40kHz)) for any percentage of time for NGSO systems with all satellites only operating at or below 2500 km altitude, or -202 dB(W/(m2/40kHz)) for any percentage of time for NGSO systems with any satellites operating above 2500 km altitude.

(3) If there is no ITU software for examining compliance with EPFD limits set forth in Article 22 of the ITU Radio Regulations, then the $EPFD_{down}$ coordination trigger is suspended and the requirement for coordination will be based on bandwidth overlap and the satellite network using the GSO has specific receive earth stations which meet all of the following conditions: earth station antenna maximum isotropic gain greater than or equal to 64 dBi; G/T of 44 dB/K or higher; and emission bandwidth of 250 MHz.

* * * * *

■ 3. In § 25.208, paragraph (l) is amended by adding Footnote 5 to the heading of Table 1L and paragraph (m) is amended by adding Footnote 5 to the heading of Table 1M to read as follows:

§ 25.208 Power flux density limits.

* * * * *

(l) * * *

[5] For each reference antenna diameter, the limit consists of the complete curve on a plot which is linear in decibels for the EPFD levels and logarithmic for the time percentages, with straight line joining the data points.

* * * * *

(m) * * *

[5] For each reference antenna diameter, the limit consists of the complete curve on a plot which is linear in decibels for the EPFD levels and logarithmic for the time percentages, with straight line joining the data points.

* * * * *

[FR Doc. 03–7557 Filed 4–3–03; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 68, No. 65
Friday, April 4, 2003

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.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Parts 1600, 1605, 1606, and 1655

Employee Elections To Contribute to the Thrift Savings Plan, Correction of Administrative Errors, Lost Earnings Attributable to Employing Agency Errors, Loans

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Notice of proposed rulemaking, and request for comments.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) proposes to revise the Board's regulations to permit the making of catch-up contributions by TSP participants who are age 50 and over, and to reflect the processes of the Thrift Savings Plan's new record keeping system.

DATES: Comments must be received on or before April 25, 2003.

ADDRESSES: Comments may be sent to: Elizabeth S. Woodruff, General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005. The Board's FAX is (202) 942–1676.

FOR FURTHER INFORMATION CONTACT: Patrick J. Forrest on (202) 942–1660.

SUPPLEMENTARY INFORMATION: The Board administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The TSP provisions of FERSA have been codified, as amended, largely at 5 U.S.C. 8351 and 8401–8479. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services which is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)). Sums in a TSP participant's account are held in trust for the participant.

In 1996, Congress amended FERSA by enacting the Thrift Savings Plan Act of 1996, Public Law 104–208, 110 Stat. 3009, which permitted the Executive Director to offer, among other things, new withdrawal options to TSP participants. In order to accommodate these new withdrawal options and to make a number of benefits arising from recent technological advances available to TSP participants, the Board redesigned its record keeping system.

On June 25, 2002, the Board published a proposed rule with request for comments in the **Federal Register** (67 FR 42856), proposing to amend the TSP regulations that will be affected by the new record keeping system.

The Executive Director proposes further amendments to the Board's regulations to implement a recent amendment to FERSA, and to explain how the Board will compute lost earnings and administer the TSP loan program when the new system is implemented.

Description of Subjects and Issues Involved

On November 27, 2002, Congress enacted Public Law 107–304. Section 1 of the Act, which will be codified at 5 U.S.C. 8351(b)(2)(C), 8432(a)(3), and 8440f, authorizes a program of additional ''catch-up'' contributions for TSP participants age 50 and over who are already contributing to the TSP the maximum amount or percentage of basic pay they are permitted by statute to contribute. The maximum allowable amount for catch-up contributions for 2003 is $2,000. This dollar limitation will increase in $1,000 yearly increments until it reaches $5,000 in 2006. Eligible participants will be able to elect catch-up contributions beginning in July 2003 (for 2003), or thereafter (for subsequent years). The Executive Director proposes to add a new provision to part 1600 of the Board's regulations to explain how eligible participants can elect to make these contributions.

Under 5 U.S.C. 8432a(a)(1) and (b), the Board is required to issue regulations to govern how the TSP will credit late contributions, and in some cases makeup contributions, with the investment gains and losses they would have earned had the contributions been timely made. The loss incurred or the gain realized on late or makeup contributions is called ''breakage,'' and it is computed under the rules codified at 5 CFR parts 1605 and 1606. The Board's June 25, 2002, proposed rule explains how breakage will be computed after implementation of the new record keeping system, with one exception. Specifically, the proposed rule states that late contributions (and some makeup contributions) will be credited with breakage based on the contributions allocation for the participant's account at the time the contributions should have been made. However, when the new record keeping system is implemented, it will contain only three years of converted contribution allocation history and contribution records for each participant. Therefore, if the TSP corrects an error that occurred more than three years before implementation of the new system, the TSP will compute breakage based on a calculated rate of investment return derived by the record keeping system, instead of basing breakage on the participant's actual investment experience. The calculated rate of return will be either the Government Securities Investment Fund (G Fund) rate, or the average of the rates of return for all of the TSP investment funds, whichever rate is greater. The Executive Director proposes to amend 5 CFR parts 1605 and 1606 to reflect this practice.

The Board has developed a loan program, as required by 5 U.S.C. 8433(g), and the Board's loan regulations are codified at 5 CFR part 1655. Although retirement plan loans are offered by 401(k) plans, which are the private-sector equivalent of the TSP, the Board did not base the TSP loan program on the private sector model. However, the Board has built its new record keeping system around a widely used commercial-off-the-shelf (COTS) software package, and some elements of the current TSP loan program are incompatible with the capabilities of the COTS program. Specifically, a participant who misses loan payments in the current system is given 90 days to recommence loan payment to avoid defaulting on the loan. No interest accrues on the missed loan payments during that 90 day period, and, when payments recommence, the period of missing payments is added onto the length of the loan. In contrast, the COTS software package incorporates the requirements of Treasury Department regulations by requiring a participant who misses loan payments to

recommence those payments by the end of the next calendar quarter, and make up all missed payments (rather than add them to the end of the loan term). In addition, interest accrues on missed loan payments. The use of the COTS software package will permit the Board to quickly adapt the administration of the TSP to the ever-changing legal and programmatic requirements affecting the TSP and defined contribution plans. Therefore, to more fully benefit from this adaptability and to minimize the need for customization of the COTS package, the Executive Director proposes to conform the loan program to the private-sector model and to amend the Board's regulations to codify these changes.

Authority Under Which the Rule Is Proposed

The rule proposed in this notice will be issued under the authority of 5 U.S.C. 8351(e), 8432(a)(3), 8432a(a)(1), 8432a(b), 8433(g)(2), 8433(h)(4), 8474(b)(5), and 8474(c)(1).

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employees and former employees of the Federal Government.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, Public Law 104–4, section 201, 109 Stat. 48, 64, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64–65, is not required.

James B. Petrick,

Executive Director (Acting), Federal Retirement Thrift Investment Board.

[FR Doc. 03–8245 Filed 4–3–03; 8:45 am]

BILLING CODE 6760–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 702, 704, 712, and 723

Prompt Corrective Action; Corporate Credit Unions; Credit Union Service Organizations; Member Business Loans

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking.

SUMMARY: NCUA is proposing to amend its member business loan (MBL) regulation by: changing certain requirements for construction and development loan equity requirements, personal guarantees by principals, and unsecured MBLs; revising and clarifying provisions regarding MBL aggregate loan limits, loan-to-value requirements, loans to credit unions and credit union service organizations (CUSOs), experience requirements, and MBL documentation requirements; and simplifying or removing confusing or unnecessary provisions in the MBL regulation. In addition, NCUA proposes to amend the prompt corrective action (PCA) rule regarding the risk weighting of MBLs and the CUSO rule to permit CUSOs to originate business loans.

DATES: Comments must be received on or before June 3, 2003.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. E-mail comments to *regcomments@ncua.gov*. *Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: David M. Marquis, Director, Office of Examination and Insurance, at the above address or telephone (703) 518–6360; or Chrisanthy J. Loizos, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

NCUA adopted its first MBL rule in April 1987 and has subsequently amended the rule, including the most recent, substantive amendments made to conform to the limitations imposed by the Credit Union Membership Access Act (CUMAA). 12 U.S.C. 1757a, Pub. L. 105–219, 112 Stat. 913 (1998). Under the current rule, the Board may exempt federally insured, state-chartered credit unions (FISCUs) in a state from NCUA's MBL rule if the Board determines the state has developed an MBL rule that minimizes risk and accomplishes the overall objectives of NCUA's rule. 12 CFR 723.20. The Board has approved seven state MBL rules. 7 Tex. Admin. Code § 91.709; Mo. Code Regs. Ann. tit. 4, § 100–2.045; Wash. Admin. Code § 208–460–010 to –170; Md. Regs. Code tit. 9, § 09.03.01.14; Wis. Admin. Code § 72.01–.18; Conn. Agencies Regs. § 59; Or. Admin. R. § 441–720–0300 to –0380.

In reviewing state rules, the Board has approved some rule provisions that relaxed some of NCUA's requirements, concluding that they did not create an undue risk to the National Credit Union Share Insurance Fund (NCUSIF). The Board believes it should amend NCUA's MBL rule in three areas it liberalized in approving state rules: construction and development loan equity requirements, personal guarantees by principals, and unsecured MBLs. The Board believes that, by incorporating these provisions and adopting certain other proposed amendments, NCUA's rule will allow credit unions greater opportunities to meet the small business loan needs of their members without creating undue risk to the NCUSIF. The NCUA Board will continue to be responsive to changes in the MBL marketplace, either by approving state specific rules or considering future changes to this rule.

The Board is proposing several amendments to revise and clarify certain provisions that have caused confusion or created unnecessary regulatory burden. These amendments relate to: the dollar amount that triggers compliance with the rule, the loans to one borrower limit, the aggregate MBL limit, loan-to-value requirements, MBL documentation requirements, and the loan loss reserve requirements. The Board also proposes that credit unions that purchase participation interests in MBLs made to credit union members need not count the purchase against the credit union's own limit.

In addition, the Board is proposing an amendment to the PCA rule related to business lending. The Board proposes to expand the current standard risk-based net worth component for MBLs in Part 702.

Finally, the Board proposes to amend the CUSO rule to permit CUSOs to make business loans. During prior rulemakings, commenters asked the Board to authorize business loan origination as a permissible CUSO activity. 66 FR 40575, Aug. 3, 2001; 63 FR 10743, Mar. 3, 1998. Previously, the Board believed that permitting CUSOs to offer business loans, a core credit union function, could negatively affect affiliated credit union services. The Board has reconsidered its position and believes that, by authorizing CUSOs to engage in business loan origination,

credit union members, particularly small businesses, will have a greater opportunity to obtain loans that their credit union may not be able to grant.

B. Section-by-Section Analysis

Outstanding Loan Balance, Sections 723.1, 723.3, 723.8, 723.16, 723.21

The Board proposes to adopt the phrase ''outstanding member business loan balance'' as a new definition in § 723.21 and use it in various sections in the rule, including §§ 723.1, 723.3, 723.8, and 723.16. The proposed definition for ''outstanding member business loan balance'' is:

> [T]he outstanding loan balance and any unfunded commitments, excluding any portion of the loan that is secured by shares in the credit union, or by shares or deposits in other financial institutions, or by a lien on the member's primary residence, or fully or partially insured or guaranteed by any agency of the Federal Government, a State or any political subdivision of such state, or subject to an advance commitment to purchase by any agency of the federal government, a state or any political subdivision of such state, or sold as a participation interest without recourse.

This definition reflects NCUA's interpretation of various provisions in the MBL rule since the current rule was issued and incorporates several exclusions derived from CUMAA. This definition is key to determining: whether a loan qualifies as an MBL; which portion of an MBL is included in the calculation of the loans to one borrower limit; and which portion of an MBL is included in the calculation of a credit union's total aggregate MBL limit.

One example of an interpretation that the Board proposes to include in the definition of outstanding MBL balance concerns participation interests sold without recourse. The Board addressed this issue during the agency's 1999 MBL rulemaking in the final rule's preamble, rather than in the regulation's text. In the preamble, the Board agreed with a commenter that, when participating out loan interests, an originating credit union should count only the amount of the loan it holds towards its aggregate loan limit, provided that the loan participation sold is without recourse. 64 FR 28721, 28727, May 27, 1999. The Board has determined that the proposed rule should include this interpretation, as well as other interpretations and CUMAA exclusions, so that credit unions can easily ascertain the factors that are involved in calculating outstanding MBL balances.

The Board believes the rule should use outstanding MBL balance throughout the rule for uniformity and to avoid confusion. Clarifying the use of outstanding MBL balances in the rule incorporates the Board's positions stated in past rulemakings and interpretations provided in NCUA legal opinions.

As part of the proposal to adopt the definition of ''outstanding MBL balance,'' the Board also proposes to delete and reserve § 723.9, which addresses calculation of the limit on loans to one borrower. The proposed definition of ''outstanding MBL balance'' contains all of the rule's exclusions from this calculation, making § 723.9 unnecessary.

Loan Participations

The Board has reconsidered its position regarding the treatment of loan participations by purchasing credit unions and proposes to exclude participation interests from the calculation of the aggregate MBL limit. The Federal Credit Union Act expressly requires a credit union to include only MBLs it makes to its members in calculating its statutory aggregate MBL limit. 12 U.S.C. 1757a(a). Participation interests purchased by a credit union from an originating eligible organization are not loans made by the participating credit union. The Board, therefore, proposes that these loans need not be included in calculating the participating credit union's aggregate loan limits.

The Board believes CUMAA's legislative history supports this interpretation as consistent with the congressional goal that credit unions fulfill their mission of meeting the credit and savings needs of consumers. Selling MBL participations without recourse permits an originating credit union to obtain additional liquidity enabling it to meet the demand for both consumer and small business loans to members. A credit union that purchases participation interests in loans from other originating lenders does so as a means of investing its excess funds and bases its participation decision on normal investment considerations, including safety and return. As a member-owned and controlled lender, a credit union will purchase participation interests only after meeting its members' own lending needs. The due diligence analysis by the purchasing credit union enhances the overall creditworthiness process in credit union business lending. In addition, these participations diversify the risk of MBLs within the credit union system, ultimately making credit unions safer and better able to meet the needs of both consumer and small business members.

While the Board believes that purchased MBL participation interests need not be included in the aggregate loan limit, a purchased participation interest is a business loan asset and carries the associated risks. A participating credit union, therefore, must otherwise comply with part 723 and subject these loans to the PCA risk-weighting standards under part 702 as though the credit union had originated the MBLs. This means that a participating credit union must have an MBL policy, employ an individual or use the services of an independent third-party with the requisite lending experience, perform the appropriate due diligence, and comply with the collateral requirements and loans to one borrower limit in part 723, in addition to all other provisions of the MBL rule when purchasing a MBL participation interest from any eligible organization.

Finally, the Board notes that, in order for a participating credit union to exclude participation interests it has purchased, the purchase must be a *bona fide* transaction to fulfill a business purpose. The sale and purchase of participation interests in MBLs among credit unions cannot be used as a means to circumvent the regulation's aggregate loan limit. For example, credit unions may not enter into participation agreements that, in effect, permit them to swap portions or all of their MBL portfolios and, thereby, claim that the participation interests are excluded from the aggregate loan limit.

Loans to Credit Unions and CUSOs, Section 723.1

The Board proposes to amend § 723.1 to clarify that loans made by Federal, natural person credit unions to other natural person credit unions and CUSOs are not MBLs. The Federal Credit Union Act grants federal credit unions (FCUs) distinct, express authority to lend to credit unions and CUSOs, independent from their authority to make MBLs. 12 U.S.C. 1757(5)(C), (D). While CUMAA placed limitations on a federally insured credit union's authority to make MBLs to members, 12 U.S.C. 1757a, the law did not alter an FCU's authority to lend to credit unions or CUSOs and did not impose limits on the amount an FCU could lend to these entities beyond the statutory conditions that pre-dated CUMAA. 12 U.S.C. 1757(5)(C), (D).

The proposed rule also permits FISCUs to exclude loans to credit unions and CUSOs in calculating their aggregate MBL limit if the state supervisory authority determines that state law grants distinct authority to lend to credit unions and CUSOs separately from the authority to make MBLs. In the absence of authority similar to that in the Federal Credit Union Act, a FISCU's loans to credit

unions and CUSOs are subject to the MBL rule.

The Board also proposes to amend NCUA's corporate credit union rule to conform with the MBL rule regarding loans to corporate CUSOs by removing the requirement that a corporate credit union's loans to corporate CUSOs comply with the MBL rule's aggregate loan limit. 12 CFR 704.11(b)(4).

Construction and Development Lending, Section 723.3

The Board proposes to lower the MBL rule's mandatory equity requirements for construction and development loans by requiring a borrower to have a minimum of a 25%, rather than a 35%, equity interest in any construction or land development project. Currently, the MBL rule requires a borrower to have a 35% equity interest or receive a waiver from an NCUA regional director. 12 CFR 723.3(b). The Board has permitted three states to lower the minimum equity interest required in land development loans to 30% and four states to lower the equity interest in loans for construction projects and combination land development and construction projects to 25%. It found the lowered equity requirements were consistent with NCUA's safety and soundness considerations. The Board believes an equity interest of 25% should provide sufficient collateral for a credit union and adequate incentive for a borrower to complete a project.

The Board also proposes certain other changes related to financing the construction of single-family residential properties to lessen the regulatory burden for members engaged in this business. First, in the case of a loan to finance the construction of a single-family residence where a contract already exists between the builder, who is a member-borrower, and a prospective homeowner, who will purchase and reside in the property, the Board proposes that such a loan not be subject to the aggregate 15% of net worth limit of § 723.3(a) or the proposed new 25% equity interest requirement. These loans would instead be subject to the normal MBL collateral requirements of § 723.7. Second, the Board proposes that this same relief from the aggregate net worth limit and the equity interest requirement be provided for one construction or development loan per member-borrower or group of associated member-borrowers for a single-family residence, irrespective of the existence of a contract with a prospective homeowner. The Board recognizes that losses in credit unions from construction and development lending have historically resulted from large development projects, both commercial and residential. The Board believes there is minimal risk in removing the additional regulatory requirements for those loans where a prospective homeowner is contractually obligated to the member-borrower or for one construction or development loan for a single-family residence per member-borrower. These proposed changes will afford added flexibility to insured credit unions in meeting the needs of members who own small businesses engaged in building individual residential properties.

Direct Experience Requirement, Section 723.5

The Board proposes to make two amendments to § 723.5 that emphasize the need for experienced and impartial individuals to evaluate MBLs. The rule requires credit unions to use the services of an individual, whether the individual is an employee or third-party contractor, with lending experience that is directly related to the type of MBLs the credit union offers. The proposed amendment provides that this individual must understand the complexity and risk exposure of the credit union's MBLs. This requirement is critical to a successful MBL program because of the vast array of businesses, types of collateral, and underwriting procedures associated with MBLs.

The second proposed amendment provides that a credit union may obtain the services of a third-party to meet the direct experience requirements of § 723.5 if the third-party has no interest or involvement in the MBL transaction. The independence of the third-party is fundamental to ensuring that the credit union performs its due diligence before originating an MBL or purchasing an interest in an MBL. The proposal provides, therefore, that the third-party may not have an interest in the transaction other than providing its impartial expertise to the credit union.

Member Business Loan Policy, Section 723.6

The Board proposes to amend § 723.6 to allow a credit union to adopt analysis and documentation requirements in its MBL policy that are appropriate for the type or types of MBLs the credit union intends to make. Currently, the rule requires the same documentation for every MBL regardless of size, business, or loan type. The Board recognizes that documentation and underwriting criteria for an MBL may vary depending on the type of business requesting the loan and type of loan requested.

Loan-to-Value Ratio, Section 723.7

The Board proposes to make several amendments to this section. First, the Board proposes a minor technical amendment in the format of § 723.7 by removing the chart used to establish the rule's collateral requirements and providing an explanation in plain English. Second, the Board proposes to exclude MBLs made for the purchase of vehicles from the rule's loan-to-value requirements if the vehicle is a car, van, pick-up truck, or sports utility vehicle that is used for commercial purposes. The Board proposes to exclude these loans because loans a credit union makes to purchase these vehicles for consumer use are not subject to the loan-to-value ratios required under the MBL rule and this standard represents the current business market. The Board believes these MBLs present little or only minimally greater risk than a comparable consumer loan and that credit unions should establish lending terms, including collateral requirements, for these loans that reflect best industry practices. The Board intends that this exclusion will be used to finance combined personal/business use vehicles and not, for example, to finance fleet purchases.

The Board also proposes to remove the principal liability and guarantee requirement from this section. The MBL rule currently requires principals to provide their personal liability or guarantee on MBLs unless the credit union receives a waiver from its regional office. 12 CFR 723.7(b). The Board has approved six state rules that do not require guarantees by principals and NCUA's regional offices have approved numerous waivers allowing credit unions to make MBLs without requiring principal guarantees. The Board also notes that the Office of the Comptroller of the Currency and the Office of Thrift Supervision do not require national banks and savings associations to obtain a principal's guarantee before extending credit to a business. The Board recognizes that some credit unions lend to cooperative entities with hundreds of members, making it impractical to obtain personal guarantees from every principal. Credit unions may still require loan applicants to provide principal guarantees as a risk-reducing business practice.

Finally, the Board proposes to amend this section to permit credit unions to make unsecured MBL loans, in addition to credit card line of credit programs offered to nonnatural person members, subject to certain limits. Under the current rule, all MBLs must be secured by collateral in accordance with the

rule's loan-to-value ratios, except for nonnatural person member credit cards. 12 CFR 723.7(a), (c). The Board has approved four state rules that permit credit unions with a net worth of at least 7% to make other unsecured MBLs under various conditions.

Under the proposal, a credit union may make unsecured MBLs if: (1) The credit union is ''well-capitalized'' as defined in 12 CFR 702.102(a)(1); (2) the aggregate of unsecured MBLs to one borrower does not exceed the lesser of $100,000 or 2.5% of the credit union's net worth; (3) the aggregate of all of the credit union's unsecured MBLs does not exceed 10% of the credit union's net worth; and (4) the credit union addresses unsecured loans in its written MBL policy. The Board also proposes that the rule permit a credit union to apply for waivers from the unsecured loans to one borrower limitation and the aggregate unsecured loan limitation under this section. In connection with adding these provisions to § 723.10 on waivers, § 723.10 has been reorganized and revised to make it easier to follow.

Reserves for Classified Loans, Sections 723.14 and 723.15

The Board proposes to delete and reserve §§ 723.14 and 723.15, which address classification of loans for losses and reserving requirements. The Board recently adopted the Interpretive Ruling and Policy Statement on Allowance for Loan and Lease Losses (ALLL) Methodologies and Documentation for Federally-Insured Credit Unions (IRPS 02–3). 67 FR 37445, May 29, 2002. IRPS 02–3 supercedes the current regulatory provisions.

IRPS 02–3 provides federally insured credit unions guidance on the design and implementation of ALLL methodologies and supporting documentation practices consistent with existing GAAP. NCUA requires all credit unions to follow GAAP with regard to loan loss estimates to meet the requirements of full and fair disclosure. 12 CFR 702.402(d)(1). IRPS 02–3 recognizes that credit unions should adopt methodologies and documentation practices appropriate for their size and complexity. Federally insured credit unions should follow IRPS 02–3 to develop and maintain an appropriate, systematic, and consistently applied process to determine the amounts of the ALLL and provisions for loan losses, regardless of loan type. These sections in the MBL rule about loan loss reserves are no longer applicable.

Standard Risk-Based Net Worth Component for MBLs

The Board proposes to expand the current standard risk-based net worth component for MBLs in Part 702. For purposes of PCA, one of the eight risk portfolios used to calculate an applicable risk-based net worth (RBNW) requirement consists of a credit union's balance of outstanding MBLs. 12 CFR 702.104(b). The standard RBNW component presently divides the portfolio of MBLs by a single threshold—12.25% of total assets. The amount of MBLs less than or equal to that threshold is risk-weighted at 6%; the amount in excess of the threshold is risk-weighted at 14%. 12 CFR 702.106(b). To recognize finer increments of risk, an alternative RBNW component is available that divides MBLs by fixed and variable-rate and then categorizes them by remaining maturity among a set of four, corresponding risk-weighting buckets. 12 CFR 702.107(b). *See* Appendix D in rule text below. The difference in interest rate risk between variable-rate and fixed-rate MBLs is reflected in the two-percentage point risk-weighting discount that the alternative component generally gives the former compared with the latter.

Among other factors, credit unions' loss experience with MBLs since part 702 was first enacted warrants reconsidering the risk-weighting schedule of the standard RBNW component. First, contrary to expectations, the loss history of MBLs has remained remarkably consistent at 0.1% net charge-offs since 1998. Second, compared to the standard component for long-term real estate loans, 12 CFR 702.106(a), the risk-weighting for MBLs arguably climbs too prematurely and too dramatically. According to December 2001 Call Report data, more than half of all MBLs are real estate loans. In view of this fact, the disparity in risk of loss is insufficient to justify triggering the 14% risk weighting at 12.25% of total assets in the case of MBLs, but at 25% of assets in the case of long-term real estate loans. Commercial real estate is typically more volatile in price than residential real estate. In addition, if the member backs the loan with his or her primary residence, the loan is not an MBL. Third, it is widely recognized that default risk and interest rate risk generally increase as maturity increases, all other factors being constant. But field staff experience indicates that credit union MBLs generally are relatively short-term, maturing in 5 years or less, thereby limiting exposure to these risks, as demonstrated by MBLs' low loss history in recent years. While both real estate loans and MBLs trigger a 14% risk weighting at 25% of assets under this proposal, the risks being addressed are somewhat different. The purpose of this risk weighting for real estate loans is primarily to target interest rate risk, whereas the target for MBLs is credit risk. Finally, recent research indicates that credit union MBLs carry less risk, on average, than do analogous commercial bank loans, which are risk-weighted at a uniform 8% regardless of percentage of total assets. 12 U.S.C. 325, Pt. 3, App A. *See* David M. Smith & Stephen A. Woodbury, *Differences in Bank and Credit Union Capital Needs* (Filene Research Institute 2001). Therefore, risk-weighting a middle range of the balance of MBLs at less than 14% would not present a material risk to the NCUSIF. On balance, these factors justify moderating the upward slope of the risk-weighting schedule for MBLs.

Accordingly, the Board proposes to expand the standard component to three tiers divided by a 15% and a 25% threshold, respectively. The bottom tier, risk-weighted at 6%, would consist of the amount of MBLs less than or equal to 15% of total assets. The middle tier, risk-weighted at 8%, would consist of the amount of MBLs greater than 15%, but less than or equal to 25%, of total assets. The top tier, risk-weighted at 14%, would consist of the amount of MBLs in excess of 25% of total assets. This is set out in line (b) in Table 3 and Appendix A in rule text below.

CUSO Business Loan Origination, Section 712.5

The Board proposes to add business loan origination to the CUSO regulation's list of permissible activities. 12 CFR 712.5. The Board believes that by authorizing CUSOs to engage in business loan origination, CUSOs will better serve credit union members by offering loans to members that their credit unions may be unable to grant. CUSOs are a good vehicle for these loans because the MBL rule and safe and sound underwriting practices require specialized lending experience.

The MBL rule requires credit unions to use the services of an individual with at least two years direct experience with the type of loans the credit union offers. 12 CFR 723.5. The rule permits a credit union to use the services of a CUSO with the appropriate lending experience to meet this requirement. *Id.* As the Board noted in 1998, a credit union ''using the CUSO for back office business loan functions can use the CUSO's staff to fulfill its obligations to

have an experienced lender on [its] staff. * * * In other words, [credit unions] are permitted to leverage their members business loan expertise with CUSO business loan personnel.'' 63 FR 10743, 10752, Mar. 3, 1998. The MBL and CUSO rules, therefore, have allowed CUSOs to engage in the mechanics of business loan origination for several years.

Business loans require specialized lending staff, experienced in the due diligence and underwriting standards necessary for originating good loans. Many credit unions do not have the lending personnel on staff with the experience required to make a variety of MBLs and may not find it prudent to outsource this expertise. By authorizing CUSOs to originate business loans, credit unions can benefit from economies of scale by pooling their investments into a business lending CUSO, thus affording their small business members access to MBLs that may otherwise be unavailable through the credit union or other lenders. The Board notes, however, that credit unions cannot circumvent the intent of the statutory limitations placed on credit unions under CUMAA by purchasing an unreasonable amount of MBL participation interest from their CUSOs. As the Board notes above, in order for a participating credit union to exclude participation interests it has purchased, including those from a credit union organization as defined in § 701.22(a)(4), the purchase must be a *bona fide* transaction to fulfill a business purpose.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (those under $1 million in assets). The proposed amendments to the member business loan rule relax some of the rule's existing standards or clarify current requirements. In addition, most small credit unions do not grant member business loans. The NCUA Board, therefore, has determined and certifies that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the proposed regulation does not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This proposed rule liberalizes current requirements and standards applicable to all federally insured credit unions and will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that the proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive if implemented as proposed.

List of Subjects

12 CFR Part 702

Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 704

Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 712

Credit, Credit unions.

12 CFR Part 723

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on March 27, 2003.

Becky Baker,

Secretary of the Board.

For the reasons stated in the preamble, NCUA proposes to amend 12 CFR chapter VII as set forth below:

PART 702—PROMPT CORRECTIVE ACTION

1. The authority citation for part 702 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1790d.

2. Amend § 702.106 as follows:

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

b. Revise Table 4 following paragraph (h) to read as set forth below:

§ 702.106 Standard calculation of risk-based net worth requirement.

* * * * *

(a) * * *

(b) *Member business loans outstanding.* The sum of:

(1) Six percent (6%) of the amount of member business loans outstanding less than or equal to fifteen percent (15%) of total assets;

(2) Eight percent (8%) of the amount of member business loans outstanding greater than fifteen percent (15%), but less than or equal to twenty-five percent (25%), of total assets; and

(3) Fourteen percent (14%) of the amount in excess of twenty-five percent (25%) of total assets;

* * * * *

TABLE 4.—§ 702.106 STANDARD CALCULATION OF RBNW REQUIREMENT

Risk portfolio	Amount of risk portfolio (as percent of quarter-end total assets) to be multiplied by risk weighting	Risk weighting
(a) Long-term real estate loans	0 to 25.00%	.06
	over 25.00%	.14
(b) MBLs outstanding	0 to 15.00%	.06
	>15.00% to 25.00%	.08
	over 25.00%	.14

TABLE 4.—§ 702.106 STANDARD CALCULATION OF RBNW REQUIREMENT—Continued

Risk portfolio	Amount of risk portfolio (as percent of quarter-end total assets) to be multiplied by risk weighting	Risk weighting
(c) Investments (by weighted-average life):	0 to 1 year	.03
	>1 year to 3 years	.06
	>3 years to 10 years	.12
	>10 years	.20
(d) Low-risk assets	All %	.00
(e) Average-risk assets	All %	.06
(f) Loans sold with recourse	All %	.06
(g) Unused MBL commitments	All %	.06
(h) Allowance	Limited to equivalent of 1.50% of total loans (expressed as a percent of total assets).	(1.00)

A credit union's RBNW requirement is the sum of eight standard components. A standard component is calculated for each of the eight risk portfolios, equal to the sum of each amount of a risk portfolio times its risk weighting. A credit union is classified ''undercapitalized'' if its net worth ratio is less than its applicable RBNW requirement.

3. Revise Appendix A to Subpart A of Part 702 to read as follows:

APPENDIX A.—EXAMPLE STANDARD COMPONENTS FOR RBNW REQUIREMENT, § 702.106

[Example calculation in bold]

Risk portfolio	Dollar balance	Amount as percent of quarter-end total assets	Risk weighting	Amount times risk weighting (percent)	Standard component (percent)
Quarter-end total assets	**200,000,000**	**100.0000**			
(a) Long-term real estate loans	**60,000,000**	**30.0000=**			**2.20**
Threshold amount: 0 to 25%		**25.0000**	.06	**1.5000**	
Excess amount: over 25%		**5.0000**	.14	**0.7000**	
(b) MBLs outstanding	**35,000,000**	**17.5000**			**1.10**
Threshold amount: 0 to 15%		**15.0000**	.06	**0.9000**	
Intermediate tier: 15% to 25%		**2,5000**	.08	**0.2000**	
Excess amount: over 25%		**0.0**	.14	**0.0**	
(c) Investments	**50,000,000=**	**25.0000=**			**1.51**
Weighted-average life:					
0 to 1 year	**24,000,000**	**12.0000**	.03	**0.3600**	
>1 year to 3 years	**15,000,000**	**7.5000**	.06	**0.4500**	
>3 years to 10 years	**10,000,000**	**5.0000**	.12	**0.6000**	
>10 years	**1,000,000**	**0.5000**	.20	**0.1000**	
(d) Low-risk assets	**4,000,000**	**2.0000**	.00		**0**
Sum of risk portfolios (a) through (d) above	**149,000,000**	**74.5.000**			
(e) Average-risk assets	**51,000,000**	**25.5000** [a]	.06		**1.53**
(f) Loans sold with recourse	**40,000,000**	**20.0000**	.06		**1.20**
(g) Unused MBL commitments	**5,000,000**	**2.5000**	.06		**0.15**
(h) Allowance	**2,040,000.00** [b]	**1.0200**	(1.00)		**(1.02)**
Sum of standard components: RBNW requirement [c]					**6.67**

[a] *The Average-risk assets risk portfolio percent of quarter-end total assets equals 100 percent minus the sum of the percentages in the four risk portfolios above i.e., Long-term real estate loans, MBLs outstanding, Investments, and Low-risk assets).*

[b] *The Allowance risk portfolio is limited to the equivalent of 1.50 percent of total loans. For an example computation of the permitted dollar balance of Allowance, see worksheet in Appendix B below.*

[c] *A credit union is classified ''undercapitalized'' if its net worth ratio is less than its applicable RBNW requirement. The dollar equivalent of RBNW requirement may be computed for informational purposes as the RBNW requirement percent of total assets.*

4. Revise Appendix D to Subpart A of Part 702 to read as follows:

APPENDIX D—EXAMPLE OF MEMBER BUSINESS LOANS ALTERNATIVE COMPONENT, § 702.107(B)

[Example calculation in bold]

Remaining maturity	**Dollar balance of MBLs by remaining maturity**	**Percent of total assets by remaining maturity**	Alternative risk weighting	**Alternative component (percent)**
Fixed-rate MLBs 0 to 3 years	**6,000,000**	**3.0000**	.06	**0.1800**
> 3 years to 5 years	**4,000,000**	**2.0000**	.09	**0.1800**
> 5 years to 7 years	**2,000,000**	**1.0000**	.12	**0.1200**
> 7 years to 12 years	**0**	**0.0000**	.14	**0.0000**
> 12 years	**0**	**0.0000**	.16	**0.0000**
Variable-rate MBLs 0 to 3 years	**17,000,000**	**8.5000**	.06	**0.5100**
> 3 years to 5 years	**4,000,000**	**2.0000**	.08	**0.1600**
> 5 years to 7 years	**2,000,000**	**1.0000**	.10	**0.1000**
> 7 years to 12 years	**0**	**0.0000**	.12	**0.0000**
>12 years	**0**	**0.0000**	.14	**0.0000**
Sum of above equals Alternative component*	.....	.....	.....	**1.25**

*Substitute for standard component if lower.

5. Revise Appendix H to Subpart A of Part 702 to read as follows:

APPENDIX H.—EXAMPLE RBNW REQUIREMENT USING ALTERNATIVE COMPONENTS

[Example calculation in bold]

Risk portfolio	Standard component	In percent	
		Alternative component	Lower of standard or alternative component
(a) Long-term real estate loans	**2.20**	**2.85**	**2.20**
(b) MBLs outstanding	**1.10**	**1.25**	**1.10**
(c) Investments	**1.51**	**1.37**	**1.37**
(f) Loans sold with recourse	**1.20**	**1.03**	**1.03**
(d) Low-risk assets	.....	.....	**[1] 0**
(e) Average-risk assets	.....	.....	**[1] 1.53**
(g) Unused MBL commitments	.....	.....	**[1] 0.15**
(h) Allowance	.....	.....	**[1] (1.02)**
RBNW requirement [2] Compare to Net Worth Ratio	.....	.....	**[1] 6.53**

[1] Standard components.
[2] A credit union is ''undercapitalized'' if its net worth ration is less than its applicable RBNW requirement.

PART 704—CORPORATE CREDIT UNIONS

6. The authority citation for part 704 is revised to read as follows:

Authority: 12 U.S.C. 1766(a), 1781, 1789.

7. Amend § 704.7 paragraph (e)(2) by revising the sentence as follows:

§ 704.7 Lending.

* * * * *

(e) * * *

(2) Corporate CUSOs are not subject to part 723 of this chapter.

* * * * *

8. Amend § 704.11 by removing paragraph (b)(4).

PART 712—CREDIT UNION SERVICE ORGANIZATIONS (CUSOs)

9. The authority citation for part 712 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757(5)(D) and (7)(I), 1766, 1782, 1784, 1785, and 1786.

10. In § 712.5, redesignate paragraphs (c) to (q) as paragraphs (d) to (r) and add new paragraph (c) to read as follows:

(c) Business loan origination;

PART 723—MEMBER BUSINESS LOANS

11. The authority citation for part 723 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757, 1757A, 1766, 1785, 1789.

12. Amend § 723.1 as follows:

a. Add the phrase ''the outstanding member business loan balances are'' after the word ''when'' in paragraph (b)(3);

b. Add paragraphs (c) and (d).

§ 723.1 What is a member business loan?

* * * * *

(c) *Loans to credit unions and credit union service organizations.* This part does not apply to loans made by federal credit unions to credit unions and credit union service organizations. This part does not apply to loans made by a federally insured, state-chartered credit union to credit unions and credit union service organizations if the credit union's state supervisory authority determines that state law grants independent authority to lend to these entities.

(d) *Loan participations.* Any interest obtained in participation loans is excluded from a purchasing credit union's aggregate member business loan limit, but the purchasing credit union must otherwise comply, as if it had originated the loan, with both the requirements of this part and the risk-weighting standards under part 702 of this chapter.

13. Amend § 723.3 by revising paragraph (a) and paragraph (b) to read as follows:

§ 723.3 What are the requirements for construction and development lending?

* * * * *

(a) The aggregate of the outstanding member business loan balances for all construction and development loans must not exceed 15% of net worth. In determining the aggregate balances for purposes of this limitation, a credit union may exclude any loan made to finance the construction of a single-family residence if a prospective homeowner has contracted to purchase and reside in the property and may also exclude a loan to finance the construction of one single-family residence per member-borrower or group of associated member-borrowers, irrespective of the existence of a contractual commitment from a prospective homeowner to purchase and reside in the property.

(b) The borrower must have a minimum of 25% equity interest in the project being financed, except that this requirement shall not apply in the case of a loan made to finance the construction of a single-family residence if a prospective homeowner has contracted to purchase and reside in the property and in the case of one loan to a member-borrower or group of associated member-borrowers to finance the construction of a single-family residence, irrespective of the existence of a contractual commitment from a prospective homeowner to purchase and reside in the property. Instead, the collateral requirements of § 723.7 shall apply; and

* * * * *

§ 723.5 [Amended]

14. Amend § 723.5 as follows:

a. Add the following sentence after the word ''in'':

The experience should provide the credit union sufficient expertise given the complexity and risk exposure of the loans in which the credit union intends to engage.

b. Add the following sentence after the word ''parties'':

Any third-party used by a credit union to meet the requirements of this section must be independent from the transaction and may not benefit from the making of the loan or the sale of a participation interest which the third-party is hired to review, except to the extent of providing a service to the credit union.

§ 723.6 [Amended]

15. Amend § 723.6 as follows:

a. Add the phrase ''secured and unsecured'' before the word ''business'' in paragraph (c);

b. Add ''§ 723.7(b)(2) and'' after the words ''subject to'' in paragraph (e);

c. Add the phrase ''consistent with appropriate underwriting and due diligence standards, which also addresses the need for periodic financial statements, credit reports, and other data when necessary to analyze future lines of credit, such as, borrower's history and experience, balance sheet, cash flow analysis, income statements, tax data, environmental impact assessment, and comparison with industry averages, depending upon the loan purpose'' after the word ''loan'' in paragraph (g);

d. Remove paragraphs (h) and (i) and redesignate paragraphs (j) to (m) as (h) to (k).

16. Amend § 723.7 by revising paragraph (a) and paragraph (b), and by adding paragraph (d) to read as follows:

§ 723.7 What are the collateral and security requirements?

(a) Unless your Regional Director grants a waiver, all member business loans, except those made under paragraphs (b), (c), and (d), must be secured by collateral as follows:

(1) The minimum loan-to-value ratio for all liens must not exceed 80% unless the value in excess of 80% is covered through private mortgage insurance or equivalent type of insurance, or insured, guaranteed, or subject to advance commitment to purchase by an agency of the federal government, an agency of a state or any of its political subdivisions, but in no case may the ratio exceed 95%;

(2) A borrower may not substitute any insurance, guarantee, or advance commitment to purchase by any agency of the federal government, a state or any political subdivision of such state for the collateral requirements of this paragraph.

(b) You may make unsecured member business loans under the following conditions:

(1) You are well-capitalized as defined by § 702.102(a)(1) of this chapter;

(2) The aggregate of the unsecured outstanding member business loans to any one member or group of associated members does not exceed the lesser of $100,000 or 2.5% of your net worth; and

(3) The aggregate of all unsecured outstanding member business loans does not exceed 10% of your net worth.

* * * * *

(d) Federally insured credit unions may make vehicle loans under this part without complying with the loan-to-value ratios in this section, provided that the vehicle is a car, van, pick-up truck, or sports utility vehicle.

17. Amend § 723.8 by adding the words ''loan balances'' after the word ''business'' and removing the word ''loans (including any unfunded commitments).''

18. Remove and reserve § 723.9.

19. Revise § 723.10 to read as follows:

§ 723.10 What waivers are available?

You may seek a waiver for a category of loans in any of the following areas:

(a) Appraisal requirements under § 722.3;

(b) Aggregate construction and development loans limits under § 723.3(a);

(c) Minimum borrower equity requirements for construction and development loans under § 723.3(b);

(d) Loan-to-value ratio requirements for business loans under § 723.7(a);

(e) Maximum unsecured business loans to one member or group of associated members under § 723.7(b)(2);

(f) Maximum aggregate unsecured member business loan limit under § 723.7(b)(3); and

(g) Maximum aggregate outstanding member business loan balance to any one member or group of associated members under § 723.8.

20. Remove and reserve § 723.14.

21. Remove and reserve § 723.15.

22. Revise the first sentence of § 723.16 as follows:

§ 723.16 What is the aggregate member business loan limit for a credit union?

The aggregate limit on a credit union's outstanding member business loan balances, excluding any interest obtained in participation loans, is the lesser of 1.75 times the credit union's net worth or 12.25% of the credit union's total assets. * * *

23. Add the following definition to § 723.21:

§ 723.21 Definitions.

* * * * *

Outstanding Member Business Loan Balance means the outstanding loan balance and any unfunded commitments, excluding any portion of the loan that is secured by shares in the credit union, or by shares or deposits in other financial institutions, or by a lien in the member's primary residence, or fully or partially insured or guaranteed by any agency of the Federal Government, a state or any political subdivision of such state, or subject to an advance commitment to purchase by any agency of the federal government, a state or any political subdivision of such

state, or sold as a participation interest without recourse.

[FR Doc. 03–8040 Filed 4–3–03; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

Draft Proposed Changes to 14 CFR 25.1329 and Draft Advisory Circular 25.1329

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of Aviation Rulemaking Advisory Committee (ARAC) recommendations.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of the ARAC-recommended draft proposed changes to 14 CFR 25.1329 and draft Advisory Circular 25.1329 for potential use, upon request, in the certification of applicable aircraft systems. The said ARAC recommendations have not yet been adopted by the FAA.

DATES: The FAA received the ARAC submittal on March 21, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Gregg Bartley, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airplane and Flight Crew Interface Branch, ANM–111, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2889; fax (425) 227–1320; e-mail: *Gregg.Bartley@faa.gov.*

SUPPLEMENTARY INFORMATION: *Reference:* FAA policy memorandum 00–113–1034 ''Use of ARAC (Aviation Rulemaking Advisory Committee) Recommended Rulemaking not yet formally adopted by the FAA, as a basis for equivalent level of safety or exemption to part 25.''

This policy memorandum describes a standardized, streamlined approach for the use of draft FAA/JAA harmonized regulations as a basis for an equivalent level of safety finding or an exemption to part 25. It may be found on the Internet at the following address: *http://www.faa.gov/certification/aircraft/anminfo/document/final/aracesf/index.htm.*

Background

After a multi-year review of the current 25.1329 rule and AC 25.1329–1A, the ARAC submitted to the FAA their recommendations for a rule amendment and revised advisory materials in March 2002. The ARAC-recommended draft proposed changes to 14 CFR 25.1329 and draft AC 25.1329 are available on the Internet at the following address: *http://www1.faa.gov/avr/arm/aracflightguide recommendation.cfm?nav=6.* If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

The procedure for using ARAC-recommended rules that are not yet adopted by the FAA is described in the FAA policy memorandum 00–113–1034 referenced above. The memorandum describes the process for requesting an equivalent safety finding, as well as petitioning for an exemption.

Issued in Renton, Washington, on March 20, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–7666 Filed 4–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–12–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Model PC–6 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Pilatus Aircraft Ltd. (Pilatus) Model PC–6 airplanes. This proposed AD would require you to inspect the integral fuel tank wing ribs for cracks and the top and bottom wing skins for distortion and repair before further flight, and accomplish a fuel tank ventilating system installation. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this proposed AD are intended to detect and correct cracks in the ribs of the inboard integral fuel tanks in the left and right wings, which could lead to wing failure during flight.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before May 12, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003-CE–12-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7-Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2003–CE–12–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of this proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each

contact we have with the public that concerns the substantive parts of this proposed AD.

How can I be sure FAA receives my comment? If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2003-CE–12-AD.'' We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on all Pilatus Model PC–6 airplanes. The FOCA reports an incident where cracks have been found in the ribs of the inboard integral fuel tanks in the left and right wings of a Model PC–6 airplane. Investigation revealed that the cracks can occur when there are excessive pressure differentials between the ambient air pressure and that of the fuel tanks. The effect of this differential can be to compress the wing in the area of the fuel tank and cause distortion of the related structure. This distortion may result in fatigue cracks on ribs within the wing.

What are the consequences if the condition is not corrected? These fatigue cracks on the ribs within the wing could lead to wing failure during flight.

Is there service information that applies to this subject? Pilatus has issued the following:

—Service Bulletin (SB) No. 57–002, dated November 27, 2002; and
—SB No. 118, dated December 1972.

What are the provisions of this service information? The service bulletins include procedures for:

—Inspecting the ribs in the left and right inboard fuel tanks;
—Repairing a rib;
—Inspecting to determine if the inboard fuel tank vent system is installed; and
—Installing the inboard fuel tank vent system.

What action did the FOCA take? The FOCA classified this service bulletin as mandatory and issued Swiss AD Number HB 2003–092, dated February 17, 2003, in order to ensure the continued airworthiness of these airplanes in Switzerland.

Was this in accordance with the bilateral airworthiness agreement? This airplane model is manufactured in Switzerland and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the FOCA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What has FAA decided? The FAA has examined the findings of the FOCA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Pilatus Model PC–6 airplanes of the same type design that are on the U.S. registry;
—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and
—AD action should be taken in order to correct this unsafe condition.

What would this proposed AD require? This proposed AD would require you to incorporate the actions in the previously-referenced service bulletins.

How does the revision to 14 CFR part 39 affect this proposed AD? On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 35 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish this proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
5 workhours × $60 per hour = $300	Not applicable	$300	$300 × 35 = $10,500.

We estimate the following costs for each rib to accomplish any necessary rib repair that would be required based on the results of this proposed inspection. We have no way of determining the number of airplanes that may need such repair.

Labor cost	Parts cost	Total cost per rib per airplane
3 workhours × $60 per hour = $180 per rib	$50 per rib	$230 per rib.

We estimate the following costs to install any inboard fuel tank vent system that would be required based on the results of this proposed inspection. We have no way of determining the number of airplanes that may need such installation.

Labor cost	Parts cost	Total cost per airplane
12 workhours × $60 per hour = $720	$200	$920

Regulatory Impact

Would this proposed AD impact various entities? The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Pilatus Aircraft Ltd.: Docket No. 2003–CE–12–AD

(a) *What airplanes are affected by this AD?* This AD affects Model PC–6 airplanes, all manufacturer serial numbers (MSN) up to and including 939, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct cracks in the ribs of the inboard integral fuel tanks in the left and right wings, which could lead to wing failure during flight.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect: (i) The ribs in the inboard integral fuel tanks and related structure in the left and right wings for crack damage;. (ii) The upper and lower wing skins for damage; and. (iii) To determine if the inboard fuel tank vent system is installed.	Within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.	In accordance with Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 57–002, dated November 27, 2002, and the applicable manual.
(2) If crack damage is found: (i) Correct the crack damage designated as repairable in the service bulletin.	Prior to further flight after the inspections required in paragraph (d)(1) of this AD.	In accordance with Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 57–002, dated November 27, 2002, and the applicable maintenance manual.
(ii) For other crack damage, obtain a repair scheme from the manufacturer through FAA at the address specified in paragraph (e) of this AD and incorporate this repair scheme.		
(3) If wing distortion is found, obtain a repair scheme from the manufacturer through FAA at the address specified in paragraph (e) of this AD and incorporate this repair scheme.	Prior to further flight after the inspections required in paragraph (d)(1) of this AD.	In accordance with Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 57–002, dated November 27, 2002, and the applicable maintenance manual.
(4) If the inboard fuel tank vent system is not installed, install the inboard fuel tank vent system.	Prior to further flight after the inspections required in paragraph (d)(1) of this AD.	In accordance with Pilatus Aircraft Ltd. PC–6 Service Bulletin No. 118, dated December 1972, and the applicable maintenance manual.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Standards Office, Small Airplane Directorate. For information on any already approved alternative methods of compliance, contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(f) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note: The subject of this AD is addressed in Swiss AD Number HB 2003–092, dated February 17, 2003.

Issued in Kansas City, Missouri, on March 28, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–8199 Filed 4–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 10

[Docket No. 99N–2497]

Citizen Petitions; Actions That Can Be Requested by Petition; Denials, Withdrawals, and Referrals for Other Administrative Action; Withdrawal

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing a proposed rule that appeared in the **Federal Register** of November 30, 1999 (64 FR 66822). The proposal would have modified the types of actions that can be requested through a citizen petition; revised certain content requirements for citizen petitions; and permitted the agency to refer citizen petitions for other administrative action, seek clarification of a petitioner's request, withdraw certain petitions, and combine petitions. We proposed these changes to improve the citizen petition process by making it more efficient and reducing the backlog of pending requests. We believe the proposed rule is no longer needed because we have made other improvements to our process for responding to citizen petitions.

DATES: The proposed rule is withdrawn on April 4, 2003.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy and Planning (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

SUPPLEMENTARY INFORMATION: FDA's citizen petition regulations at 21 CFR 10.30 provide a formal means for the public to contact FDA and seek its action or response on a particular matter. For example, the petition process can be used by a drug company to request a change in the approval standards for a generic competitor, a food trade association can request that we establish exemptions from certain package labeling requirements, or a consumer group can petition us to tighten regulation of a particular product. Citizen petitions are submitted to our Dockets Management Branch for processing and referral to the appropriate office, and our regulations require us to issue a tentative or final response within 180 days after receiving the citizen petition.

While the citizen petition process has benefited both FDA and the public, reviewing and responding to citizen petitions is often resource intensive and time consuming. We must research the petition, examine scientific, medical, legal, and sometimes economic issues, and coordinate internal agency review and clearance of the response. Petitioners occasionally sue over unfavorable responses or delays in issuing a response. This litigation consumes additional resources and time.

Historically, we have received more citizen petitions than we have been able to answer. We receive nearly 290 citizen petitions annually, and, in most years, the number of incoming citizen petitions exceeded the number of responses that we would issue. In the past, the response rate was approximately 100 responses per year. This resulted in a steadily growing backlog of citizen petitions.

Faced with a growing backlog of petitions and increasing demands on our resources, on November 30, 1999, we proposed to amend our citizen petition regulations to make the citizen petition system more efficient and responsive (64 FR 66822). The major changes under the proposal would:

- Limit the types of actions that could be requested through a citizen petition to: (1) Requests to issue, amend, or revoke a regulation; (2) requests to amend or revoke an order that FDA had issued or published; and (3) requests for any other action specifically authorized by another FDA regulation.
- Revise the content requirements to include a certification that, to the petitioner's best knowledge and belief, its citizen petition ''includes all information and views on which the petition relies, that it is well grounded in fact and is warranted by existing laws or regulations, that it is not submitted for any improper purpose, such as to harass or to cause unnecessary delay, and that it includes representative data and information known to the petitioner which are unfavorable to the petition.''
- Allow us to refer petitions for other administrative action, seek clarification of a petitioner's requests, withdraw certain petitions, and combine petitions.

The preamble to the proposed rule emphasized that, while we were redefining the types of actions that could be the subject of a citizen petition, interested parties would still have other means of contacting or communicating with us.

We received nearly 20 comments on the proposed rule, with most comments opposing the rule in whole or in part. The comments opposed to the rule came from industry and public interest groups and stated that citizen petitions are a valuable means for communicating with us or for allowing public participation in agency actions. They expressed concern that the changes would unduly restrict the use of citizen petitions. Nonetheless, several comments supported the underlying goal of the proposal, and some of its relatively minor changes, pointing to the still-unanswered petitions they had submitted earlier as evidence that improvements were needed.

Two comments supported the proposal. These comments agreed with us that the proposal would prevent misuse of the citizen petition process (particularly with respect to approvals of generic drugs), and they suggested additional changes to strengthen the citizen petition process.

As we evaluated the comments, we continued efforts to improve our handling of citizen petitions. These efforts have led to a marked increase in the number of citizen petition responses, and our current annual response rate is equal to, and sometimes even exceeds, the number of citizen petitions that we receive. Given this progress, we believe that a revision of the citizen petition regulations is not warranted at this time. Consequently, we are withdrawing the proposed rule.

Dated: March 27, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–8165 Filed 4–3–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 902

[Docket No. FR–4707–N–07]

Public Housing Assessment System (PHAS) Proposed Rule: Notice of Extension of Public Comment Period

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of extension of public comment period.

SUMMARY: This notice extends, for an additional sixty days, the public comment period for the proposed rule that would amend the regulations for the Public Housing Assessment System (PHAS).

DATES: Comment Due Date: June 8, 2003.

FOR FURTHER INFORMATION CONTACT: For further information contact the Office of Public and Indian Housing Real Estate

Assessment Center (PIH–REAC), Attention: Wanda Funk, Department of Housing and Urban Development, 1280 Maryland Avenue, SW., Suite 800, Washington, DC 20024; telephone Technical Assistance Center at (888) 245–4860 (this is a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339 (this is a toll-free number). Additional information is available from the PIH–REAC Internet site, *http://www.hud.gov/reac.*

SUPPLEMENTARY INFORMATION: On February 6, 2003 (68 FR 6262), HUD issued a proposed rule that would amend the Public Housing Assessment System (PHAS) regulations, codified at 24 CFR part 902, to provide additional information on PHAS procedures, revise certain procedures, and establish new procedures for the assessment of the physical condition, financial condition, management operations, and resident services and satisfaction with services provided to public housing residents. HUD intended to publish proposed revised grading notices at the time that it published the PHAS proposed rule. These notices will be published soon. In order to allow the public housing agencies (PHAs) and the public the benefit of reviewing the grading notices in relation to the PHAS proposed rule, HUD is extending the public comment period for an additional 60 days to coincide with the public comment period for the grading notices. The public comment due date for the February 6, 2003, PHAS proposed rule is extended to June 8, 2003.

Dated: March 28, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–8175 Filed 4–3–03; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–131478–02]

RIN 1545–BB25

Guidance Under Section 1502: Suspension of Losses on Certain Stock Dispositions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document corrects a notice of proposed rulemaking published in the **Federal Register** March 14, 2003 (68 FR 12324). The proposed regulations redetermine the basis of stock of a subsidiary member of a consolidated group immediately prior to certain transfers of such stock and certain deconsolidations of a subsidiary member and suspend certain losses recognized on the disposition of stock of a subsidiary member.

FOR FURTHER INFORMATION CONTACT: Aimee K. Meacham, (202) 622–7530 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of these corrections are under section 1502 of the Internal Revenue Code.

Need for Correction

As published, the proposed regulation contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed regulations (REG–131478–02) that were the subject of FR Doc. 03–6118, is corrected to read as follows:

On page 12325, column 1, in the preamble under the caption ''SUMMARY'', third line from the bottom of the caption, the language ''regulations. This document also'' is corrected to read ''regulations. Elsewhere in this issue of the **Federal Register** are technical corrections to § 1.1502–35T. The technical corrections supply text omitted from § 1.1502–35T(b)(3)(i)(C), (b)(3)(ii)(C), and clarify § 1.1502–35T(f)(1). This document''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 03–8313 Filed 4–3–03; 8:45 am]

BILLING CODE 4830–01–P

Notices

Federal Register
Vol. 68, No. 65
Friday, April 4, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Recreation Fee Permit Envelope

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension of the information collection, Recreation Fee Permit Envelope (Form FS–2300–26).

DATES: Comments must be received in writing on or before June 3, 2003 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Forest Service, USDA, Attn: Fee Program Manager, Recreation, Heritage, and Wilderness Resources Staff, Mail Stop 1125, 1400 Independence Avenue, SW., Washington, DC 20250–1125. Comments also may be submitted via facsimile to (202) 205–1145 or by e-mail to: tcleeland@fs.fed.us.

The public may inspect comments received at the Office of the Director, Recreation, Heritage, and Wilderness Resources Staff, Sidney R. Yates Building, 1400 Independence Avenue, Washington, DC, during normal business hours. Visitors are encouraged to call ahead to (202) 205–1169 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Teri Cleeland, Fee Program Manager, Recreation, Heritage, and Wilderness Resources Staff, (202) 205–1169.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: Recreation Fee Permit Envelope.

OMB Number: 0596–0106.

Expiration Date of Approval: April 30, 2003.

Type of Request: Extension.

Abstract: This information collection will help the Forest Service ensure that visitors to National Forest System recreational sites comply with Forest Service policies and regulations and pay user fees when required. The data will also help the agency evaluate how well it meets the recreational needs of its visitors.

Each year, millions of people visit National Forest System recreational sites. The Land and Water Conservation Fund Act of 1965, section 4(b), the Forest Service regulations at Title 36, Code of Federal Regulations (CFR), section 291.2, and Section 315 of Public Law 104–134 (Omnibus Consolidated Rescissions and Appropriations Act of 1996), as amended, authorize National Forest and Grassland recreational sites to collect fees from visitors. The Forest Service uses the Recreation Fee Permit Envelope to collect these fees.

The agency will analyze the collected data to evaluate visitor use of recreational sites to determine the staffing needs for law enforcement, cleaning, maintenance, inspection, and other needs at these recreational sites. The Forest Service also will use the collected information to track demographic data (such as a visitor's length of stay at a specific recreational site, a visitor's recreational activities, or the recreational sites most frequented) and to ensure that visitors on National Forest System recreational sites comply with the agency's fee payment policies and regulations at 36 CFR 261.15.

Visitors pick up self-service fee envelopes at recreational sites that charge fees, such as campgrounds or other facilities. The visitors complete the blocks of information requested and place the money in the envelope, which they deposit in a secure collection box or fee tube, generally located at the entrance to the site. As part of the fee collection process, the Forest Service asks visitors to provide the following information: The amount of money enclosed, the number of days for which they paid, the date and time period for which they paid, their vehicle license plate number, the State in which they live, their camp unit number, the number of people in their party, and their planned date of departure. The envelope also asks for comments on how the Forest Service can improve the facilities or services at the site. The agency will use the collected data to evaluate accessibility for all visitors based on actual reported need rather than agency assumptions. For example, visitors could report that they were unable to get a wheelchair to a picnic table or restroom or that signs weren't available in braille.

To determine the estimate of burden, six Forest Service employees were requested to pick up fee envelopes at a Forest Service campground, read the directions, complete the form, place the fee in the envelope, deposit the envelope in a fee tube, and place the stubs on their dashboards. The estimate of burden is based on the average time it took the six employees to complete the fee payment process.

Data collected in this information collection are not available from other sources.

Estimate of Annual Burden: 3 minutes.

Type of Respondents: Individuals and groups using National Forests and Grasslands recreational sites at which fees are collected.

Estimated Annual Number of Respondents: 400,000. This estimate is based on the number of fee envelopes that are printed and placed in recreational sites annually.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 20,000 hours.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. In submitting

this proposal to the Office of Management and Budget for approval, the Forest Service will summarize and respond to comments received.

Dated: March 28, 2003.

Gloria Manning,

Associate Deputy Chief, National Forest System.

[FR Doc. 03–8187 Filed 4–3–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Bighorn National Forest; Wyoming; Woodrock Project EIS.

AGENCY: Forest Service, USDA.

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

SUMMARY: The USDA, Forest Service, will prepare an Environmental Impact Statement (EIS) to disclose the environmental effects of travel management, timber harvest, fuels reduction, and watershed rehabilitation primarily in the South Tongue Watershed on the Tongue Ranger District of the Bighorn National Forest, in Sheridan County, Wyoming. The project area is located approximately 25 air miles southwest of Sheridan, Wyoming.

DATES: Written comments concerning the scope of the analysis, issues, the alternatives, and evaluation of alternatives should be received within 45 days of the date of publication of this notice in the **Federal Register**. The Forest Service estimates the Draft EIS will be filed in June of 2003. The Final EIS will be filed within 3 months of that date, approximately September of 2004. A draft document will be provided upon request. Scoping comments previously submitted for this project do not need to be submitted again.

ADDRESSES: Send written comments to Craig Yancey, District Ranger, Tounge District, Bighorn National Forest, 2013 Eastside 2nd Street, Sheridan, WY, 82801. Send electronic comments to *Mailroom_R2_Bighorn@notes.fs.fed.us;* include Woodrock Project as the subject.

FOR FURTHER INFORMATION CONTACT: Scott Hill, EIS Team Leader Woodrock Project, Bighorn National Forest, 2013 Eastside 2nd Street, Sheridan, WY, 82801, Electronic mail: *shill02@fs.fed.us,* phone: (307) 674–2649.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The Woodrock Project is being proposed to implement the Forest Plan. The project includes: implementation of Forest Plan allocations, implementing past forest management decisions and silvicultural prescriptions, improve watershed conditions, improve travel management and existing road systems, and improve or maintain the forested vegetation within the forest plan standard and guidelines and other legal requirements.

Proposed Action

The Forest Service proposes to: improve diversity of forested vegetation by mimicking scale and intensity of natural disturbance patterns within the project area; reduce impacts to watershed conditions from roads and trails by changing travel management restrictions, reconstructing, restricting travel, or decommissioning existing roads where problems cannot be mitigated; on roads and trails; harden, relocate, or close dispersed campsites to meet Forest Plan direction; timber harvest of stands to produce wood fiber and reduce the spread of forest pests on approximately 1,800 acres.

Responsible Official

The responsible official for this decision is Bill Bass, Forest Supervisor, Bighorn National Forest, 2013 Eastside 2nd Street, Sheridan, WY 82801.

Nature of Decision To Be Made

The Forest Supervisor will decide: if changes should be made to the transportation system within the area; whether and where timber harvest should be implemented; if timber harvest occurs, what silvicultural systems and size of openings would be created; what noncommercial vegetation and fuels treatments should be taken; and what watershed improvements should be undertaken. He will decide when, or if, any management activities would take place, what mitigation measures would be implemented to address concerns, and whether the action requires amendment(s) to the Bighorn Forest Plan.

Scoping Process

The Woodrock project was initially developed as an Environmental Assessment. Scoping notices were sent on September 2, 1997 inviting comments from Federal, State and local agencies, special interest groups and individuals who had expressed interest in National Forest projects in the area. Scoping notices were sent to newspapers across northern Wyoming. A field trip was held on September 30, 1997. A public meeting addressing travel management in the Woodrock area was held at Bear Lodge on October 7, 2000. The project has been listed in the Quarterly Schedule of Proposed Actions from 1997 to the present.

Preliminary Issues

Issues associated with this project that have been identified during scoping and development of proposed action include the impacts of the proposed activities on wildlife and plant species and their habitat and effects of travel management on water quality and riparian habitat.

Comment Requested

A 45-day review period for comments on the Draft EIS will be provided. Comments received will be considered and included in documentation of the Final EIS. The public is encouraged to take part in the process and to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service has sought and will continue to seek information, comments and assistance from Federal, State and local agencies and other individuals or organizations who may be interested in, or affected by, the proposed action. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts (*City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Due to these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is

also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection (**Authority:** 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21).

Dated: March 25, 2003.

Ronald H. Stellingwerf,

Acting Forest Supervisor.

[FR Doc. 03–8042 Filed 4–3–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Suction Dredging EIS—Clearwater National Forest; Clearwater National Forest, Clearwater County and Idaho County, ID

AGENCY: Forest Service, USDA.

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

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) to disclose the environmental effects of proposed suction dredge mining activities in portions of Lolo Creek and Moose Creek (tributary to Kelly Creek). The proposed action would authorize issuance of permits for 29 recreational mining operations. In 2002, Clearwater National Forest biological analyses determined that the proposed suction dredging was likely to adversely affect steelhead trout in the Lolo Creek drainage and bull trout in the Moose Creek drainage.

Forest Service regulations at 36 CFR 228 subpart A sets forth rules and procedures for use of the surface of National Forest System Lands in connection with mineral operations. The regulations direct the Forest Service to prepare the appropriate level of National Environmental Policy Act (NEPA) analysis and documentation when proposed operations may significantly affect surface resources. These regulations do not allow the Forest Service to deny entry or preempt the miners' statutory right granted under the 1872 Mining Law. The 36 CFR 228 regulations include requirement for reclamation.

The purpose of this proposed action is to authorize suction dredge operations on Lolo Creek and Moose Creek with minimal adverse environmental effects, and to efficiently fulfill the requirement in 36 CFR 228.4(f) for conducting environmental analyses on mining Plans of Operations to determine reasonable measures to protect surface resources on National Forest System lands within the context of the laws. The need for the action is to facilitate efficient and timely approval of Plans of Operation for suction dredging, while minimizing or preventing adverse impacts related to or incidental to mining by imposing reasonable conditions that do not materially interfere with operations.

Preliminary issues identified by the interdisciplinary team include the effects of the proposed action on tribal treaty rights, recreation, all species within fisheries habitat (including threatened species), the adjacent riparian area, and water quality. Terms and conditions, and alternatives to the proposed action will be analyzed to address these issues and others that may surface during public scoping.

DATES: Comments concerning the scope of the analysis should be received in writing within 30 days from publication of this notice to receive timely consideration in the preparation of the draft EIS. The draft EIS is expected to be filed with the Environmental Protection Agency in September 2003. The final EIS and Record of Decision are expected to be issued in December 2003.

ADDRESSES: Send written comments to Forest Supervisor, Clearwater National Forest, ATTN: Vern Bretz, 12730 Highway 12, Orofino, Idaho 83544.

FOR FURTHER INFORMATION CONTACT: Vern Bretz at the above address or telephone (208) 476–8322, fax (208) 476–8329.

Responsible Official: The responsible official for decisions regarding this analysis is Larry J. Dawson, Clearwater National Forest Supervisor. His address is 12730 Highway 12, Orofino, Idaho, 83544. He will decide which set of terms and conditions, when included as operational procedures in suction dredge Plan of Operations, will allow for increased protection of threatened fish species, stream channel features, and water quality while still providing for the type of mining most claimants pursue on this Forest.

SUPPLEMENTARY INFORMATION: The twenty-nine suction dredge proposals being analyzed are ''recreational classed'' dredges with nozzle diameters of 5 inches or less and are equipped with 15 horsepower motor or less.

In 1997, steelhead trout were listed as a threatened species under the Endangered Species Act; bull trout were listed as threatened in 1998. Because of the potential significance of suction dredging in waters with threatened species, suction dredge operators are required to file a plan of operations with the Forest Service. Forest Service regulations, found in 36 CFR 228, require that each plan of operation be analyzed to determine terms and conditions necessary for protection of surface resources prior to approval of the plan. The Clearwater National Forest is also required under section 7 of the Endangered Species Act to consult with National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (FWS) about any activity that may affect a listed species; in this case, the effect of suction dredging in streams and rivers with threatened steelhead trout and bull trout. NMFS and FWS 2003 Biological Opinions further state that although recreational classed suction dredges are likely to adversely affect the listed fish, dredging with small suction dredges would not jeopardize either species if several terms and conditions were adhered to. For example, the terms and conditions may include, but are not limited to:

1. A July 1 to August 15 dredge season. The timing of the dredge activity from July 1 to August 15 minimizes the likelihood of steelhead trout or bull trout being present.

2. Dredge sites will be located in areas of large substrate not preferred for spawning steelhead trout and bull trout.

3. A Forest Service fisheries biologist will inspect proposed dredge sites prior to dredging.

4. No mechanized equipment will be allowed to operate below the mean high water mark except for the dredge itself and any life support system necessary to operate the dredge.

5. Dredging shall be done in a manner so as to prevent the undercutting of stream banks.

6. Only one mining site per one hundred (100) lineal feet of stream channel shall be worked at one time.

7. Such dredges will not operate in the gravel bar areas at the tails of pools.

8. Suction dredge operators will not operate in such a way that fine sediment from the dredge discharge blankets gravel bars.

9. Dredge operators will not operate in such a way that the current is directed into the bank causing erosion or destruction of the natural form of the channel.

10. Dredging and processing of stream bank materials will not be permitted, and large woody debris cannot be moved during mining operations.

11. All petroleum products will be stored in spill proof containers at a location that minimizes the opportunity for accidental spillage.

13. Dredge operators will anchor the suction dredge to the stream bank when refueling in the water. To minimize accidental spillage, transfer no more that one-gallon of fuel at a time during refilling, and place absorbent material under the tank while refueling to catch any spillage.

14. Dredge operators will disperse all dredge piles and back-fill all dredge holes by the end of the operating season (August 15).

Public participation will be an important part of this analysis. Issues that emerge from public scoping will be used to develop additional alternatives to this proposal. Methods being used to solicit public comment include news releases, weekly radio interviews, and newsletters. A web page for this project can be accessed by logging on to: *http://www.fs.fed.us/rl/clearwater*

The lead agency for this project is the U.S. Forest Service. The Forest Service will consult with the Nez Perce Tribe, County, State, and Federal agencies that display an interest in the project.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519.553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR part 215.

Dated: March 20, 2003.

Larry J. Dawson,

Forest Supervisor.

[FR Doc. 03–8176 Filed 4–3–03; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

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

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: May 4, 2003.

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

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

SUPPLEMENTARY INFORMATION: On December 6, 2002, January 10, January 17, January 24, and February 7, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 72640, 68 FR 1434, 2498, 3508, and 6403) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

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

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

2. The action will result in authorizing small entities to furnish the products and services to the Government.

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

Accordingly, the following products and services are added to the Procurement List:

Products

Product/NSN: Protective Combat Uniform (Requirements for Natick Only)
8415–00–NSH–0626, Level 1, T-Shirt
8415–00–NSH–0627, Level 1, Boxer
8415–00–NSH–0628, Level 1, Long Sleeve Shirt
8415–00–NSH–0629, Level 1, Pant
8415–00–NSH–0630, Level 2, Long Sleeve Shirt
8415–00–NSH–0631, Level 2, Pant
NPA: Southeastern Kentucky Rehabilitation Industries, Inc., Corbin, Kentucky.
Contract Activity: U.S. Army Robert Morris Acquisition Center, Natick, Massachusetts.

Product/NSN: Protective Combat Uniform (Requirements for Natick Only)
8415–00–NSH–0632, Level 3, Jacket.
NPA: Southside Training Employment Placement Services, Inc., Victoria, Virginia.
Contract Activity: U.S. Army Robert Morris Acquisition Center, Natick, Massachusetts.

Product/NSN: Protective Combat Uniform (Requirements for Natick Only)
8415–00–NSH–0659, Level 4, Windshirt.
8415–00–NSH–0633, Level 5, Soft-shell Jacket.
8415–00–NSH–0634, Level 5, Soft-shell Pant.
8415–00–NSH–0635, Level 6, Wet Weather Jacket.
8415–00–NSH–0636, Level 6, Wet Weather Pant.

NPA: ORC Industries, Inc., La Crosse, Wisconsin.

Contract Activity: U.S. Army Robert Morris Acquisition Center, Natick, Massachusetts.

Product/NSN: Protective Combat Uniform (Requirements for Natick Only)
8415–00–NSH–0637, Level 7, Pant.
8415–00–NSH–0638, Level 7, Vest.
8415–00–NSH–0690, Level 7, Jacket.

NPA: Southeastern Kentucky Rehabilitation Industries, Inc., Corbin, Kentucky.

Contract Activity: U.S. Army Robert Morris Acquisition Center, Natick, Massachusetts.

Services

Service Type/Location: Custodial Service, James M. Hanley Federal Building and U.S. Courthouse, Syracuse, New York.

NPA: Oswego Industries, Inc., Fulton, New York.

Contract Activity: GSA/PBS Upstate New York Service Center, Syracuse, New York.

Service Type/Location: Electronic Service Customer Representative Service. Securities & Exchange Commission Library, Washington, DC

NPA: Columbia Lighthouse for the Blind, Washington, DC.

Contract Activity: U.S. Securities and Exchange Commission, Alexandria, Virginia.

Service Type/Location: Janitorial/Custodial, Area Maintenance Support Activity (AMSA) #110, New Castle, Pennsylvania.

NPA: Lark Enterprises, Inc., New Castle, Pennsylvania.

Contract Activity: 99th Regional Support Command, Coraopolis, Pennsylvania.

Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center, Cincinnati, Ohio.

NPA: CRI, Cincinnati, Ohio

Contract Activity: Headquarters, 88th Regional Support Command, Fort Snelling, Minnesota.

Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center, Duluth, Minnesota.

NPA: Goodwill Industries Vocational Enterprises, Inc., Duluth, Minnesota.

Contract Activity: Headquarters, 88th Regional Support Command, Fort Snelling, Minnesota.

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

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–8252 Filed 4–3–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

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

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received on or Before: May 4, 2003.

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 of the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the products 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. If approved, 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 products to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products 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 products 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 products are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: 2 in 1 Scrubber Squeegee M.R. 1036

NPA: The Lighthouse for the Blind, Inc., Seattle, Washington

Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia

Product/NSN: Amazing Micro Mop M.R. 1049

NPA: The Lighthouse for the Blind, Inc., Seattle, Washington

Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–8253 Filed 4–3–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Information Quality Guidelines

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

ACTION: Notice of availability of final guidelines.

SUMMARY: The Committee announces that its final Information Quality Guidelines have been posted on the Committee's Web site, *http://www.jwod.gov.*

DATES: These Guidelines are effective October 1, 2002.

ADDRESSES: Comments may be mailed to the Committee for Purchase from People Who Are Blind or Severely Disabled, 1421 Jefferson Davis Highway, Suite 10800, Arlington, VA 22202. Comments can also be e-mailed to *info@jwod.gov.*

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, Director, Information Management, Committee for Purchase from People Who Are Blind or Severely Disabled, 1421 Jefferson Davis Highway, Suite 10800, Arlington, VA 22202, (703) 603–7740.

SUPPLEMENTARY INFORMATION: Section 515 of the Treasury and General Government Appropriations Act for FY 2001 (Pub. L. 106–554) requires each Federal agency to publish guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of the information its disseminates to the public. Agency guidelines must conform to government-wide guidelines issued by the Office of Management and Budget (OMB). In compliance with this statutory requirement and OMB instructions, the Committee has posted

its Information Quality Guidelines on its Web site (*http://www.jwod.gov*).

The Guidelines describe the Committee's procedures for ensuring the quality of information that it disseminates and the procedures by which an affected person may obtain correction of information disseminated by the Committee that does not comply with the Guidelines. Persons who cannot access the Guidelines through the Internet may request a paper or electronic copy by contacting the Committee.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–8251 Filed 4–3–03; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Massachusetts Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Massachusetts Advisory Committee to the Commission will convene at 12 p.m. and adjourn at 5 p.m. on April 4, 2003, at the University of Massachusetts—Boston Graduate College of Education conference room, Wheatley Building, 1st floor, room 075, 100 Morrissey Boulevard, Boston, Massachusetts 02125–3393. The purpose of the meeting is orientation and planning future program activity.

Persons desiring additional information, or planning a presentation to the Committee, should contact Aonghas St-Hilaire, of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

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

Dated in Washington, DC, March 19, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–8186 Filed 4–3–03; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Wisconsin Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the Wisconsin Advisory Committee to the Commission will convene a planning meeting via conference call on Wednesday, April 2, 2003 from 1 p.m. until 3 p.m. The purpose of the meeting is to discuss an upcoming project: ''Police Protection of Minority Communities in Milwaukee''.

This conference call is available to the public through the following call-in number: 1–800–497–7709, access code: 161187514. Any interested member of the public may call this number and listen to the meeting. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines, persons are asked to register by contacting Constance M. Davis, Regional Director of the Midwestern Regional Office, U.S. Commission on Civil Rights at (312) 353–8311 (TDD 312–353–8362), by 4 p.m. on Tuesday, April 1, 2003.

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

Dated at Washington, DC, on March 25, 2003.

Dawn Sweet,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 03–8244 Filed 4–3–03; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: Commission on Civil Rights.

DATE AND TIME: Friday, April 11, 2003 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of March 21, 2003 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Report: The Grand Junction Report—Issues of Equality in Mesa Valley (Colorado)
VI. Presentations from Eastern Regional State Advisory Committee Members Representing the District of Columbia, Maryland, and Virginia
VII. Future Agenda Items

FOR FURTHER INFORMATION CONTACT: Les Jin, Press and Communications (202) 376–7700.

Debra A. Carr,

Deputy General Counsel.

[FR Doc. 03–8432 Filed 4–2–03; 4:01 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1272]

Termination of Foreign-Trade Subzone 138A; Richwood, OH

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board has adopted the following order:

Whereas, on July 3, 1991 the Foreign-Trade Zones Board issued a grant of authority to the Rickenbacker Port Authority (RPA), authorizing the establishment of Foreign-Trade Subzone 138A at the Wascator Manufacturing Company plant in Richwood, Ohio (Board Order 523, 56 FR 31377, July 10, 1991);

Whereas, RPA advised the Board on April 10, 2002 (FTZ Docket 3–2003), that zone procedures were no longer needed at the facility and requested voluntary termination of Subzone 138A;

Whereas, the request has been reviewed by the FTZ Staff and Customs officials, and approval has been recommended;

Now, therefore, the Foreign-Trade Zones Board terminates the subzone status of Subzone 138A, effective this date.

Signed at Washington, DC, this 21st day of March, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–8236 Filed 4–3–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–802]

Certain Preserved Mushrooms From Indonesia: Preliminary Results of Antidumping Duty New Shipper Review

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

ACTION: Notice of Preliminary Results of Antidumping Duty New Shipper Review.

SUMMARY: In response to timely requests by two manufacturers/exporters, the Department of Commerce is conducting a new shipper review of the antidumping duty order on certain preserved mushrooms from Indonesia. The respondents in this review are PT Eka Timur Rays (''Etira'') and PT Karya Dompos Bagas (''KKB''). The petitioner, the Coalition for Fair Preserved Mushroom Trade,[1] did not comment. The period of review is February 1, 2002, through July 31, 2002.

The Department preliminarily determines that, during the period of review (''POR''), neither Etira nor KKB made sales of the subject merchandise at less than normal value (''NV'') (*i.e.,* they made sales at zero or *de minimis* dumping margins). If these preliminary results are adopted in the final results of this new shipper review, we will instruct the U.S. Customs Service to liquidate appropriate entries without regard to antidumping duties.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 4, 2003.

FOR FURTHER INFORMATION CONTACT: Sophie Castro or Rebecca Trainor, Office 2, AD/CVD Enforcement Group I, Import Administration-Room B–099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202 482–0588 or (202) 482–4007, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 31, 1998, the Department published in the **Federal Register** (63 FR 72268), the final affirmative antidumping duty determination of sales at less than fair value (''LTFV'') on certain preserved mushrooms from Indonesia. We published an antidumping duty order on February 19, 1999 (64 FR 8310). On August 29, 2002, we received properly filed requests from Etira and KKB for a new shipper review of the antidumping order on certain preserved mushrooms from Indonesia.

Section 351.214(b) of the Department's regulations requires that the exporter or producer requesting a new shipper review include the following in its request: (i) A statement from such exporter or producer that it did not export subject merchandise to the United States during the period of investigation (POI); (ii) certification that, since the investigation was initiated, such exporter or producer has never been affiliated with any exporter or producer who exported the subject merchandise to the United States during the POI; and documentation establishing: (a) The date on which the subject merchandise was first entered, or withdrawn from warehouse, for consumption, or, if this date cannot be established, the date on which the exporter or producer first shipped the subject merchandise for export to the United States; (b) the volume of that shipment and subsequent shipments; and (c) the date of the first sale to an unaffiliated customer in the United States. Etira's and KKB's new shipper review requests were accompanied by information and certifications establishing the date on which they first shipped and entered preserved mushrooms for consumption in the United States, the volume of the shipments, and the dates of first sale to unaffiliated customers in the United States. They also certified that they did not export preserved mushrooms to the United States during the POI and were not affiliated with any company that had done so during the POI. Consequently, on September 30, 2002, we initiated a new shipper review of Etira and KKB covering the period February 1, 2002, through July 31, 2002. *See Certain Preserved Mushrooms From Indonesia: Initiation of New Shipper Antidumping Duty Review,* 67 FR 62437 (October 7, 2002).

On October 3, 2002, we issued antidumping questionnaires to Etira and KKB. We issued supplemental questionnaires on December 26, 2002. We received timely responses to our original and supplemental questionnaires on November 27, 2002, and January 28, 2003, respectively.

Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis.* ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms;'' (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10,0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the Harmonized Tariff Schedule of the United States [2] (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Fair Value Comparisons

To determine whether sales to the United States of certain preserved mushrooms by Etira and KKB were made at less than NV, we compared export price to the NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice.

Pursuant to section 777A(d)(2) of the Act, we compared the export prices of individual U.S. transactions to the weighted-average NV of the foreign like

[1] The Coalition for Fair Preserved Mushroom Trade includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc., Nottingham, PA; Modern Mushrooms Farms, Inc., Toughkernamon, PA; Monterrey Mushrooms, Inc., Watsonville, CA; Mount Laurel Canning Corp.; Temple, PA; Mushrooms Canning Company, Kennett Square, PA; Southwood Farms, Hockessin, DE; Sunny Dell Foods, Inc., Oxford, PA; United Canning Corp., North Lima, OH.

[2] Prior to January 1, 2002, the HTS codes were as follows: 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000.

product where were sales made in the ordinary course of trade.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Etira and KKB, covered by the description in the ''Scope of the Order'' section, above, and sold by the respondents in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market within the contemporaneous window period, which extends from three months prior to the first U.S. sale until two months after the last sale in the POR. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order: Preservation method, container type, mushroom style, weight, grade, container solution and label type. *See* ''Normal Value'' section below for further discussion.

Export Price

For both respondents, we used the export price calculation methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly by the producer/exporter in Indonesia to the first unaffiliated purchaser in the United States prior to importation and constructed export price (''CEP'') treatment was not otherwise indicated.

We calculated export price based on the packed FOB seaport prices charged to the first unaffiliated customer in the United States. We made deductions, where appropriate, for foreign inland freight and brokerage and handling, in accordance with section 772(c)(2)(A) of the Act.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Act.

Etira's and KKB's aggregate volumes of home market sales of the foreign like product were greater than five percent of their respective aggregate volumes of U.S. sales of the subject merchandise. Therefore, we determined that the home market provides a viable basis for calculating NV for both companies, in accordance with section 773(a)(1)(B)(ii)(II) of the Act.

Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the export price or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.; see also, Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa,* 62 FR 61731, 61732 (November 19, 1997) (*Cut-to-Length Plate from South Africa*). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.,* the ''chair of distribution''), including selling functions, class of customer (''customer category''), and the level of selling expenses incurred for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for export price and comparison market sales (*i.e.,* NV based on either home market or third country prices [3]), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States,* 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001).

When the Department is unable to find sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing export price or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if a NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.,* no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Cut-to-Length Plate from South Africa,* 62 FR 61731 (November 19, 1997).

We obtained information from Etira and KKB regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution. Company-specific LOT findings are summarized below.

All of Etira's sales in the home market were to distributors, comprising a single LOT. Etira provided no services such as inventory maintenance, technical advice, warranty services, or advertising for home market customers.

In the U.S. market, Etira made only export price sales to trading companies. As in the home market, Etira did not provide any services, such as inventory maintenance, technical advice, or advertising to its U.S. customers, but did incur expenses to transport the merchandise to the port of exportation. Accordingly, there is only one LOT for U.S. sales.

KKB's home market sales were exclusively to trading companies, constituting a single LOT. KKB provided no services such as inventory maintenance, technical advice, warranty services, or advertising for home market customers.

In the U.S. market, KKB made only export price sales to trading companies. Although KKB incurred freight costs in delivering the product to the port, it did not provide any other services, such as inventory maintenance, technical advice, or advertising in selling to its U.S. customers. Accordingly, there is only one LOT for U.S. sales.

For both companies, we compared the export price LOT to the home market LOT and concluded that the selling functions performed for home market customers were essentially the same as those performed for U.S. customers. Accordingly, we considered the export price and home market LOTs to be the same. Consequently, we compared export price sales to sales at the same LOT in the home market of both companies.

Price-to-Price Comparisons

For Etira and KKB, we based NV on the price at which the foreign like product is first sold for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade, and at the same LOT as the export price, as

[3] Where NV is based on constructed value, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses and profit for constructed value, where possible.

defined by section 773(a)(1)(B)(i) of the Act.

Home market prices were based on ex-factory prices. We reduced NV for packing costs incurred in the home market, in accordance with section 773(a)(6)(B)(i), and increased NV to account for U.S. packing expenses in accordance with section 773(a)(6)(A). We also made adjustments for differences in circumstances of sale (COS) in accordance with 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, by deducting home market direct selling expenses (*i.e.,* imputed credit) and adding U.S. direct selling expenses (*i.e.,* imputed and bank charges, where applicable).

Currency Conversion

We made currency conversions in accordance with section 773A of the Act based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the weighted-average dumping margins for the period February 1, 2002, though July 31, 2002, are as follows:

Manufacture/exporter	Margin (percent)
PT Eka Timur Raya	0.00
PT Karya Kompos Bagas	0.00

We will disclose calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication. *See* 19 CFR 351.310(c). If requested, a hearing will be held 44 days after the date of publication of this notice, or the first work day thereafter.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in the respective case briefs and rebuttal briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than 30 days and 37 days, respectively, from the date of publication of these preliminary results. *See* 19 CFR 351.309(c) and (d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of this new shipper review, including the results of its analysis of issues raised in any written briefs, not later than 90 days after the date of publication of this notice.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. For assessment purposes, we do not have the actual entered values for all sales made by Etira. Accordingly, we intend to calculate customer-specific assessment rates by aggregating any dumping margins calculated for all of Etira's U.S. sales examined and dividing the respective amount by the total quantity of the sales examined. To determine whether the duty assessment rates are de minimis (*i.e.,* less than 0.50 percent), in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate importer-specific ad valorem ratios based on export prices. With respect to KKB, we intend to calculate importer-specific assessment rates for the subject merchandise by aggregating any dumping margins calculated for the examined sales and dividing this amount by the total entered value of the sales examined.

The Department will issue appropriate appraisement instructions directly to the Customes Service upon completion of this review. We will instruct the Customs Service to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.,* less than 0.50 percent). *See* 19 CFR 351.106(c)(1). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

Bonding will no longer be permitted to fulfill security requirements for shipments from Etira or KKB of certain preserved mushrooms from Indonesia entered or withdrawn from warehouse, for consumption on or after the publication date of the final results of the new shipper review. Furthermore, the following cash deposit requirements will be effective upon publication of the final results of the new shipper review for all shipments of subject merchandise from Etira or KKB entered, or withdrawn from warehouse, for consumption on or after the publication date: (1) for subject merchandise manufactured and exported by Etira or KKB, no cash deposit will be required if the cash deposit rates calculated in the final results are zero or *de minimis;* and (2) for subject merchandise exported by Etira or KKB but not manufacture by them, the cash deposit rate will be 11.26 percent, the ''All Others'' rate made effective by the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) ot file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper review and notice are published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act and 19 CFR 351.214.

Dated: March 27, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–8234 Filed 4–3–03; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and

be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–014. *Applicant:* Department of Health and Human Services, NIH/NIEHS, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Instrument:* Electron Microscope, Model Tecnai G^2 12 BioTWIN, BioTWIN Upgrade, and Accessories. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* The instrument is intended to be used to examine the ultrastructure of biological tissues from control animals (usually rats and mice) and those genetically altered or chemically treated to induce possible aberrations similar to those seen in various human diseases exemplified by cancer, liver malfunction and growth, maturation and neuronal anomalies. Objectives of the experimentation will be to understand the cellular and subcellular processes involved in the progression of the disease state, make recommendations for future studies, and suggest possible treatments or preventive therapies. *Application accepted by Commissioner of Customs:* March 11, 2003.

Docket Number: 03–015. *Applicant:* North Carolina State University, Campus Box 7212, Raleigh, NC 27695–7212. *Instrument:* Electron Beam Melting Machine, Model EBM S12. *Manufacturer:* Arcam AB, Sweden. *Intended Use:* The instrument is intended to be used to fabricate three-dimensional metallic-components having arbitrarily complex geometries. Several new materials will be developed with the aim of achieving strength-to-weight ratios that were not previously possible. Research investigating the fabrication of novel geometric shapes includes:

(1) Design and testing of conformal cooling in production tools with the aim of reducing cycle time and improving geometric accuracy.

(2) Design and testing of non-random cellular structures for weight reduction of metal components for aerospace and military applications using aluminum and titanium.

(3) Design and fabrication of custom biomedical implants using titanium and cobalt-chromium.

(4) Design, development and testing of novel fuel cell material compositions.

In addition, the instrument will be used for educational purposes in courses such as:

(1) IE 216, Manufacturing Engineering Practicum.

(2) IE 316, Manufacturing Engineering I—Processes.

(3) IE 514, Product Engineering.

(4) IE 589U, Biomodeling and Fabrication.

Application accepted by Commissioner of Customs: March 10, 2003.

Docket Number: 03–016. *Applicant:* University of Wisconsin-Eau Claire, 105 Garfield Avenue, Eau Claire, WI 54701. *Instrument:* Automatic Fusion Machine, Model AutoFluxer 4. *Manufacturer:* Breitlander Eichproben und Labormaterial GmbH, Germany. *Intended Use:* The instrument is intended to be used to fuse sample whole rock powder for geochemical analysis. The instrument produces fused glass beads which present a homogeneous smooth surface to the X-Ray Florescence Spectrometer for analysis of major elements (Si, Al, Fe, Mn, Mg, Ca, K, P). In addition, the instrument will be used in the following university courses:

(1) Geology 312—Mineralogy and Petrology I.

(2) Geology 313—Mineralogy and Petrology II.

(3) Geology 320—Sedimentation and Stratigraphy.

(4) Geology 330—Geochemistry.

Application accepted by Commissioner of Customs: March 10, 2003.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–8238 Filed 4–3–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Northwestern University, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–005. *Applicant*: Northwestern University, Chicago, IL 60637. *Instrument*: MSM System Series 300 Yeast Manipulator and Micro Zapper. *Manufacturer*: Singer Instrument Company Limited, United Kingdom. *Intended Use*: *See* notice at 68 FR 8210, February 20, 2003.

Comments: None received. *Decision*: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons*: The foreign instrument provides a complete computer-controlled workstation for micromanipulation in yeast genetics by performing tetrad dissection, pedigree analysis, cell and zygote isolation, cell progression and other automated functions. The National Institutes of Health advises in its memorandum of February 26, 2003, that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–8240 Filed 4–3–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Colorado, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–002. *Applicant:* University of Colorado, JILA, Boulder, CO 80309–0440. *Instrument:* DFB Fiber Laser with Amplifier, Model Y10. *Manufacturer:* Koheras A/S, Denmark. *Intended Use: See* notice at 68 FR 6415, February 7, 2003.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides 1.0 W of laser light at the vacuum wavelength of 1126.275 nm

with a linewidth of less than 20 kHz to probe the super narrow transition in a single trapped and laser cooled mercury ion for development of stable optical frequency standards. A domestic manufacturer of similar equipment advised March 25, 2003, that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–8237 Filed 4–3–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Kentucky; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–004.

Applicant: University of Kentucky, Lexington, KY 40506.

Instrument: IR Image Furnace, Model SCII-MDH–11020.

Manufacturer: NEC Machinery Corporation, Japan.

Intended Use: See notice at 68 FR 8210, February 20, 2003.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a dual mirror image furnace with a homogeneous temperature gradient around the horizontal plane with a simultaneous steeper temperature gradient along the vertical portion for growth of various large single crystals. The National Aeronautics and Space Administration advised May 8, 2002 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use (comparable case).

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–8239 Filed 4–3–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–507–501]

Certain In-shell Pistachios from the Islamic Republic of Iran: Preliminary Results of Countervailing Duty Administrative Review

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

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on certain in-shell pistachios from the Islamic Republic of Iran (Iran) for the period January 1, 2001, through December 31, 2001. If the final results remain the same as the preliminary results of this administrative review, we will instruct the U.S. Customs Service (Customs) to assess countervailing duties as detailed in the ''Preliminary Results of Review'' section of this notice. Interested parties are invited to comment on these preliminary results. (*See* the ''Public Comment'' section of this notice.)

EFFECTIVE DATE: April 4, 2003.

FOR FURTHER INFORMATION CONTACT: Darla Brown, AD/CVD Enforcement, Office VI, Group II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2849.

SUPPLEMENTARY INFORMATION

Background

On March 11, 1986, the Department published in the **Federal Register** the countervailing duty order on certain in-shell pistachios from Iran. *See Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: In-shell Pistachios from Iran,* 51 FR 8344 (March 11, 1986) (*In-shell Pistachios*). On March 1, 2001, the Department published a notice of ''Opportunity to Request an Administrative Review'' (67 FR 9438). On March 22, 2002, we received a timely request for an administrative review from Cyrus Marketing, the exclusive representative of the Rafsanjan Pistachio Producers Cooperative (RPPC), the respondent company in this proceeding. On April 24, 2002, we initiated an administrative review covering the period of review (POR) January 1, 2001, through December 31, 2001 (67 FR 20089).

On June 11, 2002, we issued our initial questionnaire to the Government of Iran (GOI) and RPPC. On September 17, 2002, we issued a supplemental questionnaire to RPPC.

On October 23, 2002, we extended the period for the completion of the *Preliminary Results* pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act). *See Certain In-shell Pistachios from the Islamic Republic of Iran: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review,* 67 FR 65091 (October 23, 2002).

On February 20, 2003, we issued a supplemental questionnaire to the GOI. On March 5, 2003, we issued a second supplemental questionnaire to RPPC. On March 19, 2003, we received from the GOI a partial response to the Department's February 20, 2002, supplemental questionnaire.

On March 20, 2003, we sent a letter to the GOI, extending for the second time the time limit for the submission of its full response to the supplemental questionnaire issued by the Department on February 20, 2003. The due date of the supplemental questionnaire was extended until March 25, 2003. However, we stated in the letter that, given the proximity of this extended due date to the date of our preliminary results (*i.e.*, March 31, 2003), we could not guarantee that we would be able to analyze the information contained in the supplemental response in time to incorporate that information in our preliminary results.

On March 21, 2003, we sent a letter to RPPC, extending for the second time the time limit for the submission of its response to the second supplemental questionnaire issued by the Department on March 5, 2003. The due date of the supplemental questionnaire was extended until March 25, 2003. However, we stated in the letter that, given the proximity of this extended due date to the date of our preliminary results (*i.e.*, March 31, 2003), we could not guarantee that we would be able to analyze the information contained in

the supplemental response in time to incorporate that information in our preliminary results.

On March 25, 2003, we did not receive the GOI's supplemental questionnaire response. *See* March 25, 2003 Memorandum to the File from the team. Therefore, as discussed below in the ''Use of Facts Available'' section of this notice, we have resorted to the facts otherwise available employing an adverse inference. (*See* section 776 of the Act.)

Also on March 25, 2003, we did not receive the second supplemental questionnaire response from RPPC. *See* March 25, 2003 Memorandum to the File from the team. Therefore, as discussed below in the ''Use of Facts Available'' section of this notice, we have resorted to the facts otherwise available, employing an adverse inference. (*See* section 776 of the Act.)

In accordance with 19 CFR 351.213 (2002), this administrative review covers only those producers or exporters for which a review was specifically requested. Accordingly, this administrative review covers RPPC and nine programs.

Scope of Review

The product covered by this administrative review is in-shell pistachio nuts from which the hulls have been removed, leaving the inner hard shells and edible meat, as currently classifiable in the Harmonized Tariff Schedules of the United States (HTSUS) under item number 0802.50.20.00. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Use of Facts Available

During the course of this proceeding, we have repeatedly sought information pertaining to all companies that are cross-owned and/or affiliated with RPPC, the producer of subject merchandise, and RPPC's shareholders. *See* pages III–3 through III–4 of the Department's June 11, 2002, questionnaire, page 1 of the Department's September 17, 2002, supplemental questionnaire, and page 1 of the Department's March 5, 2003, second supplemental questionnaire. In addition, we have repeatedly requested information concerning the total sales and sales of subject merchandise made by RPPC during the POR. *See* pages III–3 through III–4 of the Department's June 11, 2002, questionnaire, page 1 of the Department's September 17, 2002 supplemental questionnaire, and page 1 of the Department's March 5, 2003, second supplemental questionnaire. Moreover, we have repeatedly asked for specific information concerning RPPC's and its members' usage of the following programs: Provision of Fertilizer and Machinery, Provision of Water and Irrigation Equipment, Duty Refunds on Imported Raw or Intermediate Materials Used in the Production of Exported Goods, Program to Improve the Quality of Exports of Dried Fruit, Tax Exemptions, Technical Assistance from the GOI, and Provision of Credit. *See* pages III–9 through III–12 of the Department's June 11, 2002, questionnaire, pages 3 through 6 of the Department's September 17, 2002, supplemental questionnaire, and pages 3 through 4 of the Department's March 5, 2003, second supplemental questionnaire.

In response to these repeated inquiries relating to affiliation, sales data, and the seven aforementioned programs, RPPC repeatedly failed to answer specific questions, provided incomplete answers, and did not provide useable information regarding these seven programs.

In addition, we have sought, without success, information from the GOI regarding details about RPPC's and its growers' usage of the programs under review. *See* the Department's June 11, 2002, initial questionnaire. Moreover, we specifically asked the GOI to provide copies of relevant legislation proving that certain programs subject to this administrative review have been terminated. *See* the Department's February 20, 2003, supplemental questionnaire. The GOI failed to provide the requested legislation and only answered one of the Department's supplemental questions (*see* the GOI's March 19, 2003, submission).

Section 776(a) of the Act requires the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. As described above, RPPC and the GOI have failed to provide information regarding these programs in the manner explicitly and repeatedly requested by the Department; therefore, we must resort to the facts otherwise available.

Furthermore, section 776(b) of the Act provides that in selecting from among the facts available, the Department may use an inference that is adverse to the interests of a party if it determines that a party has failed to cooperate to the best of its ability. The Department finds that by not providing necessary information specifically requested by the Department, despite numerous opportunities, the GOI and RPPC have failed to cooperate to the best of their ability. Therefore, in selecting from among the facts available, the Department determines that an adverse inference is warranted.

When employing an adverse inference in an administrative review, the statute indicates that the Department may rely upon information derived from: (1) The petition, a final determination in a countervailing duty or an antidumping investigation, any previous administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review; or (2) any other information placed on the record. *See* 19 CFR 351.308(c). Thus, in applying adverse facts available, we have used information on the record of this administrative review as well as information from the final determinations of *In-shell Pistachios* and *Certain In-shell Pistachios and Certain Roasted In-shell Pistachios from the Islamic Republic of Iran: Final Results of New Shipper Countervailing Duty Reviews,* 68 FR 4997 (January 31, 2003) (*Pistachios New Shipper Reviews*).

If the Department relies on secondary information (*e.g.*, data from a petition) as facts available, section 776(c) of the Act provides that the Department shall, ''to the extent practicable,'' corroborate such information using independent sources reasonably at its disposal.[1] The SAA further provides that to corroborate secondary information means that the Department will satisfy itself that the secondary information to be used has probative value. *See* also, 19 CFR 351.308.

Thus, in those instances in which it determines to apply adverse facts available, the Department, in order to satisfy itself that such information has probative value, will examine, to the extent practicable, the reliability and relevance of the information used. However, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. The only source for such information normally is administrative determinations. In the instant case, no evidence has been presented or obtained which contradicts the reliability of the

[1] The Statement of Administrative Action accompanying the URAA clarifies that information from the petition is ''secondary information.'' *See* Statement of Administrative Action, accompanying H.R. 5110 (H. Doc. No. 103–316) (1994) (SAA) at 870.

evidence relied upon in previous segments of this proceeding.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render benefit data not relevant. *See Cotton Shop Towels from Pakistan: Final Results of Countervailing Duty Administrative Review,* 66 FR 42514 (August 13, 2001). Where circumstances indicate that the information is not appropriate as adverse facts available, the Department will not use it. *See Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812 (February 22, 1996). In the instant case, no evidence has been presented or obtained which contradicts the relevance of the benefit data relied upon in previous segments of this proceeding. Thus, in the instant case, the Department finds that the information used has been corroborated to the extent practicable.

Analysis of Programs

I. Programs Preliminarily Determined To Confer Subsidies

A. Export Certificate Voucher Program

The GOI and RPPC explain that prior to calendar year 2000, there were three exchange rates in effect: (1) The oil-notional rate, available exclusively to the GOI for its own budgetary requirements; (2) the non-oil export rate, also referred to as the ''export rate,'' available to importers and exporters for their foreign exchange transactions; and (3) the ''free-market'' rate, which was itself tied to the Tehran Stock Exchange (TSE). According to information from the GOI, during the months leading up to the POR, the export rate and the ''free-market'' rate, although similar to each other, were significantly different from the oil-notional rate.

Under this system, the GOI required exporters to deposit a certain percentage of their anticipated export revenue with the Central Bank of Iran (CBI). Deposit rates varied across industries. In the case of the pistachio industry, the deposit requirement was 100 percent of the export sale. Also, the GOI required exporters to obtain, for a nominal fee, an export certificate. In addition, the GOI required exporters to return the foreign exchange earned on the sale to the CBI.

Provided that the exporter conducted the transaction through an Iranian bank, the CBI issued, upon return of the foreign exchange earnings, an export certificate voucher to the exporter. The export certificate voucher, in turn, gave the exporter three options: (1) Use the dollars earned on the export sale, within three months of receipt, to purchase dollar-denominated imports; (2) use the voucher to convert the amount of foreign exchange listed on the export certificate into rials at the export rate; or (3) sell the voucher, within three months of receipt, on the open market at slightly higher margins (*i.e.*, the margin between the export rate and ''free market'' rate) to buyers in Iran that had a need to acquire U.S. dollars.

According to the GOI, this exchange rate system was revised pursuant to Iran's adoption of its third five-year development plan in March of 2000. Under the new system, the GOI abolished the export rate, thus leaving only two rates, the oil-notional rate and the ''free market'' rate. However, according to the GOI, participants in the export certificate voucher program were eligible to utilize a third rate that more closely tracked but, nonetheless, was still below the ''free market'' rate.

Under this revised exchange rate system, exporters must return their foreign currency to the CBI within eight months of the sale. As an added incentive, the CBI offers an early deposit reward to holders of export certificate vouchers equal to one percent of the sale for every month the exporter returns the foreign currency prior to the termination of the eight month deadline. This reward is capped at six percent of the sale. The exporter is then free to sell the ''awarded'' foreign exchange at the ''free market'' rate.

According to the GOI, the exchange rate system adopted under the third five-year development plan was, itself, abolished by the CBI in March of 2002. Under the new 2002 system, the GOI claims that it has completely unified its exchange rate system.

According to RPPC, it utilized the export certificate voucher program during the POR, selling the vouchers on the open market at slightly higher margins (*i.e.*, the margin between the export rate and ''free market'' rate) (*see* page 11 and Exhibit 7 of RPPC's August 19, 2002, questionnaire response). Moreover, RPPC used the early deposit reward program during the POR (*see* page 4 of RPPC's October 15, 2002, questionnaire response). To calculate the benefit from the export certificate voucher program, we subtracted the exchange rate listed on each export certificate RPPC sold during the POR from the free market exchange rate that was in effect as of the date of the export certificate. We then multiplied this difference, in rials per dollar, by the dollar value listed on each export certificate. Next, we summed each of the products to arrive at the total benefit in rials. We then divided the total benefit by RPPC's export sales during the POR. We note that, as BIA, we used RPPC's total sales of export certificates in rials for RPPC's export sales, as RPPC did not provide us with its export sales. On this basis, we preliminarily determine, for liquidation purposes, a net countervailable subsidy of 1.14 percent *ad valorem* for RPPC.

We calculated a benefit for RPPC's early deposit rewards by dividing the total amount of RPPC's early deposit rewards in rials by the same export sales figure discussed above. On this basis, we preliminarily determine, for liquidation purposes, a net countervailable subsidy of 2.72 percent *ad valorem* for RPPC.

However, we found in the *Pistachios New Shipper Reviews* that the export certificate voucher program in its entirety was terminated as of March 21, 2002 (*see* Comment 13 of the Issues and Decision Memorandum). Therefore, for cash deposit purposes, the rate is 0.00 percent *ad valorem* for RPPC. For further discussion, *see* ''Preliminary Results of Review'' section below.

B. Provision of Fertilizer and Machinery

Petitioners have alleged that under this program the GOI provides fertilizer and machinery to the pistachio industry at preferential prices. Although RPPC itself stated that it did not receive any inputs from the GOI during the POR, RPPC did not provide any information regarding the usage of this program by the 70,000 members of RPPC. Therefore, as adverse facts available, we preliminarily determine a net countervailable subsidy of 7.11 percent *ad valorem,* from *In-shell Pistachios,* for RPPC.

C. Provision of Water and Irrigation Equipment

Petitioners have alleged that the GOI undertakes the construction of soil dams, flood barriers, canals, and other irrigation projects on behalf of pistachio farmers. Although RPPC itself stated that it did not receive any funding from the GOI during the POR with respect to this program, RPPC did not provide any information regarding the usage of this program by the 70,000 members of RPPC. Therefore, as adverse facts available, we preliminarily determine a net countervailable subsidy of 7.11 percent *ad valorem,* from *In-shell Pistachios,* for RPPC.

D. Program to Improve Quality of Exports of Dried Fruit

Petitioners have alleged that pursuant to the Budget Act of 2001–2002, the GOI provides financial assistance to exporters of dried fruit and pistachios to

assist them in the production of export quality goods. RPPC did not respond to questions regarding its or its members' usage of this program. Therefore, as adverse facts available, we preliminarily determine a net countervailable subsidy of 7.11 percent *ad valorem,* from *In-shell Pistachios,* for RPPC.

E. Duty Refunds on Imported Raw or Intermediate Materials Used in the Production of Exported Goods

Petitioners have alleged that pursuant to the Third Five Year Development Plan (TFYDP) enacted by the GOI, duties and levies paid in connection with the importation of intermediate materials used in the production of the exported commodities and goods are refunded to exporters. RPPC did not answer any of our questions with respect to this program. Therefore, as adverse facts available, we preliminarily determine a net countervailable subsidy of 7.11 percent *ad valorem,* from *In-shell Pistachios,* for RPPC.

F. Tax Exemptions

Petitioners have alleged that the GOI provides tax exemptions to agricultural producers who are exporters. During the verification of the new shipper reviews, the Department learned that section 141 of the Direct Taxation Act exempts exporters of agricultural goods from income taxes (*see* December 4, 2002 memorandum to Melissa G. Skinner, Director, Office of AD/CVD Enforcement VI from Alicia Kinsey, Case Analyst, Verification of the Questionnaire Responses Submitted by the GOI (GOI Verification Report) at page 6, which has been placed on the record of this administrative review). RPPC stated that it was not subject to income taxation during the POR. However, RPPC has failed to provide relevant tax information for any of the 70,000 growers that are members of its cooperative. Therefore, as adverse facts available, we preliminarily determine a net countervailable subsidy of 7.11 percent *ad valorem,* from *In-shell Pistachios,* for RPPC.

G. Technical Assistance from the GOI

Petitioners have alleged that pistachio growers receive technical support as part of the GOI's program to facilitate agricultural development. Although RPPC itself stated that it did not receive any technical assistance from the GOI during the POR with respect to this program, RPPC did not provide any information regarding the usage of this program by the 70,000 members of RPPC. Therefore, as adverse facts available, we preliminarily determine a net countervailable subsidy of 7.11 percent *ad valorem,* from *In-shell Pistachios,* for RPPC.

H. Provision of Credit

Petitioners have alleged that the GOI provides loans at below market interest rates to members of the agricultural sector. RPPC states that it did not receive any loans from the GOI. In the course of this administrative review, we requested that RPPC submit financial statements for the POR. RPPC submitted financial statements covering the year ending March 19, 2001. These financial statements include a line item for ''loans'' and do not contain any explanatory notes. RPPC claims that these financial statements are complete and are the most current.

We find that RPPC failed to provide us with complete financial statements for the POR, as the financial statements that RPPC submitted cover only one quarter of the POR. We note that RPPC is one of the largest pistachio producers in the world and, thus, should be able to provide the Department with at least some form of financial information (*e.g.,* unaudited financial statements) for the remaining nine and one-half months of the POR, as we are well into 2003. Therefore, we preliminarily determine that there is not enough evidence on the record to confirm that RPPC's outstanding loans were not provided by the GOI, as RPPC did not submit any ledgers or journals as supporting documentation, nor did it submit any financial statements or records for the majority of the POR.

Therefore, as adverse facts available, we preliminarily determine a net countervailable subsidy of 7.11 percent *ad valorem,* from *In-shell Pistachios,* for RPPC.

II. Program Determined to Be Not Countervailable

A. Price Supports and/or Guaranteed Purchase of All Production

Based on information obtained in the course of the recently-completed new shipper reviews of in-shell pistachios and in-shell roasted pistachios from Iran, we determined that this program is not countervailable (*see Pistachios New Shipper Reviews* and the accompanying Issues and Decision Memorandum at Comment 5). No information was submitted in the instant review to warrant the Department to reconsider its determination. Therefore, we continue to find this program not countervailable.

Preliminary Results of Review

In accordance with section 751(a)(1)(A) of the Act, we determined an individual rate for each producer/exporter of the subject merchandise participating in this administrative review. We preliminarily determine the total estimated net countervailable subsidy rate to be:

Producer/Exporter
Rafsanjan Pistachio Producers Cooperative (RPPC).
Net Subsidy Rate
53.63 percent *ad valorem.*

Under section 351.526 of the Department's regulations, the Department can adjust cash deposit rates to account for program-wide changes. During the recently-completed new shipper reviews of in-shell pistachios and in-shell roasted pistachios from Iran, the Department verified that the export certificate voucher program has been terminated subsequent to the POR (*see Pistachios New Shipper Reviews* and the accompanying Issues and Decision Memorandum at Comment 13). Therefore, we are adjusting the cash deposit rate to take into account this program-wide change. Thus, in determining the cash deposit rate listed below, we have deducted the subsidies found for this program from the overall subsidy rate calculated for RPPC.

Producer/Exporter
Rafsanjan Pistachio Producers Cooperative (RPPC).
Cash Deposit Rate
49.77 percent *ad valorem.*

If the final results of this review remain the same as these preliminary results, the Department intends to instruct Customs to assess countervailing duties as indicated above. The Department also intends to instruct Customs to collect cash deposits of estimated countervailing duties as indicated above as a percentage of the f.o.b. invoice price on all shipments of the subject merchandise from reviewed companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was *not* requested, duties must

be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States,* 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States,* 822 F.Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 351.212(c)(ii)(2)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 2001, through December 31, 2001, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

Upon completion of this administrative review, the Department will determine, and Customs shall assess, countervailing duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(2), we have calculated a company-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to Customs within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct Customs to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the company's entries during the review period.

Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on these preliminary results. Any such hearing is tentatively scheduled to be held 37 days from the date of publication of these preliminary results, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. Parties may file case briefs pursuant to 19 CFR 351.309(c)(ii). Six copies of the business proprietary version and six copies of the non-proprietary version of the case briefs must be submitted to the Assistant Secretary no later than 30 days from the date of publication of the preliminary determination. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Parties may also submit rebuttal briefs pursuant to 19 CFR 351.309(d). Six copies of the business proprietary version and six copies of the non-proprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than 5 days from the date of filing of the case briefs. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Further written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(1)).

Dated: March 31, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–8235 Filed 4–3–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration.

[I.D. 033103A]

Proposed Information Collection; Comment Request; Southwest Center Freshwater Salmon and Steelhead Angler Survey.

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 3, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Cindy Thomson, National Marine Fisheries Service, Southwest Fisheries Science Center, 110 Shaffer Road, Santa Cruz, CA 95060, phone 831–420–3911, Cindy.Thomson@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Data on fishery participation, expenditures and demographics will be collected from freshwater salmon and steelhead anglers in California. The data will used to evaluate the economic effects of potential changes in fishery regulations, hatchery practices, and other actions that may be considered to protect chinook, coho, and steelhead stocks listed as threatened or endangered under the Endangered Species Act.

II. Method of Collection

Telephone interviewers will contact a random sample of steelhead report card holders to ask if they had gone steelhead fishing in California in the previous season. Those who were active in the previous season will be asked additional

questions regarding their fishing experiences, expenditures, and demographics. Because names and telephone numbers of salmon anglers are not available, a different method of identifying potential salmon respondents will be used. Specifically, names/telephone numbers of individuals who live in central and northern California and identify fishing as one of their interests will be purchased from a company that specializes in special purpose random digit samples. Telephone interviewers will contact individuals in the special purpose sample to ask if they had gone freshwater salmon fishing in California in the previous season. Those who were active in the previous season will be asked additional questions regarding their fishing experiences, expenditures, and demographics.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 7,565.

Estimated Time Per Response: Two minutes each for the 7,565 respondents to the screening questions; 15 minutes each for the 710 anglers identified in the screening questions as having fished for salmon or steelhead in the previous season.

Estimated Total Annual Burden Hours: 430 hours.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 28, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–8271 Filed 4–3–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 033103B]

Proposed Information Collection; Comment Request; Northwest Region Logbook Family of Forms.

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 3, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Becky Renko, 206–526–6140, or at Becky.Renko@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection contains certain reporting and recordkeeping requirements for vessels in the Pacific Coast Groundfish Fishery in the Exclusive Economic Zone for the northwest. These requirements affect fish processing vessels over 125 feet in length and catcher vessels that deliver their catch to motherships. NOAA also proposes to merge the requirement currently cleared under OMB Control Number 0648–0419 into this clearance. This requirement is for a report of intent to off-load non-whiting groundfish in excess of trip limits for purposes of donating that groundfish to a hunger-relief agency.

The information collected is needed to monitor catch, effort, and production for fishery management purposes.

II. Method of Collection

Forms are used for most requirements. These may be submitted by computer or by facsimile machine. Off-load notifications are made be telephone.

III. Data

OMB Number: 0648–0271.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 70.

Estimated Time Per Response: 13 minutes per day for a Daily Fishing and Cumulative Production Log (DFCPL) from a catcher vessel; 26 minutes per day for a DFCPL from a catcher-processor; 13 minutes per day for a Daily Report of Fish Received and Cumulative Production Log from a mothership; 4.3 minutes per day for a Weekly/Daily Production Report; 20 minutes for a Product Transfer/Offloading Logbook; 1.25 minutes for a Start or Stop Notification Report; and 5 minutes for an off-load notification.

Estimated Total Annual Burden Hours: 1,382.

Estimated Total Annual Cost to Public: $8,890.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 28, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–8272 Filed 4–3–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 013003C]

Endangered Species; Files No.1266–01 and 1388

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

ACTION: Receipt of applications for modification.

SUMMARY: Notice is hereby given that the following applicants have applied in due form for a permit modification to take sea turtles for purposes of scientific research/enhancement:

REMSA, Inc., 12829 Jefferson Ave., Suite 108, Newport News, VA 23608 (John Glass, Principal Investigator) (File No. 1266–01); and

Dr. David Nelson, U.S. Army Research and Development Center, Waterways Experiment Station, 4104 Freetown Rd., Vicksburg, MS 39183 (File No. 1388).

DATES: Written or telefaxed comments must be received on or before May 5, 2003.

ADDRESSES: The modification requests and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371;

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

Written comments or requests for a public hearing on these requests should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on these particular modification requests would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject modifications are requested under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 1266–01 authorizes REMSA, Inc. to capture via trawl, handle, flipper and PIT tag, and release sea turtles while removing them from the path of hopper dredges. Annually, 350 loggerhead, 150 green, 150 Kemp's ridley, 10 hawksbill and 10 leatherback sea turtles may be taken in this manner. Research is conducted in the Atlantic Ocean and the Gulf of Mexico. In this modification, the permit holder requests authorization to biopsy sample sea turtles. A maximum of 350 loggerhead, 150 green, 150 Kemp's ridley, 10 hawksbill, and 10 leatherback sea turtles could be biopsy sampled annually until the permit's expiration on April 30, 2006. Biopsy sampling will follow the protocol for tissue collection established by the NMFS Southeast Fisheries Science Center and will only be performed by trained personnel.

Permit No. 1388 authorizes Dr. David Nelson to conduct sea turtle research in the northwestern Atlantic Ocean and the Gulf of Mexico. The first project involves relocation trawling in association with hopper dredge activity. A total of 200 loggerhead, 100 green, 30 Kemp's ridley, 2 hawksbill, and 2 leatherback sea turtles are authorized to be captured, handled, measured, flipper and PIT tagged, and released. The second project uses a subset of the turtles caught via relocation trawling to investigate large-scale movements and diving behavior. Twenty loggerhead, 5 Kemp's ridley, and 5 green turtles will be satellite tagged in addition to the above activities before being released. The third project is an abundance and habitat survey of green sea turtles along the shoreline of Cape Canaveral. A total of 75 green sea turtles may be captured, handled, flipper and PIT tagged, and fitted with a radio/sonic transmitter or a time-depth recorder/radio transmitter, before being released. The permit holder requests authorization to biopsy sample 30 of the 200 loggerhead turtles that may be captured annually during relocation trawls in association with dredging activity. Biopsy sampling will follow the protocol for tissue collection established by the NMFS Southeast Fisheries Science Center and will only be performed by trained personnel.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: March 28, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–8273 Filed 4–3–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 020325069–2311–02]

Request for Proposals for FY 2003—NOAA Educational Partnership Program With Minority Serving Institutions: Environmental Entrepreneurship Program

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA). Commerce.

ACTION: Notice of an extension of deadline.

SUMMARY: This notice is an addendum to, and hereby extends only the deadline in, **Federal Register** Notice, Vol. 68., No. 2, January 3, 2003 for full proposals under the ''NOAA Institutions: Environmental Entrepreneurship Program'' to no later than 5 p.m. (Eastern Daylight Savings Time) on April 24, 2003.

Mark Brown,

Chief Financial/Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 03–8270 Filed 4–3–03; 8:45 am]

BILLING CODE 3510–KD–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Sea Grant Review Panel

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant

Review Panel. The meeting will have several purposes. Panel members will discuss and provide advice on the National Sea Grant College Program in the areas of program evaluation, education and extension, science and technology programs, and other matters as described below:

DATES: The announced meeting is scheduled during two days: Saturday, April 26 and Wednesday, April 30, 2003.

ADDRESSES: (To be held in conjunction with the national ''Sea Grant Week'' Meetings April 26–30, 2003), Moody Gardens Hotel, Seven Hope Boulevard, Galveston, Texas 77554, Telephone: (409) 741–8484.

FOR FURTHER INFORMATION CONTACT: Dr. Francis M. Schuler, Designated Federal Official, National Sea Grant College program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 11837, Silver Spring, Maryland 20910, (301) 713–2445.

SUPPLEMENTARY INFORMATION: The Panel, which consists of a balanced representation from academia, industry, state government and citizens groups, was established in 1976 by section 209 of the Sea Grant Improvement Act (Pub. L. 94–461, 33 U.S.C. 1128). The Panel advises the Secretary of Commerce and the Director of the National Sea Grant College Program with respect to operations under the Act, and such other matters as the Secretary refers to them for review and advice. The agenda for the meeting is as follows:

Saturday, April 26, 2003

10 a.m. to 5 p.m.

Executive Committee Report.

NOAA/Sea Grant Update.

Sea Grant Association President's Report.

Program Evaluation.

New Panel Business.

Adjourn.

Wednesday, April 30, 2003

8:30 a.m. to 10 a.m.

National Sea Grant Office and Review Panel Wrap-up.

This meeting will be open to the public.

Dated: March 27, 2003.

Mark Brown,

Chief Financial Administrative Officer, Office of Oceanic and Atmospheric Research.

[FR Doc. 03–8269 Filed 4–3–03; 8:45 am]

BILLING CODE 3510–KA–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 2003–C–015]

Public Advisory Committees

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice and request for nominations.

SUMMARY: On November 29, 1999, the President signed into law the Patent and Trademark Office Efficiency Act (the ''Act''), Pub. L. 106–113, Appendix I, Title IV, Subtitle G, 113 Stat. 1501A–572, which, among other things, established two Public Advisory Committees to review the policies, goals, performance, budget and user fees of the United States Patent and Trademark Office (USPTO) with respect to patents, in the case of the Patent Public Advisory Committee, and with respect to trademarks, in the case of the Trademark Public Advisory Committee, and to advise the Director on these matters. The USPTO is requesting nominations for three (3) members to each Public Advisory Committee for terms that begin July 13, 2003.

DATES: Nominations must be received or electronically transmitted on or before May 12, 2003.

ADDRESSES: Persons wishing to submit nominations should send the nominee's resume to Chief of Staff, Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, Washington, DC 20231; by electronic mail to: *PPACnominations@uspto.gov* for the Patent Public Advisory Committee or *TPACnominations@uspto.gov* for the Trademark Patent Public Advisory Committee; by facsimile transmission marked to the Chief of Staff's attention at (703) 305–8664; or by mail marked to the Chief of Staff's attention and addressed to the Office of the Under Secretary and Director of the USPTO, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: Chief of Staff by facsimile transmission marked to his attention at (703) 305–8664, or by mail marked to his attention and addressed to the Office of the Under Secretary and Director of the USPTO, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: Under the Act, the then-Acting Secretary of Commerce appointed members to the Patent and Trademark Public Advisory Committees on July 12, 2000. The Advisory Committees' duties include:

- Review and advise the Under Secretary and Director of the USPTO on matters relating to policies, goals, performance, budget, and user fees of the USPTO relating to patents and trademarks, respectively; and
- Within 60 days after the end of each fiscal year: (1) Prepare an annual report on matters listed above; (2) transmit a report to the Secretary of Commerce, the President, and the Committees on the Judiciary of the Senate and the House of Representatives; and (3) publish the report in the Official Gazette of the USPTO.

Members of the Patent and Trademark Public Advisory Committees are appointed by and serve at the pleasure of the Secretary of Commerce for three (3)-year terms.

Advisory Committees

The Public Advisory Committees are each composed of nine (9) voting members who are appointed by the Secretary of Commerce (the ''Secretary'') and who have substantial backgrounds and achievement in finance, management, labor relations, science, technology, and office automation.'' 35 U.S.C. 5(b)(3). The Public Advisory Committee members must be United States citizens and represent the interests of diverse users of the USPTO both large and small entity applicants in proportion to the number of such applications filed. In the case of the Patent Public Advisory Committee, at least twenty-five (25) percent of the members must represent ''small business concerns, independent inventors, and nonprofit organizations,'' and at least one member must represent the independent inventor community. 35 U.S.C. 35(b)(2). Each of the Public Advisory Committees also includes three (3) non-voting members representing each labor organization recognized by the USPTO.

Procedures and Guidelines of the Patent and Trademark Public Advisory Committees

Each newly appointed member of the Patent and Trademark Public Advisory Committees will serve for a term of three years. Members appointed in the current fiscal year shall serve from July 13, 2003, through July 12, 2006. As required by the Act, members of the Patent and Trademark Public Advisory Committees will receive compensation for each day while the member is attending meetings or engaged in the business of that Advisory Committee. The rate of compensation is the daily equivalent of the annual rate of basic pay in effect for level III of the Executive Schedule under section 5314 of title 5, United States Code. While away from home or regular place of business, each

member will be allowed travel expenses, including per diem in lieu of subsistence, as authorized by Section 5703 of Title 5, United States Code. The USPTO will provide the necessary administrative support, including technical assistance for the Committees.

Applicability of Certain Ethics Laws

Members of each Public Advisory Committee shall be special Government employees within the meaning of Section 202 of Title 18, United States Code. The following additional information assumes that members are not engaged in Public Advisory Committee business more than sixty days during each calendar year:

- Each member will be required to file a confidential financial disclosure form within thirty (30) days of appointment. 5 CFR 2634.202(c), 2634.204, 2634.903, and 2634.904(b).
- Each member will be subject to many of the public integrity laws, including criminal bars against representing a party, 18 U.S.C. 205(c), in a particular matter that came before the member's committee and that involved at least one specific party. *See* also 18 U.S.C. 207 for post-membership bars. A member also must not act on a matter in which the member (or any of certain closely related entities) has a financial interest. 18 U.S.C. 208.
- Representation of foreign interests may also raise issues. 35 U.S.C. 5(a)(1) and 18 U.S.C. 219.

Meetings of the Patent and Trademark Public Advisory Committees

Meetings of each Advisory Committee will take place at the call of the Chair to consider an agenda set by the Chair. Meetings may be conducted in person, electronically through the Internet, or by other appropriate means. The meetings of each Advisory Committee will be open to the public except each Advisory Committee may, by majority vote, meet in executive session when considering personnel or other confidential matters. Nominees must also have the ability to participate in Committee business through the Internet.

Procedures for Submitting Nominations

Submit resumes for nomination for the Patent Public Advisory Committee and the Trademark Public Advisory Committee to: Chief of Staff, United States Patent and Trademark Office, Washington, DC 20231.

Dated: March 31, 2003.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 03–8216 Filed 4–3–03; 8:45 am]

BILLING CODE 3510–16–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts, that was scheduled for 17 April 2003 has been rescheduled for 22 April 2003 at 10 a.m. in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001–2728. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call (202) 504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, on the 31st of March, 2003.

Charles H. Atherton,

Secretary.

[FR Doc. 03–8194 Filed 4–3–03; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Defense Logistics Agency, Defense Reutilization and Marketing Service, DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Logistics Agency, Defense Reutilization and Marketing Service (DRMS) announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 3, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Commander, Defense Reutilization and Marketing Service, Attn: Ms. Nancy Olson-Butler, 74 Washington Ave., N., Battle Creek, MI 49017–3092.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call DRMS, Office of Corporate Planning, at (616) 961–7433.

Title; Associated Form; and OMB Number: Defense Reutilization and Marketing Service Customer Comment Card.

Needs and Uses: The information collection requirement is necessary to obtain customer rating and comments on the service of a Defense Reutilization and Marketing store.

Affected Public: Individuals; Business or other for profit; Not-for-profit institutions.

Annual Burden Hours: 100.

Number of Respondents: 400.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are customers who obtain, or visit a store to obtain, surplus or excess property. The customer comment card is a means for customers to rate and comment on DRMS Facilities, Receipt/Store/Issue services, Reutilization/Transfer/Donation services, Demil services, Environmental services, Usable property sales, and scrap sales. The completed card is an agent for service improvement and determining whether there is a systemic problem.

Dated: March 27, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–8208 Filed 4–3–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by May 5, 2003.

Title, Form Number, and OMB Number: United States Air Force Academy Candidate Writing Sample; USAFA Form O–878; OMB Number 0701–0147.

Type of Request: Extension.

Number of Respondents: 4,100.

Responses Per Respondent: 1.

Annual Responses: 4,100.

Average Burden Per Response: 60 minutes (average).

Annual Burden Hours: 4,100 hours.

Needs and Uses: This form is used to collect a writing sample on candidates applying to the United States Air Force Academy. The writing sample is used to evaluate background and aptitude for commissioned service.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: March 28, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–8209 Filed 4–3–03; 8:45 am]

BILLING CODE 5001-08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Reinstatement of Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed reinstatement of public information collection and seeks public comment on the provisions thereof. 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' estimate of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 3, 2003.

ADDRESSES: Written comments and recommendations on the reinstatement of information collection should be sent to TRICARE Management Activity, Medical benefits and Reimbursement System, 16401 East Centretech Parkway, ATTN: Marty Maxey, Aurora, CO 80011–9066.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed reinstatement of information collection, please write to the above address or call TRICARE Management Activity, Medical benefits and Reimbursement Systems at (303) 676–3627.

Title Associated with Form, and OMB Number: Request for Reimbursement of Capital and Direct Medical Education Costs.

Needs and Uses: The TRICARE/CHAMPUS contractors will use the information collected to reimburse hospitals for TRICARE/CHAMPUS' share of capital and direct medical education costs.

Affected Public: Individuals; business or other for profit.

Annual Burden Hours: 5,532.

Number of Respondents: 5,400. Respondents are institutional providers and admitting physicians.

Responses Per Respondent: 1.

Average Burden Per Response: 5 minutes for physicians.

Frequency: On occasioin.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Department of Defense Authorization Act, 1984, Pub. L. 98–94 amended Title 10, section 1079(j)(2)(A) of the U.S.C. and provided the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) with the statutory authority to reimburse institutional providers based on diagnosis-related groups (DRGs). The CHAMPUS DRG-based payments apply only to hospital's operating costs and do not include any amounts for hospitals' capital or direct medical education costs. Any hospital subject to the DRG-based payment system, except for children's hospitals (whose capital and direct medical education costs are incorporated in the children's hospital differential), who want to be reimbursed for allowed capital and direct medical education costs must submit a request for payment to the TRICARE/CHAMPUS contractor. The request allows TRICARE to collect the information necessary to properly reimburse hospitals for its share of these costs. The information can be submitted in any form, most likely in the form of a letter. The contractor will calculate the TRICARE/CHAMPUS share of capital and direct medical education costs and make a lump-sum payment to the hospital.

The TRICARE/CHAMPUS DRG-based payment system is modeled on the Medicare Prospective Payment System (PPS) and was implemented on October 1, 1987. Initially, under 42 CFR 412.46 of the Medicare regulations, physicians was required to sign attestation and acknowledgment statements. These requirements were implemented to ensure a means of holding hospitals and physicians accountable for the information they submit on the Medicare claim forms. Being modeled on the Medicare PPS, CHAMPUS also adopted these requirements. The physicians attestation and physician acknowledgment required by Medicare under 42 CFR 412.46 are also required for CHAMPUS as a condition for payment and may be satisfied by the same statements as required for Medicare, with substitution or addition of ''CHAMPUS'' when the word ''Medicare'' is used. Physicians sign a physician acknowledgement, maintained by the institution, at the time the physician is granted admitting privileges. This acknowledgement indicates the physician understands the importance of a correct medical record,

and misrepresentation may be subject to penalties.

Dated: March 19, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–8210 Filed 4–3–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. 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 burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received 60 days from publication of this notice in the **Federal Register**.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness) (Program Integration) (Legal Policy), ATTN: Lt Col Patrick W. Lindenmann, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call at (703) 697–3387; facsimile (703) 693–6708.

Title, Associated Form, and OMB Control Number: Application for Review of Discharge or Separation from the Armed Forces of the United States; DD Form 293; OMB Control Number 0704–004.

Needs and Uses: Former members of the Armed Forces who received an administrative discharge have the right to appeal the characterization or reason for separation. Title 10 of the U.S.C., section 1553, and DoD Directive 1332.28 established a Board of Review consisting of five members to review appeals of former members of the Armed Forces. The DD Form 293, Application for Review of Discharge or Separation from the Armed Forces of the United States, provides the respondent a vehicle to present to the Board their reasons/justifications for a discharge upgrade as well as providing the Services the basic data needed to process the appeal.

Affected Public: Individuals or households.

Annual Burden Hours: 6,000.

Number of Respondents: 8,000.

Responses per Respondent: 1.

Average Burden Per Response: 45 minutes.

Frequency: One-time.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Under Title 10 U.S.C., section 1553, the Secretary of a Military Department established a Board of Review, consisting of five members, to review appeals of former members of the Armed Forces. This information collection allows an applicant to request a change in the type of military discharge issued. Applicants are former members of the Armed Forces who have been discharged or dismissed (other than a discharge or dismissal by sentence of a general court-martial), or if the former member is deceased or incompetent, the surviving spouse, next-of-kin, or legal representative who is acting on behalf of the former member. The DD Form 293, Application for Review of Discharge or Separation from the Armed Forces of the United States, provides the former member an avenue to present to their respective Service Discharge Review Board their reasons/justifications for a discharge upgrade as well as providing the Services the basic data needed to process the appeal.

Dated: March 20, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–8211 Filed 4–3–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

National Security Education Board Group of Advisors Meeting

AGENCY: National Defense University.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the National Security Education Board Group of Advisors. The purpose of the meeting is to review and make recommendations to the Board concerning requirements established by the David L. Boren National Security Education Act, Title VIII of Public Law 102–183, as amended.

DATES: April 28–29, 2003.

ADDRESSES: The Marriott University Park, 880 East Second Street, Tucson, AZ 85719.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond J. Collier, Director for Programs, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rosslyn P.O. Box 20010, Arlington, Virginia 22209–2248; (703) 696–1991. Electronic mail address: *colliere@ndu.edu*.

SUPPLEMENTARY INFORMATION: The National Security Education Board Group of Advisors meeting is open to the public.

Dated: March 27, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–8212 Filed 4–3–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting date change.

SUMMARY: On Friday, March 21, 2003 (68 FR 13906), the Department of Defense announced closed meetings of the Defense Science Board Task Force on Missile Defense, Phase III—Modeling and Simulation. The meeting originally planned for May 1–2, 2003, has been rescheduled to May 12, 2003, at the Institute for Defense Analyses, 1801 N. Beauregard Street, Alexandria, VA.

Dated: March 31, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–8213 Filed 4–3–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Institute of Pathology Scientific Advisory Board

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following open meeting:

Name of Committee: Scientific Advisory Board (SAB).

Dates of Meeting: May 22–23, 2003.

Place: The Armed Forces Institute of Pathology (AFIP), Building 54, 14th St. & Alaska Ave., NW., Washington, DC 20306–6000.

Time: 1 p.m.–5 p.m. (May 22, 2003); 8:30 a.m.–12 p.m. (May 23, 2003).

FOR FURTHER INFORMATION CONTACT: Mr. Ridgely Rabold, Office of the Principal Deputy Director (PDD), AFIP, Building 54, Washington, DC 20306–6000, phone (202) 782–2553.

SUPPLEMENTARY INFORMATION:

General function of the board: The SAB provides scientific and professional advice and guidance on programs, policies and procedures of the AFIP.

Agenda: The Board will hear status reports from the AFIP Director, Principal Deputy Director, and each of the pathology sub-specialty departments, which the Board members will visit during the meeting.

Open board discussions: Reports will be presented on all visited departments. The reports will consist of findings, recommended areas of further research, improvement, and suggested solutions. New trends and/or technologies will be discussed and goals established. The meeting is open to the public.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–8231 Filed 4–3–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Command and General Staff College Advisory Committee

AGENCY: Department of the Army, DOD

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting:

Name of Committee: U.S. Army Command and General Staff College (CGSC) Advisory Committee.

Date of Meeting: April 28–30, 2003.

Place of Meeting: Bell Hall, Room 113, Fort Leavenworth, KS 66027–1352.

Time of Meeting: 5 p.m.–10 p.m. (April 28, 2003); 7:30 a.m.–9 p.m. (April 29, 2003); and 7:30 a.m.–2 p.m. (April 30, 2003).

Proposed Agenda: Review of CGSC educational program (April 28–30,2003); Executive Session (10:30 a.m.–11:30 a.m., April 30, 2003); and Report to Commandant (11:30 a.m.–12:30 p.m., April 30, 2003).

FOR FURTHER INFORMATION CONTACT: Dr. Philip J. Brookes, Committee's Executive Secretary, USACGSC Advisory Committee, 1 Reynolds Ave., Bell Hall, Room 119, Fort Leavenworth, KS 66027–1352; or phone (913) 684–2741.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for the Advisory Committee to examine the entire range of college operations and, where appropriate, to provide advice and recommendations to the College Commandant and faculty.

The meeting will be open to the public to the extent that space limitations of the meeting location permit. Because of these limitations, interested parties are requested to reserve space by contacting the Committee's Executive Secretary at the above address or phone number.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–8230 Filed 4–3–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Provisional Patent Application Concerning Topical Ointment for Vesicating Chemical Warfare Agents

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of the invention described in U.S. Provisional Patent Application No. 60/439,919 entitled ''Topical Ointment for Vesicating Chemical Warfare Agents,'' filed January 14, 2003. The United States Government, as presented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The invention relates to a biologically active composition for treating sulfur mustard gas skin injuries and a method for treating the same.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–8232 Filed 4–3–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Army is amending 15 systems of records notices in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

The amendments are required to alert the users of these systems of records of the additional requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as implemented by DoD 6025.18-R, DoD Health Information Privacy Regulation. Language being added under the ''Routine Use'' category is as follows:

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

DATES: This proposed action will be effective without further notice on May 5, 2003 unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/ Privacy Act Office, U.S. Army Records Management and Declassification Agency, Attn: TAPC–PDD–FP, 7798 Cissna Road, Suite 205, Springfield, VA 22153–3166.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–7137/DSN 656–7137.

SUPPLEMENTARY INFORMATION: The Department of the Army 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 system being amended are set forth below followed by the notice, as amended, published in its 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: March 25, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

AAFES 0405.11

SYSTEM NAME:

Individual Health Records (August 9, 1996, 61 FR 41577).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry ''**NOTE:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.''

* * * * *

AAFES 0405.11

SYSTEM NAME:

Individual Health Records.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598; HQ Army and Air Force Exchange Service-Europe, Pinder Barracks, Schwabacherster 20 8502 Zirndorf.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Army and Air Force Exchange Service (AAFES).

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, organizational location, date of birth, medical data recorded by treating nurse/ physician, information provided by individual's personal physician regarding diagnosis, prognosis, and return to duty status, and similar relevant data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army and 8013; Army Regulation 215–1, The Administration of Morale, Welfare, and Recreation Activities and Non-appropriated Fund Instrumentalities; and Army Regulation 60–21, Personnel Policies; and E.O. 9397 (SSN).

PURPOSE(S):

To provide health care and medical treatment to employees who become ill or are injured during working hours.

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 the Army's compilation of systems of records notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in locked file cabinets.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained in the dispensary, available only to assigned medical personnel.

RETENTION AND DISPOSAL:

Records are maintained for 6 years following termination of individual's employment; then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, Attn: Director, Administrative Services, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual must furnish full name, details concerning injury or illness and date and location of such, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, Attn: Director, Administrative Services, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual must furnish full name, details concerning injury or illness and date and location of such, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the employee; his/her physician; witnesses to an injury/ accident.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

AAFES 0409.01

SYSTEM NAME:

AAFES Accident/Incident Reports (August 9, 1996, 61 FR 41579).

CHANGES:

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry ''**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.''

* * * * *

AAFES 0409.01

SYSTEM NAME:

AAFES Accident/Incident Reports.

SYSTEM LOCATION:

Safety and Security Offices of Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598;

Army and Air Force Exchange Service—Europe Region, Building 4001, In der Witz 14–18, 55252 Mainz-Kastel, Germany; Exchange Regions and Area Exchanges at posts, bases, and satellites world-wide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in accidents, incidents, or mishaps resulting in theft or reportable damage to Army and Air Force Exchange Service (AAFES) property or facilities; individuals injured or become ill as a result of such accidents, incidents, or mishaps.

CATEGORIES OF RECORDS IN THE SYSTEM:

AAFES Accident Report, AAFES Incident Report, record of injuries and illnesses; physicians' reports; witness statements; investigatory reports; similar relevant documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 60–21, Personnel Policies; E.O. 12196, Occupational Safety and Health Programs for Federal Employees; and E.O. 9397 (SSN).

PURPOSE(S):

To record accidents, incidents, mishaps, fires, theft, etc., involving Government property; and personal injuries/illnesses in connection therewith, for the purposes of recouping damages, correcting deficiencies, initiating appropriate disciplinary action; filing of insurance and/or workmen's compensation claims therefore; and for managerial and statistical reports.

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:

Information may be disclosed to the Department of Labor to support workmen's compensation claims.

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By name of individual involved or injured and Social Security Number.

SAFEGUARDS:

Records are accessed only by designated individuals having official need therefore in the performance of their duties, within buildings protected by security guards.

RETENTION AND DISPOSAL:

Paper records are retained for 2 years following which it is destroyed by shredding; information on microfiches is retained for 3 years; computer tapes reflecting historical data are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, Attn: Director, Loss Prevention Division, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide their full name, present address and telephone number; sufficient details concerning the accident, mishap, or attendant injury to permit locating the record, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, Attn: Director, Loss Prevention Division, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide their full name, present address and telephone number; sufficient details concerning the accident, mishap, or attendant injury to permit locating the record, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; medical facilities; investigating official; State Bureau of Motor Vehicles, State and local law enforcement authorities; witnesses; victims; official Department of Defense records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0027–20a DAJA

SYSTEM NAME:

U.S. Army Claims Service Management Information System (February 22, 1993, 58 FR 10002).

CHANGES:

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry ''**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place

additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.''

* * * * *

A0027–20a DAJA

SYSTEM NAME:

U.S. Army Claims Service Management Information System.

SYSTEM LOCATION:

U.S. Army Claims Service, Office of the Judge Advocate General, ATTN: JACS–Z, 4411 Llewellyn Avenue, Fort Meade, MD 20755–5360. Segments exist at subordinate field operating agencies and at Staff Judge Advocate Offices at Army installations throughout the world. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, corporations, associations, countries, states, territories, political subdivisions presenting a claim against the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of claimant, claim file number, type of claim presented, reports of investigation, witness statements, police reports, photographs, diagrams, bills, estimates, expert opinions, medical records and similar reports, copy of correspondence with claimant, potential claimants, third parties, and insurers of claimants or third parties, copies of finance vouchers evidencing payment of claims, and similar relevant information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 31 U.S.C. 3711, Collection and Compromise; Army Regulation 27–20, Claims; and E.O. 9397 (SSN).

PURPOSE(S):

To develop and preserve all relevant evidence about incidents, which generate claims against or in favor of the Army. Evidence developed is used as a legal basis to support the settlement of claims. Data are also used as a management tool to supervise claims operations at subordinate commands worldwide.

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:

To the Internal Revenue Service for tax purposes.

To the Department of Justice for assistance in deciding disposition of claims filed against or in favor of the Government and for considering criminal prosecution, civil court action or regulatory orders.

To the U.S. Claims Court and the Court of Appeals for the Federal Circuit, to support legal actions, considerations or evidence to support proposed legislative or regulatory changes, for budgetary purposes, for quality control or assurance type studies, or to support action against a third party.

To Foreign governments for use in settlements of claims under the North Atlantic Treaty Organization Status of Forces Agreement or similar international agreements.

To the State governments for use in defending or prosecuting claim by the state or its representatives.

To the Department of Labor, for consideration in determining rights under Federal Employees Compensation Act or similar legislation.

To civilian and Government experts for assistance in evaluating the claim.

To the Office of Management and Budget for preparation of private relief bills for presentation to the Congress.

To Government contractors for use in defending or settling claims filed against them, including recovery actions, arising out of the performance of a Government contract.

To Federal and state workmen's compensation agencies for use in adjudicating claims.

To private insurers with a legal interest in the same case.

To potential joint tort-feasors or their representatives for the purpose of prosecuting or defending claims for contribution or indemnity.

Information from this system of records may also be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By last name, Social Security Number, or claim number.

SAFEGUARDS:

Records are accessible only by authorized personnel who are properly instructed in the permissible use of the information, buildings housing records are locked after normal business hours.

RETENTION AND DISPOSAL:

Destroyed when no longer needed (claims reports); after 5 years (claims journals); after 6 years, 3 months (investigative reports, except those relating to medical malpractice); or 10 years (medical malpractice investigative reports, claims files).

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the Army, 2200 Army Pentagon, Washington, DC 20310–2200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Claims Service, 4411 Llewellyn Avenue, Fort Meade, MD 20755–5360.

Individual should provide full name, current address and telephone number, claim number if known, date and place of incident giving rise to the claim, and any other personal identifying data that would assist in determining location of the records.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Claims Service, 4411 Llewellyn Avenue, Fort Meade, MD 20755–5360.

Individual should provide full name, current address and telephone number, claim number if known, date and place of incident giving rise to the claim, and any other personal identifying data that would assist in determining location of the records.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records contesting contents, and

appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; investigative reports originating in the Department of the Army, Federal Bureau of Investigation, and/or foreign, state, or local law enforcement agencies; medical treatment facilities; Armed Forces Institute of Pathology; relevant records and reports in the Department of Defense.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–5a DASG

SYSTEM NAME

DoD Health Surveillance/Assessment Registries (August 5, 2002, 67 FR 50655).

CHANGES:

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry ''**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.''

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A0040–5a DASG

SYSTEM NAME:

DoD Health Surveillance/Assessment Registries.

SYSTEM LOCATION:

U.S. Army Center for Health Promotion and Prevention Medicine, 5158 Blackhawk Road, Aberdeen Proving Ground, MD 21010–5403; and Army Medical Surveillance Activity, Building T–20, Room 213, 6900 Georgia Avenue, NW., Washington, DC 20307–5001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual that participates in a DoD health survey.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in this system of records originates from health surveys/assessments (*e.g.*, Pentagon Post Disaster Health Assessment) conducted by or for the Department of Defense. Records being maintained include individual's name, Social Security Number, date of birth, sex, branch of service, home address, age, medical treatment facility, condition of medical and physical health and capabilities, responses to survey questions, register number assigned, and similar records, information and reports, relevant to the various registries, (*e.g.*, cancer, Human Immunodeficiency Virus (HIV), serum repository).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 3013, Secretary of the Army, 10 U.S.C. 8013, Secretary of the Air Force, 10 U.S.C. 5013, Secretary of the Navy; DoD Instruction 1100.13, Surveys of DoD Personnel; DoD Directive 6490.2, Joint Medical Surveillance; DoD Directive 6490.3, Implementation and Application of Joint Medical Surveillance for Deployments; and E.O. 9397 (SSN).

PURPOSE(S):

To record, store and document injury, illness and exposure to chemical/biochemical elements, and collect data for statistical purposes. To enhance efficient management practices and effective analysis and comparisons of statistical data utilized in the public health assessment data registry.

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 the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Information is retrieved by individual's name, Social Security Number, and registry number.

SAFEGUARDS:

Records are maintained within secured buildings in areas accessible only to persons having official need, and who therefore are properly trained and screened. Automated segments are protected by controlled system passwords governing access to data.

RETENTION AND DISPOSAL:

Records are destroyed when no longer needed for reference and for conducting business.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Center for Health Promotion and Prevention Medicine, 5158 Blackhawk Road, Aberdeen Proving Ground, MD 21010–5403.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Center for Health Promotion and Prevention Medicine, 5158 Blackhawk Road, Aberdeen Proving Ground, MD 21010–5403.

For verification purposes, individual should provide the full name, Social Security Number, details which will assist in locating record, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Center for Health Promotion and Prevention Medicine, 5158 Blackhawk Road, Aberdeen Proving Ground, MD 21010–5403.

For verification purposes, individual should provide the full name, Social Security Number, details which will assist in locating record, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual and mortality reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–31b DASG

SYSTEM NAME:

Research and Experimental Case Files (August 7, 1997, 62 FR 42530).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry ''**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.''

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A0040–31b DASG

SYSTEM NAME:

Research and Experimental Case Files.

SYSTEM LOCATION:

U.S. Army Medical Research Institute of Chemical Defense, Aberdeen Proving Ground, MD 21010–5425.

SYSTEM LOCATION:

Individual research/test/medical documents (paper records) are contained in individual's health record which, for reserve and retired military members, is at the U.S. Army Reserve Components Personnel and Administration Center, St. Louis, MO; for other separated military members, is at the National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132–5200; for military members on active duty, is at the servicing medical facility/center; for civilians (both Federal employees and prisoners) is in a special file at the National Personnel Records Center.

As paper records are converted to microfiche, the original (silver halide) and 1 copy of the microfiche will be located at the Washington National Records Center; 1 copy will be located at Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, Attn: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013; 1 copy will reside with the Army contractor—the National Academy of Sciences; and 1 copy retained at the U.S. Army Medical Research Institute of Chemical Defense.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Volunteers (military members, Federal civilian employees, state prisoners) who participated in Army tests of potential chemical agents and/or antidotes from the early 1950's until the program ended in 1975.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual pre-test physical examination records and test records of performance and biomedical parameters measured during and after test exposure.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 40–31, Armed Forces Institute of Pathology and Armed Forces Histopathology Centers; and E.O. 9397 (SSN).

PURPOSE(S):

To follow up on individuals who voluntarily participated in Army chemical/biological agent research projects for the purpose of assessing risks/hazards to them, and for retrospective medical/scientific evaluation and future scientific and legal significance.

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:

Information may be disclosed to the Department of Veterans Affairs in connection with benefits determinations.

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in individual's medical file folders and electronic storage media.

RETRIEVABILITY:

Paper records in individual's health record are retrieved by surname and/or service number/Social Security Number. Microfiche are retrieved by individual's surname.

SAFEGUARDS:

Records are maintained in secured areas accessible only to authorized individuals having official need therefore in the performance of assigned duties.

RETENTION AND DISPOSAL:

Paper medical records in an individual's health record are retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, Attn: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Medical Research Institute of Chemical Defense, Aberdeen Proving Ground, MD 21010–5400.

Individual should provide full name, Social Security Number, current address and telephone number of the requester.

For personal visits, the individual should be able to provide acceptable identification such as valid driver's license, employer or other individually identifying number, building pass, *etc.*

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Medical Research Institute of Chemical Defense, Aberdeen Proving Ground, MD 21010–5400.

Individual should provide full name, Social Security Number, current address and telephone number of the requester.

For personal visits, the individual should be able to provide acceptable identification such as valid driver's license, employer or other individually identifying number, building pass, *etc.*

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and

appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual through test/questionnaire forms completed at test location; from medical authorities/sources by evaluation of data collected previous to, during, and following tests while individual was in this research program.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0040–66b DASG

SYSTEM NAME:

Health Care and Medical Treatment Record System (April 13, 2001, 66 FR 19151).

CHANGES:

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry ''**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.''

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A0040–66b DASG

SYSTEM NAME:

Health Care and Medical Treatment Record System.

SYSTEM LOCATION:

Army Medical Department facilities and activities. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military members of the Armed Forces (both active and inactive); family members; civilian employees of the Department of Defense; members of the U.S. Coast Guard, Public Health Service, and National Oceanic and Atmospheric Agency; cadets and midshipmen of the military academies; employees of the American National Red Cross; and other categories of individuals who receive medical treatment at Army Medical Department facilities/activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical records (of a permanent nature) used to document health; psychological and mental hygiene consultation and evaluation; medical/dental care and treatment for any health or medical condition provided an eligible individual on an inpatient and/or outpatient status to include but not limited to: health; clinical (inpatient); outpatient; dental; consultation; and procurement and separation x-ray record files; and Human Immunodeficiency Virus (HIV) blood sampling results to identify Acquired Immune Deficiency Syndrome (AIDS); and Psychological Assessment and Selection Case records.

Subsidiary medical records (of a temporary nature) are also maintained to support records relating to treatment/observation of individuals. Such records include but are not limited to: Social work case files, inquiries/complaints about medical treatment or services rendered by the medical treatment facility, and patient treatment x-ray and index files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 1071–1085, Medical and Dental Care; 50 U.S.C. Supplement IV, Appendix 454, as amended, Persons liable for training and service; 42 U.S.C. Chapter 117, Sections 11131–11152, Reporting of Information; 10 U.S.C. 1097a and 1097b TRICARE Prime and TRICARE Program; 10 U.S.C. 1079, Contracts for Medical Care for Spouses and Children; 10 U.S.C. 1079a, CHAMPUS; 10 U.S.C. 1086, Contracts for Health Benefits for Certain Members, Former Members, and Their Dependents; E.O. 9397 (SSN); DoD Instruction 6015.23, Delivery of Healthcare at Military Treatment Facilities (MTFs); DoD Directive 6040.37, Confidentiality of Medical Quality Assurance (QA) Records; DoD 6010.8–R, Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Army Regulation 40–66, Medical Record Administration and Health Care Documentation.

PURPOSE(S):

To provide health care and medical treatment of individuals; to establish tuberculosis/tumor/cancer/Human Immunodeficiency Virus (HIV) registries; for research studies; compilation of statistical data and management reports; to implement preventive medicine, dentistry, and communicable disease control programs; to adjudicate claims and determine benefits; to evaluate care rendered; determine professional certification and hospital accreditation; and determine medical and psychological suitability of persons for service or assignment.

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:

Information may be disclosed to the Department of Veterans Affairs to adjudicate veterans' claims and provide medical care to Army members.

National Research Council, National Academy of Sciences, National Institutes of Health, Armed Forces Institute of Pathology, and similar institutions for authorized health research in the interest of the Federal Government and the public. When not essential for longitudinal studies, patient identification data shall be eliminated from records used for research studies. Facilities/activities releasing such records shall maintain a list of all such research organizations and an accounting disclosure of records released thereto.

To local and state government and agencies for compliance with local laws and regulations governing control of communicable diseases, preventive medicine and safety, child abuse, and other public health and welfare programs.

Third party payers per 10 U.S.C. 1095 as amended by Pub. L. 99–272, and guidance provided to the DoD health services by DoD Instruction 6015.23, for the purpose of collecting reasonable inpatient/outpatient hospital care costs incurred on behalf of retirees or dependents.

To former DoD health care providers, who have been identified as being the subjects of potential reports to the National Practitioner Data Bank as a result of a payment having been made on their behalf by the U.S. Government in response to a malpractice claim or litigation, for purposes of providing the provider an opportunity, consistent with the requirements of DoD Instruction 6025.15 and Army Regulation 40–68, to provide any pertinent information and to comment on expert opinions, relating to the claim for which payment has been made.

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Army's

compilation of systems of records notices also apply to this system.

Note: Records of identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The DoD ''Blanket Routine Uses'' do not apply to these types of records.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; x-ray film preservers; and electronic storage media.

RETRIEVABILITY:

By patient or sponsor's surname or by sponsor's Social Security Number.

SAFEGUARDS:

Records are maintained in buildings that employ security guards and are accessed only by authorized personnel having an official need-to-know. Automated segments are protected by controlled system passwords governing access to data.

RETENTION AND DISPOSAL:

Military health/dental and procurement/separation x-ray records are permanent. Clinical (inpatient), outpatient, dental and consultation record files for military members are destroyed after 50–75 years.

All records (except the Military Health/Dental records) which are active while individual is on active duty, then retired with individual's Military Personnel Records Jacket and the procurement/separation x-ray records which are forwarded to the National Personnel Records Center on an accumulation basis) are retained in an active file while treatment is provided and subsequently held for a period of 1 to 5 years following treatment before being retired to the National Personnel Records Center. Subsidiary medical records, of a temporary nature, are normally not retained long beyond termination of treatment; however, supporting documents determined to have significant documentation value to patient care and treatment are incorporated into the appropriate permanent record file. Until the National Archives and Records Administration approves the disposition of Psychological Assessment and Selection Case records, treat as permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Medical Command, Suite 13, 2050 Worth Road, Fort Sam Houston, TX 78234–6010.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the medical facility where treatment was provided. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

Red Cross employees may write to the Medical Officer, American National Red Cross, 1730 E Street, NW., Washington, DC 20006. For verification purposes, the individual should provide the full name, Social Security Number of sponsor, and current address and telephone number. Inquiry should include name of the hospital, year of treatment and any details that will assist in locating the records.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the medical facility where treatment was provided. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

Red Cross employees may write to the Medical Officer, American National Red Cross, 1730 E Street, NW., Washington, DC 20006. For verification purposes, the individual should provide the full name, Social Security Number of sponsor, and current address and telephone number. Inquiry should include name of the hospital, year of treatment and any details that will assist in locating the records.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Subject individual, personal interviews and history statements from the individuals; abstracts or copies of pertinent medical records; examination records of intelligence, personality, achievement, and aptitude; reports from attending and previous physicians and other medical personnel regarding results of physical, dental, and mental examinations, treatment, evaluation, consultation, laboratory, x-ray and special studies and research conducted to provide health care and medical treatment; and similar or related documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0070–45 DASG

SYSTEM NAME:

Medical Scientific Research Data Files (December 1, 2000, 65 FR 75249).

CHANGES:

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry ''**NOTE:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.''

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A0070–45 DASG

SYSTEM NAME:

Medical Scientific Research Data Files.

SYSTEM LOCATION:

Primary locations: U.S. Army Medical Research and Development Command, 504 Scott Street, Fort Detrick, MD 21701–5009. U.S. Army Chemical Research, Development, and Engineering Center, Aberdeen Proving Ground, MD 21010–5423;

Secondary locations: Letterman Army Institute of Research, Presidio of San Francisco, CA 94129–6800;

Walter Reed Army Institute of Research, Washington, DC 20307–5104;

U.S. Army Aeromedical Research Laboratory, Fort Rucker, AL 36362–5000;

U.S. Army Institute of Dental Research, Washington, DC 20307–5300;

U.S. Army Institute of Dental Research, Fort Sam Houston, TX 78234–6200;

U.S. Army Medical Bioengineering Research and Development Laboratory, Fort Detrick, MD 21701–5010;

U.S. Army Medical Research Institute of Chemical Defense, Aberdeen Proving Ground, MD 21010–5425;

U.S. Army Medical Research Institute of Infectious Diseases, 1425 Porter Street, Fort Detrick, MD 21702–5011;

U.S. Army Research Institute of Environmental Medicine, Natick, MA 01760–5007; and

U.S. Army Research Institute of Infectious Diseases, 1425 Porter Street, Fort Detrick, MD 21702–5011.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Volunteers who participate in the Sandfly Fever (Clinical Research Data) studies at the U.S. Army Medical Research Institute of Infectious Diseases; individuals who participate in research sponsored by the U.S. Army Medical Research and Development Command and the U.S. Army Chemical Research, Developments, and Engineering Center; and individuals at Fort Detrick who have been immunized with a biological product or who fall under the Occupational Health and Safety Act or Radiologic Safety Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Participant's name, Social Security Number, age, race, date of birth, occupation, titers, body temperature, pulse, blood pressure, respiration, urinalysis, immunization, schedules, blood serology, amount of dosage, reaction to immunization radiologic agents, exposure level, health screening result, health test schedule, test protocols, challenge materials, inspection, after action reports, medical support plans, summaries of pre and post test physical exams parameter and other related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C., Chapter 55, Medical and Dental Care; Army Regulation 70–25, Use of Volunteers as Subjects of Research; Army Regulation 70–45, Scientific and Technical Information Program; Occupational Safety and Health Administration Act of 1970; and E.O. 9397 (SSN).

PURPOSE(S):

To create a database of immunological or vaccinal data for research purposes.

To answer inquiries and provide data on health issues of individuals who participated in research conducted or sponsored by U.S. Army Medical Research Institute of Infectious Diseases, U.S. Army Medical Research and Development Command, and U.S. Army Chemical Research, Development, and Engineering Center.

To provide individual participants with newly acquired information that may impact their health.

To maintain and manage scheduling of health screening tests immunizations, physicals, safety and immunogenicity and other special procedures for a given vaccine or biosurveillance program, radiologic safety program and occupational health safety program.

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:

To the Department of Veteran Affairs to assist in making determinations relative to claims for service connected disabilities; and other such benefits.

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file cabinets and automated computer systems that are backed up daily.

RETRIEVABILITY:

By individual's name and Social Security Number.

SAFEGUARDS:

Computerized and paper records are maintained in controlled areas. Access is restricted to authorized personnel only.

RETENTION AND DISPOSAL:

Special Immunization System Records are permanent; Research Volunteer Registry records are maintained for 65 years then destroyed; and Clinical Research Data records are maintained until they have no further research value then destroyed.

SYSTEMS MANAGER(S) AND ADDRESS:

Commander, U.S. Army Medical Research Institute of Infectious Diseases, 1425 Porter Street, Fort Detrick, MD 21702–5011 for special immunization records.

Office of The Surgeon General, Headquarters, Department of Army, 5109 Leesburg Pike, Falls Church, VA 22041–3258 for all other records maintained in this system of records.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the appropriate system manager.

For verification purposes the individual should provide full name, Social Security Number, military status or other information verifiable from the record itself.

For personal visits, the individual should be able to provide acceptable identification such as valid driver's license, employer, or other individually identifying number, and building pass.

Individual should provide his/her full name, address and telephone number, Social Security Number, date of birth, and any other personal data which would assist in identifying records pertaining to him/her.

RECORD SOURCE CATEGORIES:

From quantitative data obtained from investigative staff, research/test results, individuals concerned, interviews, clinical laboratory results/reports, immunization results, records and other relevant tests.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From quantitative data obtained from investigative staff and clinical laboratory reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0351 DASG

SYSTEM NAME:

Army School Student Files: Physical Therapy Program (March 23, 1999, 64 FR 13972).

CHANGES:

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry ''**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.''

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A0351 DASG

SYSTEM NAME:

Army School Student Files: Physical Therapy Program.

SYSTEM LOCATION:

Commandant, Academy of Health Services, Physical Therapy Branch, 3151 Scott Road, Suite 1230, Fort Sam Houston, TX 78234–6138.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Graduates of the U.S. Army Physical Therapy Program since 1928.

CATEGORIES OF RECORDS IN THE SYSTEM:

Academic grades only on graduates from 1973 to present. Academic grades and varying amounts and types of anecdotal information on performance: 1945–1972.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army and Army Regulation 40–1, Composition, Mission, and Functions of the Army Medical Department.

PURPOSE(S):

To provide certification of graduation from an approved physical therapy program to the individual graduate.

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 the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Paper records in file folders:

RETRIEVABILITY:

By last name of graduate.

SAFEGUARDS:

Records are in closed files, accessible only to designated officials having need therefore in the performance of their duties.

RETENTION AND DISPOSAL:

Records are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant, Academy of Health Services, Physical Therapy Branch, 3151 Scott Road, Suite 1230, Fort Sam Houston, TX 78234–6138.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commandant, Academy of Health Services, Physical Therapy Branch, Attn: MCCS HMT, 3151 Scott Road, Suite 1230, Fort Sam Houston, TX 78234–6138.

For verification purposes, the individual should provide the full name, maiden name if married, year of graduation, current address, institution and complete address to which transcript is to be mailed if other than that of individual concerned.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commandant, Academy of Health Services, Physical Therapy Branch, Attn: MCCS HMT, 3151 Scott Road, Suite 1230, Fort Sam Houston, TX 78234–6138.

For verification purposes, the individual should provide the full name, maiden name if married, year of graduation, current address, institution and complete address to which transcript is to be mailed if other than that of individual concerned.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Staff and faculty of appropriate school and/or training hospital responsible for presentation of instruction.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0351a DASG

SYSTEM NAME:

U.S. Army Medical Department School and Academy of Health Sciences Academic Records (August 12, 2002, 67 FR 52456).

CHANGES:

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry ''**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.''

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A0351a DASG

SYSTEM NAME:

U.S. Army Medical Department School and Academy of Health Sciences Academic Records.

SYSTEM LOCATION:

U.S. Army Medical Department Center and School, Academy of Health Sciences, Department of Academic Support, 2250 Stanley Road, Fort Sam Houston, TX 78234–6100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Resident and correspondence students enrolled in courses at the Academy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Student's name, Social Security Number, grade/rank, academic qualifications, progress reports, academic grades, ratings attained, aptitudes and personal qualities, including corporate fitness results; faculty board records pertaining to class standing/rating/classification/ proficiency of students; class academic records maintained by instructors indicating attendance and progress of class members.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 351–3, Professional Education and Training Programs of the Army Medical Department; and E.O. 9397 (SSN).

PURPOSE(S):

To determine eligibility for enrollment/attendance, monitor student progress, record accomplishments, and serve as record of courses which may be prerequisite for other formal courses of instruction, licensure, certification, and employment.

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:

Information may be disclosed to civilian medical institutions for the purpose of accrediting the individual's training and instruction.

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, microfiche, cards, magnetic tape and/or disc, and computer printouts.

RETRIEVABILITY:

By individual's name and Social Security Number.

SAFEGUARDS:

Access to all records is restricted to designated individuals whose official duties dictate the need therefore.

RETENTION AND DISPOSAL:

Academic records are maintained 40 years at the Academy of Health Sciences. Except for the master file, automated data are erased after the fourth updating cycle.

SYSTEM MANAGER(S) AND ADDRESS:

Registrar, Academy of Health Sciences, 2250 Stanley Road, Fort Sam Houston, TX 78234–6000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Registrar, Academy of Health Sciences, 2250 Stanley Road, Fort Sam Houston, TX 78234–6000.

For verification purposes, individual should provide the full name, Social Security Number, date attended/ enrolled, current address, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Registrar, Academy of Health Sciences, 2250 Stanley Road, Fort Sam Houston, TX 78234–6000.

For verification purposes, individual should provide the full name, Social Security Number, date attended/ enrolled, current address, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual and Academy of Health Sciences' staff and faculty.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0600–8–1b TAPC

SYSTEM NAME:

Line of Duty Investigations (March 13, 2001, 66 FR 14559).

CHANGES:

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry ''**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.''

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A0600–8–1b TAPC

SYSTEM NAME:

Line of Duty Investigations (March 13, 2001, 66 FR 14559).

SYSTEM LOCATION:

Personnel Plans and Actions Branch, Personnel Service Center at Army Installations; Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249–0601; U.S. Total Army Personnel Command, Alexandria, VA 22332–0400; U.S. Army Reserve Personnel Center, 9700 Page Avenue, St. Louis, MO 63132–5200; National Personnel Records Center (Military), 9700 Page Avenue, St. Louis, MO 63132–5200; National Guard Bureau, 5109 Leesburg Pike, Falls Church, VA 22041–3258; and Regional Support Centers for U.S. Army Reserve. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty, Reserve and National Guard members who have been injured, diseased or deceased and who are in a duty status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Statement of Medical Examination and Duty Status; Report of Investigation-Line of Duty and Misconduct Status; approval/disapproval authority memoranda, and other relevant supporting documents such as military police reports, accident reports, witness statements, and appointment instruments, and action on appeals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 972, Members: Effect of time lost; 10 U.S.C. 1204, Members, on Active Duty for 30 days or less or on inactive duty training: retirement; 10 U.S.C. 1207, Disability from intentional misconduct of willful neglect: separation; 10 U.S.C. 3013, Secretary of the Army; 37 U.S.C. 802, Forfeiture of pay during absence from duty due to disease from intemperate use of alcohol or drugs; Army Regulation 600–8–1, Army Casualty Operation/Assistance/ Insurance; and E.O. 9397 (SSN).

PURPOSE(S):

To review facts and circumstances of service member's death, injury or disease and render decisions having the effect of approving/denying certain military benefits, pay and allowances.

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:

Information may be provided to the Department of Veterans Affairs for the purpose of determining the service member's entitlement to benefits.

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, microfiche and electronic storage media.

RETRIEVABILITY:

By Social Security Number and by service member's surname.

SAFEGUARDS:

Paper records in file folders are maintained in file cabinets accessible only to authorized personnel in the performance of their duties. Electronic storage media accessible to authorized personnel with password capability.

RETENTION AND DISPOSAL:

Documents related to determining line of duty status and incident investigation concerning individual Army members are maintained for 5 years then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249–0601 (For enlisted personnel on active duty); Commander, U.S. Total Army Personnel Command, Alexandria, VA 22332–0400 (For officers on active duty); Commander, U.S. Army Reserve Personnel Center, 9700 Page Avenue, St. Louis, MO 63132–5200 (For Army reserve personnel); National Personnel Records Center (Military), 9700 Page Avenue, St. Louis, MO 63132–5200 (For separated enlisted and officer personnel); National Guard Bureau, 5109 Leesburg Pike, Falls Church, VA 22041–3258 (For full-time National Guard Duty under 32 U.S.C., those in federalized status, or those attending active Army service school).

Individuals should provide the full name, Social Security Number, present address, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249–0601 (For enlisted personnel on active duty); Commander, U.S. Total Army Personnel Command, Alexandria, VA 22332–0400 (For officers on active duty); Commander, U.S. Army Reserve Personnel Center, 9700 Page Avenue, St. Louis, MO 63132–5200 (For Army reserve personnel); National Personnel Records Center (Military), 9700 Page Avenue, St. Louis, MO 63132–5200 (For separated enlisted and officer personnel); National Guard Bureau, 5109 Leesburg Pike, Falls Church, VA 22041–3258 (For full-time National Guard Duty under 32 U.S.C., those in federalized status, or those attending active Army service school).

Individuals should provide the full name, Social Security Number, present address, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

Appeals of determinations by authority of the Secretary of the Army are governed by AR 600–8–1, Army Casualty and Memorial Affairs and Line of Duty Investigations; collateral review of decided cases is limited to questions of completeness of the records of such determinations.

RECORD SOURCE CATEGORIES:

From the individual, medical records, service member's commander, official Army records and reports, witness statements, civilian and military law enforcement agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0600–85 DAPE

SYSTEM NAME:

Army Substance Abuse Program (July 31, 2002, 67 FR 49678).

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry ''**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.''

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A0600–85 DAPE

SYSTEM NAME:

Alcohol and Drug Abuse Rehabilitation Files.

SYSTEM LOCATION:

Primary location: Army Substance Abuse Program (ASAP) rehabilitation/ counseling facilities (*e.g.*, Community Counseling Center/ASAP Counseling Facilities) at Army installations and activities. Official mailing addresses are published as an appendix to the Army's compilation of record system notices. Secondary location: Army Center for Substance Abuse Program, ATTN: PEDA, Suite 320, 4501 Ford Avenue, Alexandria, VA 22302–1460.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Eligible military members, civilians employees, family members of military members and retirees who are screened and/or enrolled in the Army Substance Abuse Program (ASAP), federal civilians in testing designated positions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Primary location: Copies of patient intake records, progress reports, psychosocial histories, counselor observations and impressions of patient's behavior and rehabilitation progress, copies of medical consultation and laboratory procedures performed, results of biochemical urinalysis for alcohol/drug abuse, Patient Intake/Screening record-PIR (DA Form 4465–R); Patient Progress Report-PPR (DA Form 4466–R); Resource and Performance Report (DA Form 3711–R); and Specimen Custody Document-Drug Testing (DD Form 2624), and similar or related documents.

Secondary location: Copies of Patient Intake/Screening record-PIR (DA Form 4465–R); Patient Progress Report-PPR (DA Form 4466–R); Resource and Performance Report (DA Form 3711–R); and Specimen Custody Document-Drug Testing (DD Form 2624), and demographic composites thereof.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 290dd–2; Federal Drug Free Workplace Act of 1988; Army Regulation 600–85, Army Substance Abuse Program; and E.O. 9397 (SSN).

PURPOSE(S):

To identify alcohol and drug abusers within the Army; to treat, counsel, and rehabilitate individuals who participate in the Army Substance Abuse Program; to judge the magnitude of drug and alcohol abuse in the Army.

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 the Army's compilation of systems of records notices do not apply to this system.

The Patient Administration Division at the medical treatment facility with jurisdiction is responsible for the release of medical information to malpractice insurers in the event of malpractice litigation or prospect thereof.

Information is disclosed only to the following persons/agencies:

To health care components of the Department of Veterans Affairs furnishing health care to veterans.

To medical personnel to the extent necessary to meet a bona fide medical emergency.

To qualified personnel conducting scientific research, audits, or program evaluations, provided that a patient may not be identified in such reports, or his or her identity further disclosed by such personnel.

In response to a court order based on the showing of good cause in which the need for disclosure and the public's interest is shown to exceed the potential harm that would be incurred by the patient, the physician-patient relationship, and the Army's treatment program. Except as authorized by a court order, no record may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.

Note: Records of identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974 to the extent that disclosure is more limited. However, access to the record by the individual to whom the record pertains is governed by the Privacy Act.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in locked metal containers; computer database; computer magnetic discs/tapes.

RETRIEVABILITY:

By patient's surname; Social Security Number or other individually identifying characteristics.

SAFEGUARDS:

Records are maintained in storage areas in locked file cabinets where access is restricted to authorized persons having an official need-to-know.

RETENTION AND DISPOSAL:

Primary location: Records are destroyed 5 years after termination of the patient's treatment, unless the Army Medical Department Activity/Facility commander authorizes retention for an additional 6 months.

Secondary location: Manual records are retained up to 18 months or until information taken there from and entered into computer records is transferred to the ''history'' file, whichever is sooner. Disposal of manual records is by burning or shredding. Computer records are retained permanently for historical and/or research purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army (DAPE–HR–PR), 300 Army Pentagon, Washington, DC 20320–3000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to either the commander of the medical center/medical department activity where treatment was obtained or the Army Center for Substance Abuse Programs, 4501 Ford Avenue, Suite 320, Alexandria, VA 22302–1460. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

Individual should provide the full name, Social Security Number, date of birth, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to either the commander of the medical center/medical department activity where treatment was obtained or the Army Center for Substance Abuse Programs, 4501 Ford Avenue, Suite 320, Alexandria, VA 22302–1460. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

Individual should provide the full name, Social Security Number, date of birth, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

Denial to amend records in this system can be made only by the Deputy Chief of Staff for Personnel in coordination with The Surgeon General.

RECORD SOURCE CATEGORIES:

From the individual by interviews and history statement; abstracts or copies of pertinent medical records; abstracts from personnel records; results of tests; physicians' notes, observations of client's behavior; related notes, papers, and forms from counselor, clinical director, and/or commander.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0601–141 DASG

SYSTEM NAME:

Applications for Appointment to Army Medical Department (December 4, 2001, 66 FR 63048).

CHANGES:

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry ''**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.''

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A0601–141 DASG

SYSTEM NAME:

Applications for Appointment to Army Medical Department.

SYSTEM LOCATION:

Primary location: Commander, U.S. Army Recruiting Command, Health Services Directorate, Fort Knox, KY 40121–2726. Secondary locations: Army Medical Department Health Care Recruiting Teams/Stations. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Potential healthcare professional applicants, to include civilian, active duty and reserve duty personnel, applying for appointment in the U.S. Army and the U.S. Army Reserve with or without concurrent call to active duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Health Care Recruiter interview, resume, Curriculum Vitae, autobiography, letters of recommendation, selection/non-selection letters, Special Orders, correspondence to, from, and about applicant; Selection Board/Committee results, Statement of Interests, Objectives and Motivation, Letter of Appointment, service agreement, Application for Appointment, oath of office, professional degrees, license certifications, quality assurance documents, prior service records, physical examination, National Practitioner, and birth certificate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 601–100, Appointment of Commissioned and Warrant Officers in the Regular Army; and E.O. 9397 (SSN).

PURPOSE(S):

To evaluate an applicant's acceptability and potential for appointment in the U.S. Army Reserve of the Army Medical Department; to evaluate qualifications for assignment to various career areas; to determine educational and experience background for award of constructive service credit; to determine dates of service and seniority to document service agreement with the U.S. Army; to provide, statistical information for effective management of the Army Medical Department Recruiting Program.

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 the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By applicant's name and/or Social Security Number.

SAFEGUARDS:

Records are restricted to designated officials having a need-to-know in the performance of official duties.

RETENTION AND DISPOSAL:

Records of selected applicants are held for 1 year before being destroyed by shredding; those for applicants not selected are held 1 year and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Recruiting Command, Health Services Directorate, Fort Knox, KY 40121–2726.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Recruiting Command, Health Services Directorate, Fort Knox, KY 40121–2726.

For verification purposes, the individual should provide full names, Social Security Number, sufficient details to permit locating pertinent records, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Recruiting Command, Health Services Directorate, Fort Knox, KY 40121–2726.

For verification purposes, the individual should provide full name, Social Security Number, sufficient details to permit locating pertinent records, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; academic transcripts; faculty evaluations; employer evaluations; military supervisor evaluations; American Testing Program; Educational Testing Service; selection board/committee records; prior military service records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

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

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

A0601–210a USAREC

SYSTEM NAME:

Enlisted Eligibility Files (February 22, 1993, 58 FR 10002).

CHANGES:

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry ''**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.''

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A0601–210a USAREC

SYSTEM NAME:

Enlisted Eligibility Files.

SYSTEM LOCATION:

U.S. Army Recruiting Command, Fort Knox, KY 40121–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for the Regular Army who have requested a waiver of moral eligibility for a juvenile or adult felony; determination of medical/Military Occupational Specialty qualifications, determination of Stripes for Skills qualification; exceptions to policy; determination of enlistment eligibility, and prior service personnel requesting a mental retest.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's request, evaluation documents, decisions, replies concerning approval/disapproval.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 504, Persons not qualified; and Army Regulation 601–210, Regular Army and Army Reserve Enlistment Program.

PURPOSE(S):

To make determinations on the moral, medical, and administrative waivers of applicants for the Regular Army.

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 the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are accessed only by designated individuals having official need therefore in the performance of assigned duties.

RETENTION AND DISPOSAL:

Destroyed after 2 years, by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Recruiting Command, Fort Knox, KY 40121–5000.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether or not information on them is contained in this system of records should write to the Commander, U.S. Army Recruiting Command, Attn: USARCRM–M, Fort Knox, KY 40121–5000, furnishing full name, Military Status, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records about themselves should write to the Commander, U.S. Army Recruiting Command, Attn: USARCRM–M, Fort Knox, KY 40121–5000, furnishing full name, Military Status, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, employers, probation officials, law enforcement officials, school officials, personal references, transcripts, medical records, Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

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

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and published in 32 CFR part 505. For additional information contact the system manager.

A0608–18 DASG

SYSTEM NAME

Army Family Advocacy Program Files (August 21, 2001, 66 FR 43847).

CHANGES:

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Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Add to end of entry ''**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of

1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.''

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A0608–18 DASG

SYSTEM NAME:

Army Family Advocacy Program Files.

SYSTEM LOCATION:

Primary location: Director, U.S. Army Patient Administration Systems and Biostatistics Activity, Attn: MCHS–ISF, 1216 Stanley Road, Fort Sam Houston, TX 778234–5053.

Secondary location: Any Army medical treatment facility which supports the Family Advocacy Program (FAP). Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Eligible military members and their family, and DoD civilians who participate in the Family Advocacy Program (FAP).

CATEGORIES OF RECORDS IN THE SYSTEM:

Family Advocacy Case Review Committee (CRC) records of established cases of child/spouse abuse or neglect to include those occurring in Army sanctioned or operated activities. Files may contain extracts of law enforcement investigative reports, correspondence, Case Review Committee reports, treatment plans and documentation of treatment, follow-up and evaluative reports, supportive data relevant to individual family advocacy Case Review Committee files, summary statistical data reports and similar relevant files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 10606 *et seq.*, Victims' Rights, as implemented by Department of Defense Instruction 1030.2, Victim and Witness Assistance Program; Army Regulation 608–18, The Family Advocacy Program; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain records that identify, monitor, track and provide treatment to alleged offenders, eligible victims and their families of substantiated spouse/child abuse, and neglect. To manage prevention programs to reduce the incidence of abuse throughout the Army military communities.

To perform research studies and compile statistical data.

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:

Information may be disclosed to departments and agencies of the Executive Branch of government in performance of their official duties relating to coordination of family advocacy programs, medical care and research concerning child abuse and neglect, and spouse abuse.

The Attorney General of the United States or his authorized representatives in connection with litigation or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch agencies.

To federal, state, or local governmental agencies when it is deemed appropriate to use civilian resources in counseling and treating individuals or families involved in child abuse or neglect or spouse abuse; or when appropriate or necessary to refer a case to civilian authorities for civil or criminal law enforcement; or when a state, county, or municipal child protective service agency inquires about a prior record of substantiated abuse for the purpose of investigating a suspected case of abuse.

To the National Academy of Sciences, private organizations and individuals for health research in the interest of the Federal government and the public and authorized surveying bodies for professional certification and accreditation such as Joint Commission on the Accreditation of Health Care Organizations.

To victims and witnesses of a crime for purposes of providing information consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on electronic storage media.

RETRIEVABILITY:

By the sponsor's Social Security Number of an abused victim.

SAFEGUARDS:

Records are maintained in various kinds of filing equipment in specified monitored or controlled areas. Public access is not permitted. Records are accessible only to authorized personnel who are properly screened and trained, and have an official need-to-know. Computer terminals are located in supervised areas with access controlled by password or other user code system.

RETENTION AND DISPOSAL:

Disposition pending (until the National Archives and Records Administration has approved the retention and disposal of these records, treat as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Director, U.S. Army Community Family Support, 4700 King Street, Alexandria, VA 22302–4420.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the local Patient Administration Division Office; to the commander of the medical center or hospital where treatment was received; or to the Director, Patient Administration Systems and Biostatistics Activity, 126 Stanley Road, Fort Sam Houston, TX 78234–5053. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, the individual should provide the full name, Social Security Number of the patient's sponsor, and current address, date and location of treatment, and any details that will assist in locating the record, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this record system should address written inquiries to the local Patient Administration Division Office; to the commander of the medical center or

hospital where treatment was received; or to the Director, Patient Administration Systems and Biostatistics Activity, 126 Stanley Road, Fort Sam Houston, TX 78234–5053. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, the individual should provide the full name, Social Security Number of the patient's sponsor, and current address, date and location of treatment, and any details that will assist in locating the record, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations by the concerned individual are published in the Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, educational institutions, medical institutions, police and investigating officers, state and local government agencies, witnesses, and records and reports prepared on behalf of the Army by boards, committees, panels, auditors, etc. Information may also derive from interviews, personal history statements, and observations of behavior by professional persons (*i.e.*, social workers, physicians, including psychiatrists and pediatricians, psychologists, nurses, and lawyers).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

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

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

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and published in 32 CFR part 505. For additional information contact the system manager.

A0621–1 DASG

SYSTEM NAME:

Long-Term Civilian Training Student Control Files (July 27, 1993, 58 FR 40115).

CHANGES:

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add to end of entry ''**NOTE:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.''

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A0621–1 DASG

SYSTEM NAME:

Long-Term Civilian Training Student Control Files.

SYSTEM LOCATION:

U.S. Army Health Professional Support Agency, 5109 Leesburg Pike, Falls Church, VA 22041–3258.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Army Medical Department personnel currently participating in long-term civilian training on a fully funded basis.

CATEGORIES OF RECORDS IN THE SYSTEM:

Enrollment applications, notification of acceptance/rejection, contract between the Army and the civilian college or university, similar relevant documents and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 4301, Members of Army: Detail as students, observers, and investigator at educational institutions, industrial plants and hospitals; 10 U.S.C. 3013, Secretary of the Army; Army Regulation 621–1, Training of Military Personnel at Civilian Institutions; and E.O. 9397 (SSN).

PURPOSE(S):

To negotiate contract between the Army and a civilian academic institution for the purpose of sending Army Medical Department officer and enlisted personnel for long-term civilian training under fully funded programs.

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 the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Individual's name and/or Social Security Number.

SAFEGUARDS:

All records are maintained in secured offices in secured buildings. Electronic key required to access elevators to floor housing records during non-duty hours.

RETENTION AND DISPOSAL:

Records destroyed 2 years after an individual has completed training or has been canceled or withdrawn from the program.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Surgeon General, Headquarters, Department of the Army, 5109 Leesburg Pike, Falls Church, VA 22041–3258.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Health Professional Support Agency, Attn: SGPS–EDT, 5109 Leesburg Pike, Falls Church, VA 22044–3258.

For verification purposes, the individual should provide the full names, Social Security Number, current address, current unit of assignment (if on active duty), sponsoring program and calendar years in training, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Health Professional Support Agency, Attn: SGPS–EDT, 5109 Leesburg Pike, Falls Church, VA 22044–3258.

For verification purposes, the individual should provide the full names, Social Security Number, current address, current unit of assignment (if on active duty), sponsoring program and calendar years in training, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, or appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army records and reports, correspondence with the selecting academic institution.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–8016 Filed 4–3–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, April 17, 2003, 5:30 p.m.–9:15 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: W. Don Seaborg, Deputy Designated Federal Officer (DDFO), Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6806.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

5:30 p.m.—Informal Discussion
6 p.m.—Call to Order; Introductions; Approve March Minutes; Review Agenda
6:10 p.m.—DDFO's Comments
- Budget Update
- ES & H Issues
- EM Project Updates
- Citizen Advisory Board (CAB) Recommendation Status
- Other

6:30 p.m.—Ex-officio Comments
6:40 p.m.—Public Comments and Questions
6:50 p.m.—Review of Action Items
7:05 p.m.—Break
7:15 p.m.—Presentation
- Scrap Metal Removal Project Update
- C–410 Decontamination and Decommissioning Update
- Denver Chairs' Meeting Report

8:15 p.m.—Public Comments and Questions
8:25 p.m.—Task Force and Subcommittee Reports
- Water Task Force
- Waste Operations Task Force
- Long Range Strategy/Stewardship
- Community Concerns
- Public Involvement/Membership

8:55 p.m.—Administrative Issues
- Review of Workplan
- Review of Next Agenda
- Federal Coordinator Comments
- Final Comments

9:15 p.m.—Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Dollins at the address listed above or by telephone at (270) 441–6819. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy'sEnvironmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday thru Friday or by writing to David Dollins, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6819.

Issued at Washington, DC, on March 31, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–8217 Filed 4–3–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RT01–2–007]

PJM Interconnection, L.L.C.; Notice of Filing

March 31, 2003.

Take notice that on March 27, 2003, PJM Interconnection, L.L.C. (PJM), tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its March 20, 2003 compliance filing in the above-captioned proceeding.

Consistent with the effective date proposed in the March 20, 2003 compliance filing, PJM requests an effective date of March 20, 2003 for the amended compliance filing.

PJM states that it will promptly post the amended compliance filing on the PJM Web site (*http://www.pjm.com*) and will deliver a hard copy of the compliance filing to any person upon request. PJM requests that the Commission waive the service requirements of its Rule 2010(a) to the extent necessary to accommodate these arrangements.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be

considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: April 17, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8221 Filed 4–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–40–002, et al.]

ITC Holdings Corp., et al.; Electric Rate and Corporate Filings

March 27, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. ITC Holdings Corp., ITC Holdings Limited Partnership, DTE Energy Company, International Transmission Company, The Detroit Edison Company

[Docket Nos. EC03–40–002 and ER03–343–002]

Take notice that on March 24, 2003, ITC Holdings Corp. and International Transmission Company tendered for filing with the Federal Energy Regulatory Commission (Commission) a compliance filing pursuant to the Commission's February 20, 2003 order issued in the above-referenced proceedings (102 FERC ¶ 61,182).

Comment Date: April 14, 2003.

2. Green Country Energy, LLC

[Docket No. EC03–71–000]

Take notice that on March 25, 2003, Green Country Energy, LLC (Green Co. Energy) filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act for approval of the transfer of 100 percent of the membership interests in Green Co. Energy to Newco, LLC (Newco) and the simultaneous effective transfer of a 90 percent indirect non-managing membership interest in Green Co. Energy to GESF I and GESF II (together, GESF Members). Green Co. Energy states that GESF Members are indirect, wholly-owned subsidiaries of GE Structured Finance. Green Co. Energy states it owns 100 percent interest in a 795 MW (summer rated) generating facility (Facility) located in Jenks, Oklahoma.

Comment Date: April 15, 2003.

3. American Ref-Fuel Company of Essex County, American Ref-Fuel Company of Hempstead, SEMASS Partnership, American Ref-Fuel Company of Delaware Valley, L.P., MSW Energy Holdings LLC

[Docket No. EC03–72–000]

Take notice that on March 25, 2003, American Ref-Fuel Company of Essex County (ARC-Essex), American Ref-Fuel Company of Hempstead (ARC-Hempstead), SEMASS Partnership (SEMASS), American Ref-Fuel Company of Delaware Valley, L.P. (ARC-Delaware Valley and together with ARC-Essex, ARC-Hempstead and SEMASS, the Project Companies) and MSW Energy Holdings LLC (MSW) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby the applicants would affect a change in control over the Project Companies. Each of the Project Companies is a qualifying facility under the Public Utility Regulatory Policies Act of 1978, as amended.

The applicants are requesting approval of: (1) Several transfers of an aggregate fifty percent interest in ARC-Essex, ARC-Hempstead, ARC-Delaware Valley, and a forty-five percent interest in SEMASS (Transferred Interests) to upstream affiliates of the Project Companies that are wholly owned subsidiaries of Duke Energy Global Markets, Inc. (Duke GMI); (2) the indirect transfer by Duke GMI and one of these affiliates of the Transferred Interests, through a two-stage sale, to MSW and (3) additional internal transfers of the Transferred Interests by the upstream owners of MSW. The applicants are requesting confidential treatment pursuant to 18 CFR 388.112 (2002) for Exhibits F (wholesale power sales and unbundled transmission customers), I (the written instruments associated with the proposed transfer), M and N (QF contracts). Further, applicants respectfully request that the Commission approve this transfer on an expedited basis and no later than May 31, 2003.

Comment Date: April 15, 2003.

4. Athens Generating Company, L.P.

[Docket No. ER99–4282–003

Covert Generating Company, LLC

[Docket No. ER01–520–003

Harquahala Generating Company, LLC

[Docket No. ER01–748–003

Millennium Power Partners, L.P.

[Docket No. ER98–830–007

Take notice that on March 19, 2003, Athens Generating Company, L.P., Covert Generating Company, LLC, Harquahala Generating Company, LLC and Millennium Power Partners, L.P. (collectively, the Applicants) tendered for filing a request that the Commission place in abeyance the Applicants' notice of change in status filed on November 18, 2002 in the above-referenced proceedings.

Comment Date: April 9, 2003.

5. Armstrong Limited Energy Partnership, LLP, Dominion Energy Marketing, Inc., Dominion Nuclear Connecticut, Inc., Dominion Nuclear Marketing I, Inc., Dominion Nuclear Marketing II, Inc., Dominion Nuclear Marketing III, Inc., Dresden Energy, LLC, Elwood Energy, LLC, Fairless Energy, LLC, Kincaid Generation, LLC, Pleasants Energy, LLC, State Line Energy, LLC, Troy Energy, LLC

[Docket Nos. ER02–24–002, ER01–468–001, ER00–3621–02, ER00–3620–002, ER00–3619–002, ER00–3746–003, ER02–22–002, ER99–1695–002, ER02–23–002, ER99–1432–002, ER02–26–002, ER96–2869–005, ER02–1342–001, and ER02–25–002]

Take notice that, on March 24, 2003, Dominion Resources, Inc. (DRI) submitted a three-year market update for its unregulated subsidiaries that have authorizations to sell power at market-based rates. These subsidiaries include: Armstrong Limited Energy Partnership, LLLP; Dominion Energy Marketing, Inc.; Dominion Nuclear Connecticut, Inc.; Dominion Nuclear Marketing I, Inc.; Dominion Nuclear Marketing II, Inc.; Dominion Nuclear Marketing III, LLC; Dresden Energy, LLC; Elwood Energy, LLC; Fairless

Energy, LLC; Kincaid Generation, LLC; Pleasants Energy, LLC; State Line Energy, LLC; and Troy Energy, LLC (collectively, the DRI Affiliates). DRI asks that the next three-year update for the DRI Affiliates be due three years from the date of acceptance of this filing.

Comment Date: April 14, 2003.

6. Michigan Electric Transmission Company, LLC

[Docket No. ER03–649–000]

Take notice that on March 25, 2003, Michigan Electric Transmission Company, LLC (METC) submitted an executed Interconnection Facilities Agreement Between METC and Lowell Light and Power (Facilities Agreement and Lowell, respectively). METC requests an effective date of March 6, 2003 for the Facilities Agreement.

Comment Date: April 15, 2003.

7. Jersey Central Power & Light Company

[Docket No. ER03–650–000]

Take notice that on March 25, 2003, Jersey Central Power & Light Company (Jersey Central) tendered for filing a complete revised Interconnection Agreement between Jersey Central and Atlantic City Electric Company (Atlantic City), which revises a component of the rate for service relating to Jersey Central's Operating and Maintenance (O&M) expenses for 2002. Also submitted for filing was a revised rate schedule sheet reflecting changes to Jersey Central's O&M expenses for 2003.

Jersey Central states that a copy of this filing has been served upon the New Jersey Board of Public Utilities and Atlantic City.

Comment Date: April 15, 2003.

8. Wilbur Power LLC .

[Docket No.QF03–79–000]

Take notice that on March 25 2003, Wilbur Power LLC, filed with the Federal Energy Regulatory Commission (Commission) an Application for Certification as a Qualifying Cogeneration Facility, Request for Waiver of QF Operating and Efficiency Standards, and Request for Expedited Treatment, pursuant to Sections 292.207(b) and 292.205'' of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

Wilbur Power LLC, states that the facility is a 49 MW, natural gas fired, topping-cycle cogeneration facility (the Facility) located in Antioch, California, and the Facility is interconnected with the electric system of Pacific Gas and Electric Company and power from the Facility will be sold to Pacific Gas and Electric Company.

Comment Date: April 24, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8218 Filed 4–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–51–000, et al.]

Tenaska Alabama II Partners, L.P., et al.; Electric Rate and Corporate Filings

March 28, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Tenaska Alabama II Partners, L.P.

[Docket No. EG03–51–000]

Take notice that on March 26, 2003, Tenaska Alabama II Partners, L.P., 1044 North 115th Street, Suite 400, Omaha, Nebraska 68154 (Tenaska Alabama II), filed with the Federal Energy Regulatory Commission (Commission) an application for redetermination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Comment Date: April 18, 2003.

2. Tenaska Alabama Partners, L.P.

[Docket No. EG03–52–000]

Take notice that on March 26, 2003, Tenaska Alabama Partners, L.P., 1044 North 115th Street, Suite 400, Omaha, Nebraska 68154 (Tenaska Alabama), filed with the Federal Energy Regulatory Commission (Commission) an application for redetermination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Comment Date: April 18, 2003.

3. Southern Company Services, Inc.

[Docket No. ER03–641–001]

Take notice that on March 25, 2003, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern), filed a supplement to SCS's March 21, 2003, filing of Southern's Annual Filing of Revised Accruals for Post-Retirement Benefits Other Than Pensions (PBOP). SCS states that the supplement consists of Southern's 2002 actuarial reports, which describe the actuarial assumptions and serve as a basis for the 2003 projections.

Comment Date: April 15, 2003.

4. Pacific Gas and Electric Company

[Docket No. ER03–651–000]

Take notice that on March 26, 2003, Pacific Gas and Electric Company (PG&E) tendered for filing revisions to Exhibit II to the Comprehensive Agreement Between Pacific Gas and Electric Company and the California Department of Water Resources (CDWR), Pacific Gas and Electric Company First Revised Rate Schedule FERC No. 77.

PG&E states that the revisions to Exhibit II reflect a decrease in the Contract Coincidental Rate of Delivery of backbone transmission due to CDWR's sale of the Bottle Rock Powerplant, the elimination of transmission loss energy factors, and revised California Public Utilities Commission (CPUC) Electric Rule 2 Rates for Special Facilities, which result in a decrease in revenue to PG&E.

PG&E has requested certain waivers. PG&E also states that this filing has been served upon CDWR, the CPUC, and the California Independent System Operator Corporation.

Comment Date: April 16, 2003.

5. Commonwealth Edison Company

[Docket No. ER03–654–000]

Take notice that on March 25, 2003, Commonwealth Edison Company (ComEd) tendered for filing amendments to an Interconnection Agreement with Kendall New Century Development, L.L.C. (Kendall). ComEd requests an effective date of March 26, 2003, and accordingly seeks waiver of the Commission's notice requirements.

ComEd states that copies of the filing were served on Kendall and the Illinois Commerce Commission.

Comment Date: April 15, 2003.

6. Commonwealth Edison Company

[Docket No. ER03–655–000]

Take notice that on March 25, 2003, Commonwealth Edison Company (ComEd) tendered for filing an amendment to an Interconnection Agreement with Chicago Heights Energy Partners, L.L.C. (CHEP). ComEd requests an effective date of March 26, 2003, and accordingly seeks waiver of the Commission's notice requirements.

ComEd states that copies of the filing were served on CHEP and the Illinois Commerce Commission.

Comment Date: April 15, 2003.

7. Commonwealth Edison Company

[Docket No. ER03–656–000]

Take notice that on March 25, 2003, Commonwealth Edison Company (ComEd) tendered for filing with the Federal Energy Regulatory Commission (Commission), amendments to an Interconnection Agreement with Titan Land Development Company, L.L.C. (Titan). ComEd requests an effective date of March 26, 2003, and accordingly seeks waiver of the Commission's notice requirements.

ComEd states that copies of the filing were served on Titan and the Illinois Commerce Commission.

Comment Date: April 15, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8219 Filed 4–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, and Soliciting Comments, and Final Recommendations, Terms and Conditions, and Prescriptions

March 31, 2003.

Take notice that the following hydroelectric application and applicant-prepared environmental assessment has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License.

b. *Project No.:* 2233–043.

c. *Date filed:* December 27, 2002.

d. *Applicant:* Portland General Electric.

e. *Name of Project:* Willamette Falls Hydroelectric Project.

f. *Location:* On the Willamette River, in Clackamas County, Oregon.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Julie A. Keil, Portland General Electric Company, 121 SW Salmon Street, Portland, Oregon 97204, (503) 464–8864; Bruce Martin, Blue Heron Paper Company, 419 Main Street, Oregon City, Oregon.

i. *FERC Contact:* John Blair (202) 502–6092 or john.blair@FERC.gov.

j. Deadline for filing motions to intervene and protests, comments, and final recommendations, terms and conditions, and prescriptions: 60 days from the issuance of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all interveners 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 intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted; but is not ready for environmental analysis at this time.

l. *Description of the Project:* Portland General Electric (PGE) and Blue Heron Paper Company (BHPC) propose to continue operation of the Willamette Falls Hydroelectric Project on the Willamette River. The dam is a 2300 feet long horseshoe shaped concrete structure that caps the crest of Willamette Falls. The Project is operated run-of-river. It is comprised of two separate hydroelectric generating developments located on the east (Oregon City) and west (West Linn) sides of Willamette Falls. The Project has a total generation capacity of 17.5 megawatts (MW); 16 MW at PGE's T.W. Sullivan plant and 1.5 MW at BHPC. T.W. Sullivan powerhouse contains 13 vertical turbine generators; BHPC powerhouse contains 2 horizontal turbine generators.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-

free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

The Commission directs, pursuant to section 4.34(b) of the Regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application and APEA be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8220 Filed 4–3–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0041, FRL–7475–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; Environmental Radiation Ambient Monitoring System (ERAMS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB):

Environmental Radiation Ambient Monitoring System (ERAMS): EPA ICR No.0877.08; OMB Control No. 2060–0015; Expiration date, 08/31/03. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 3, 2003.

ADDRESSES: National Air and Radiation Environmental Laboratory, 540 South Morris Avenue, Montgomery, Alabama 36115–2601. Limited number of copies available at this address. ICR available electronically at *www.epa.gov/narel.*

FOR FURTHER INFORMATION CONTACT: Charles M. Petko, Office of Radiation and Indoor Air, National Air and Radiation Environmental Laboratory, 540 South Morris Ave., Montgomery, AL 36115–2601. TEL: (334) 270–3411; FAX: (334) 270–3454; e-mail: *petko.charles@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OAR–2003–0041, which is available for public viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by email to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov./edocket.*

Affected entities: Entities potentially affected by this action are sample collectors.

Title: Environmental Radiation Ambient Monitoring System (ERAMS) (OMB Control Number 2060–0015; EPA ICR Number 0877.08, expiring 08/31/2003.

Abstract: The Environmental Radiation Ambient Monitoring System (ERAMS) is a national network of stations collecting sampling media that include air, precipitation, drinking water, and milk. Samples are sent to EPA's National Air and Radiation

Environmental Laboratory (NAREL) in Montgomery, AL, where they are analyzed for radioactivity. ERAMS provides emergency response/homeland security and ambient monitoring information on levels of environmental radiation across the nation. All stations, usually operated by state and local personnel, participate in ERAMS voluntarily. Station operators complete information forms that accompany the samples. The forms request descriptive information related to sample location, *e.g.,* sample type, sample location, length of sampling period, and volume represented. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

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

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 1.3 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Sample Collectors, who are usually employed by states or, in a few cases, local government.

Estimated number of respondents: 249.

Frequency of Response: From twice weekly, to four times annually, depending upon type of media being sampled.

Estimated Total Annual Burden: 8363.4 hours.

Estimated Total Annualized Cost Burden: $224,999.59.

Dated: March 27, 2003.

Edwin L. Sensintaffar,

Director, National Air and Radiation Environmental Laboratory.

[FR Doc. 03–8255 Filed 4–3–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ORD–2003–0001; FRL–7477–2]

Agency Information Collection Activities; Submission of EPA ICR No. 2109.01 to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Seven County Study of Air Quality and Birth Defects: Computer-Assisted Telephone Questionnaire for Subset of Study Population (EPA ICR No. 2109.01) The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before May 5, 2003.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Dr. Pauline Mendola, U.S. EPA/NHEERL, Human Studies Division, MD 58 A, Research Triangle Park, NC 27711; telephone number: (919) 966–6953; fax (919) 966–7584; e-mail address: *mendola.pauline@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 23, 2002 (67 FR 78227) EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. ORD–2003–0001 which is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information Docket is (202) 566–1753. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not

be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Seven County Study of Air Quality and Birth Defects: Computer-Assisted Telephone Questionnaire for Subset of Study Population (EPA ICR Number 2109.01). This is a request for a new collection. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The questionnaire contains a maximum of 28 questions categorized into 6 sections: Residential History, Work History, Time Spent Outside the Home (Weekdays), Time Spent Outside the Home (Weekends), Multivitamin Use, and Tobacco Use. Study participants are the mothers of babies born with and without birth defects in 1999 in seven Texas counties and will be randomly selected from a larger case-control study of air pollution and birth defects in the state. Potential participants will be first contacted by mail to provide basic information about the questionnaire. Within two weeks of receipt of the letter, they will be telephoned and invited to complete the questionnaire over the telephone. Participation in the telephone interview is completely voluntary. The study investigators will use this data to help estimate the association between air pollution exposure and the risk of selected birth defects. The questionnaire seeks to gather information on individual-level behaviors that have never been collected in studies published in this area of research. If it proves useful, it will indicate a need for such supplemental data collection in future studies. Confidentiality of the participants will be maintained by keeping all electronic forms and datasets on password protected computers, and any CDs or floppy disks in locked filing cabinets of the study investigators. No participant will be identifiable through any publications including EPA reports, dissertation manuscripts and journal articles.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 10 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Individuals or households.

Estimated Number of Respondents: 1000.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 167.

Estimated Total Annual Cost: $2,458.24.

Dated: March 27, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–8256 Filed 4–3–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0005; FRL–7477–3]

Agency Information Collection Activities; Submission of EPA ICR No. 1838.02 (OMB No. 2040–0213) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Industry Detailed Questionnaire: Phase III Cooling Water Intake Structures (OMB Control No. 2040–0213, EPA ICR No. 1838.02) The ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before May 5, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION**

FOR FURTHER INFORMATION CONTACT: Jennifer Chan, Office of Water, Office of Science and Technology, mailcode 4303T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; by phone at (202) 566–1078, by e-mail at *chan.jennifer@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 12, 2002 (67 *FR* 76400), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one comment and has adopted many of the suggestions made by the commentor.

EPA has established a public docket for this ICR under Docket ID No. OW–2003–0005, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *OW–Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives

them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

Title: Industry Detailed Questionnaire: Phase III Cooling Water Intake Structures (OMB Control No. 2040–0213, EPA ICR Number 1838.02). This is a request to renew an existing approved collection that is scheduled to expire on March 31, 2003. Note that the Agency is substituting the term ''Phase III'' for ''Phase II'', in the title of the original ICR, to correspond to the revised structure of the rulemaking. Under the PRA regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: In accordance with the PRA, this notice announces the submission of a revised ICR from the EPA to the OMB for review and approval. EPA requests approval to contact 80 respondents from the original survey for clarifications of their responses and to request their 316(b) environmental studies. EPA also requests approval to conduct a survey of two industries (offshore and coastal oil and gas extraction facilities (OCOGEFs) and seafood processing vessels) potentially subject to Section 316(b) of the Clean Water Act (CWA), 33 U.S.C. 1326(b). EPA was made aware of these two industries from public comments received on the proposed Phase I rule (65 FR 49060). These industries were not surveyed in the original information collection. For this request, EPA has revised the original ICR questionnaires to customize them for the OCOGEFs and Seafood Processing Vessels. Responses to this Industry Detailed Questionnaire will help EPA better characterize the design, location, construction, and operation of cooling water intake structures at industrial facilities throughout the U.S.

Section 316(b) provides that any standard established pursuant to Sections 301 or 306 of the CWA and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact. EPA is developing regulations implementing Section 316(b) of the CWA, 33 U.S.C. 1326(b) pursuant to a Consent Decree in *Riverkeeper* v. *Whitman* [93 civ.0314 (AGS)]. The baseline data will help EPA frame regulatory options and define further research needs regarding the relationship of cooling water intake structures, intake technologies, and environmental impacts. The economic and financial information will help EPA to assess facility-level and firm-level impacts of complying with the proposed regulations and also enable EPA to carry out required economic analyses, including Regulatory Impact Analysis (RIA), cost/benefit analysis, and small business analysis. In order to fully evaluate costs associated with a proposed Section 316(b) regulations, EPA will consider the costs associated with performing Section 316(b) demonstration studies, additions and modifications to cooling water intake structures and equipment, and operating and monitoring costs associated with the regulations.

EPA has the authority to collect this information under Section 308 of the CWA (33 U.S.C. 1318). Accordingly, responses to the questionnaires (Industry Technical Questionnaire and Industry Economic Questionnaire) would be mandatory. In accordance with 40 CFR part 2, subpart B, Section 2.203, the survey will inform respondents of their right to claim information as confidential. The survey provides instructions on the procedures for making Confidential Business Information (CBI) claims, and the respondents also will be informed of the terms and rules governing protection of CBI obtained under the CWA.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1 hour per response for the follow-up effort, 8 hours per response for the Industry Technical Questionnaire, and 50 hours per response for the Industry Economic Questionnaire. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Offshore and Coastal Oil and Gas Extraction Facilities, Seafood Processing Vessels, and 80 respondents surveyed in the original ICR.

Estimated Number of Respondents: 281.

Frequency of Response: One time.

Estimated Total Annual Hour Burden: 7,021 hours.

Estimated Total Annual Cost: $453,648, includes $1,123 annualized O&M costs.

Changes in the Estimates: There is a decrease of 121,715 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to less number of respondents in this ICR.

Dated: March 27, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–8257 Filed 4–3–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[SFUND–2003–0004, FRL–7477–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; Brownfields Program Revitalization Grantee Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Brownfields Program—Revitalization Grantee Reporting, EPA ICR Number

2104.01. This information collection request applies to the reporting and recordkeeping requirements that apply to recipients of assessment, revolving loan fund, cleanup and job training grants awarded under subtitle A of the Small Business Liability Relief and Brownfields Revitalization Act (Public Law 107–118). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 3, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: James Maas, Office of Solid Waste and Emergency Response (OSWER), Office of Brownfields Cleanup and Redevelopment (OBCR) 5105T, U.S. EPA Headquarters, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 566–2778; fax number: (202) 566–2757; e-mail address: *maas.james@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number SFUND–2003–0004, which is available for public viewing at the OSWER Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0276. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice, and according to the following detailed instructions: Submit your comments to EPA online using EDOCKET (our preferred method), by E-mail to *superfund.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, OSWER Docket, 5202T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

Affected entities: Entities potentially affected by this action are states, tribes, local governments, and certain non-governmental organizations that apply for and receive grants from EPA to support the cleanup and redevelopment of brownfields properties.

Title: Brownfields Program—Revitalization Grantee Reporting Information Collection Request; (OMB Control Number 2050–NEW; EPA ICR Number 2104.01).

Abstract: The Small Business Liability Relief and Brownfields Revitalization Act (Public Law 107–118) (''the Brownfields Amendments'') was signed into law on January 11, 2002. The Act amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, and authorizes EPA to award grants to states, tribes, local governments, and other eligible entities to assess and clean up brownfields sites. Under the Brownfields Amendments, a brownfields site means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. For grant funding purposes, EPA uses the term ''brownfields property(ies)'' synonymously with the term ''brownfields sites.'' The Brownfields Amendments authorize EPA to award several types of grants to eligible entities on a competitive basis. Under subtitle A of the Small Business Liability Relief and Brownfields Revitalization Act, States, tribes, local governments, and other eligible entities can receive assessment grants to inventory, characterize, assess, and conduct planning and community involvement related to brownfields properties; cleanup grants to carry out cleanup activities at brownfields properties; grants to capitalize revolving loan funds and provide subgrants for cleanup activities; and job training grants to support the creation and implementation of environmental job training and placement programs.

Grant recipients have general reporting and record keeping requirements as a condition of their grant that result in burden. A portion of this reporting and record keeping burden is authorized under 40 CFR parts 30 and 31 and identified in the EPA's general grants ICR (OMB Control Number 2030–0020). EPA requires Brownfields program grant recipients to maintain and report additional information to EPA on the uses and accomplishments associated with the funded brownfields activities. EPA has prepared several forms to assist grantees in reporting the information and to ensure consistency of the information collected. EPA will use this information to meet Federal stewardship responsibilities to manage and track how program funds are being spent, to evaluate the performance of the Brownfields Cleanup and Redevelopment Program, to meet the Agency's reporting requirements under the Government Performance Results Act, and to report to Congress and other program stakeholders on the status and accomplishments of the grants program. This ICR addresses the burden imposed on grant recipients that are associated with those reporting and recordkeeping requirements that are specific to grants awarded under Subtitle A of the Small Business Liability Relief and Brownfields Revitalization Act. This ICR does not address the burden imposed on grant recipients who are awarded grants under Subtitle C of the Small Business Liability Relief and Brownfields Revitalization Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

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

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, (*e.g.*, permitting electronic submission of responses).

Burden Statement: The annual reporting and record keeping burden for this collection of information is estimated to average 7 hours per response for job training grant recipients, and 3.25 hours per response for assessment, cleanup, and revolving loan fund grant recipients. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Estimated Number of Respondents: 203.

Frequency of Response: Quarterly.

Estimated Total Annual Hour Burden: 9866.

Estimated Total Annual Cost: $291,733.

Dated: March 27, 2003.

Linda Garczynski,

Director, Office of Brownfields Cleanup and Redevelopment, Office of Solid Waste and Emergency Response.

[FR Doc. 03–8258 Filed 4–3–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6639–1]

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.

Summary of Rating Definitions

Environmental Impact of the Action

LO—Lack of Objections

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC—Environmental Concerns

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

EO—Environmental Objections

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU—Environmentally Unsatisfactory

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

Adequacy of the Impact Statement

Category 1—Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2—Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category 3—Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

Draft EIS

ERP No. D–AFS–F65036–WI Rating EC2, Hoffman-Sailor West Project, Timber Harvest, Regeneration Activities, Connected Road Construction and Decommissioning, Chequamegon-Nicolet National Forest, Medford/Park Falls Ranger District, Price County, WI.

Summary: EPA expressed environmental concerns with project impacts and overall forest health, including commutative impacts. The Final EIS should address how the emphasis on managing for aspen and the potential for overpopulation of species that could impact forest in and

outside the project area and especially how roadless and wilderness areas will be managed.

ERP No. D–AFS–J65375–MT Rating EC2, Sheep Creek Range Analysis, Grazing and Special Use Allotments Reorganization, Grazing and Special Use Permits Issuance, Lewis and Clark National Forest, White Sulphur Springs Ranger District, Meagher and Cascade Counties, MT.

Summary: While EPA supports the proposed grazing improvements and preferred alternative, EPA did express environmental concerns regarding potential impacts to the watershed, effects on wetlands and springs and stream flows from proposed water development. Uncertainties with the availability of adequate funds and resources to implement proposed range improvements and the proposed riparian monitoring program should be addressed in the final EIS.

ERP No. D–NPS–G65085–AR Rating LO, Arkansas Post National Memorial General Management Plan, Implementation, Osotouy Unit, Arkansas and Mississippi Rivers, Arkansas County, AR.

Summary: EPA has no objection to the management plan.

Final EIS

ERP No. F–BLM–L65391–OR, Lakeview Resource Management Plan, Unified Land Use Plan to Replace All or Portions of Three nearly Twenty Year Old Existing Land Use Plans, Implementation, Lake and Bend Counties, OR.

Summary: EPA expressed environmental concerns with the adequacy of information on noxious weeds, water quality, protection of tribal cultural sites, air quality and impacts from new roads. These issues and a mitigation strategy from future energy development activities should be addressed in the final EIS.

ERP No. F–FHW–F40405–IL, US 34/FAP–313 Transportation Facility Improvement Project, U.S. 34 from the Intersection of Carman Road east of Gulfport to Monmouth, Funding and US Army COE Section 404 and NPDES Permits Issuance, Henderson and Warren Counties, IL.

Summary: EPA has determined that FHWA has adequately addressed previous concerns related to Botanical Site #3. However, EPA continues to have environmental concerns regarding impacts to impaired waters as well as to the adequacy of water quality information.

ERP No. FS–AFS–J65295–MT, Clancy-Unionville Vegetation Manipulation and Travel Management Project, Updated and New Information concerning Cumulative Effects and Introduction of Alternative F, Clancy-Unionville Implementation Area, Helena National Forest, Helena Ranger District, Lewis and Clark and Jefferson Counties, MT.

Summary: EPA expressed environmental concerns with the potential continued impacts to the watershed and wildlife habitat from road impacts and suggested the action incorporate lower road densities.

Dated: April 1, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–8260 Filed 4–3–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6638–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliane/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed March 24, 2003, through March 28, 2003,

Pursuant to 40 CFR 1506.9.

EIS No. 030131, Draft EIS, AFS, VT, Greendale Project, To Establish the Desired Condition stated in the Green Mountain National Forest Land and Resource Management Plan, Manchester Ranger District, Town of Western, Windor County, VT, Comment Period Ends: May 19, 2003, Contact: Jay Strand (802) 767–4261. This document is available on the Internet at: *http://www.fs.fed.us/r9/gm/.*

EIS No. 030132, Draft EIS, AFS, CO, Green Ridge Mountain Pine Beetle Analysis Project, Proposal to Reduce the Spread of Mountain Pine Beetle and Associated Tree Mortality, Medicine Bow-Routt National Forest & Thunder Basin National Grassland, Parks Ranger District, Jackson County, CO, Comment Period Ends: May 19, 2003, Contact: Terry Delay (307) 326–2518. This document is available on the Internet at: *http://www.fs.fed.us/mrnf.*

EIS No. 030133, Final Supplement, NPS, NV, Great Basin National Park General Management and Development Concept Plans, Implementation, White Pine County, NV, Wait Period Ends: May 5, 2003, Contact: Alan Schmierer (510) 817–1441.

EIS No. 030134, Draft EIS, COE, FL, Miami Harbor Navigation Improvement Project, Provide Greater Navigation Safety and Accommodating Larger Vessels, Port of Miami, Miami-Dade County, FL , Comment Period Ends: May 19, 2003, Contact: James McAdams (904) 232–2117.

EIS No. 030135, Draft EIS, AFS, GA, Chattahoochee-Oconee National Forests Revised Land and Resource Management Plan, Implementation, Several Counties, GA, Comment Period Ends: July 3, 2003, Contact: Ron Stephens (770) 297–3000. This document is available on the Internet at: *http://www.fs.fed.us/conf/.*

EIS No. 030136, Draft EIS, AFS, AL, Alabama National Forests Revised Land and Resource Management Plan, Implementation, Bankhead National Forest, Lawrence, Winston and Franklin Counties, AL, Comment Period Ends: July 3, 2003, Contact: Felicia Humphrey (334) 832–4470.

EIS No. 030137, Final EIS, AFS, ID, North Kennedy-Cottonwood Stewardship Project, Existing Transportation System Modifications and Forest Health Improvements through Vegetation Management both Commercial and Non-Commercial Methods, Boise National Forest, Emmett Ranger District, Gem and Valley Counties, ID, Wait Period Ends: May 05, 2003, Contact: Terry Hardy (208) 373–4235.

EIS No. 030138, Draft EIS, BLM, NM, New Mexico Products Pipeline (NMPP) Project, Build and Operate a Refined Petroleum Products Pipeline System from Odessa, Texas, to Bloomfield, NM, Comment Period Ends: May 19, 2003, Contact: Joseph Jaramillo (505) 761–8779. This document is available on the Internet at: *http://www.nm.blm.gov.*

EIS No. 030139, Draft EIS, AFS, ID, East Beaver and Miner's Creek Timber Sales and Prescribed Burning Project, Conduct a Timber Sale and Provide Forest Products, Caribou-Targhee National Forest, Clark County, ID, Comment Period Ends: May 19, 2003, Contact: Melissa Jenkin (208) 624–3151.

EIS No. 030140, Final EIS, SFW, NM, Rio Grande Silvery Minnow (Hybognathus amarus) Critical Habitat Designation, Implementation, Bernalillo, Sandoval, Socorro and Valencia Counties, NM, Wait Period Ends: May 5, 2003, Contact: Joy Nicholopoulos (505) 346–2525.

EIS No. 030141, Draft EIS, COE, TX, Gulf Intracoastal Waterway in the

Laguna Madre, Maintenance Dredging from the JFK Causeway to the Old Queen Isabella Causeway, Nueces, Kleberg, Kenedy, Willacy and Cameron County, TX , Comment Period Ends: May 19, 2003, Contact: Dr. Terry Roberts (409) 766–3035.

EIS No. 030142, Draft EIS, AFS, CA, Combined Array for Research in Millimeter-wave Astronomy (CARMA) Project, Construction, Reconstruction and Operation 23 Antennas at the Juniper Flat Site, Special-Use-Permit, Inyo Mountain, Inyo National Forest, Inyo County, CA, Comment Period Ends: May 19, 2003, Contact: Colleen (Chaz) O'Brien (760) 873–2490. This document is available on the Internet at: *http://www.r5.fs.fed.us/inyo/.*

EIS No. 030143, Final EIS, BLM, NM, Farmington Resource Management Plan, Implementation, Managing Public Lands within the Farmington Field Office (FFO) Boundaries and Federal Oil and Gas Resources within the New Mexico Portion of San Juan Basin, San Juan, McKinley, Rio Arriba and Sandoval Counties, NM, Wait Period Ends: May 5, 2003, Contact: James Ramakka (505) 599–6307.

EIS No. 030144, Draft EIS, DOC, ME, VT, CT, NY, DE, NH, MA, RI, NJ, MD, VA, NC, Essential Fish Habitat Components of Amendment 13 to the Northeast Multispecies Fishery Management Plan, To Select the best Method of Minimizing the Impacts of Groundfish Fishing on Essential Fish Habitat, New England Fishery Management Council, ME, VT, CT, NY, DE, NH, MA, RI, NJ, MD, VA and NC, Comment Period Ends: July 2, 2003, Contact: Paul J. Howard (978) 465–0492.

EIS No. 030145, Draft EIS, FRC, LA, Hackberry Liquified Natural Gas (LNG) Terminal and Natural Gas Pipeline Facilities, Construction and Operation, Cameron, Calcasieu, and Beauregard Parishes, La, Comment Period Ends: May 19, 2003, Contact: Carlton Jackson (202) 502–8581.

EIS No. 030146, Final EIS, AFS, UT, WY, Wasatch-Cache National Forest Revised Land and Resource Management Plan, Implementation, several counties, UT and Uinta County, WY, Wait Period Ends: May 5, 2003, Contact: Julie Hubbard (801) 524–3907.

EIS No. 030147, Final EIS, SFW, FL, Proposed Rulemaking for: The Incidental Take of Small Numbers of Florida Manatees (Trichechus manatus latirostris) Resulting from Government Programs Related to Watercraft Access and Watercraft Operation in the State of Florida, FL, Wait Period Ends: May 5, 2003, Contact: Kevin Moody (404) 679–7089.

Dated: April 1, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–8261 Filed 4–3–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7477–4]

Science Advisory Board; Notification of Public Advisory Committee Meeting Ecological Processes and Effects Committee (EPEC) Conference Call

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA), Science Advisory Board (SAB), Ecological Processes and Effects Committee (EPEC) is announcing a planning teleconference meeting to discuss several proposed self-initiated projects for Fiscal Year 2004.

DATES: The conference call meeting will take place on Wednesday, April 21, 2003 from 2 p.m. to 4 p.m. Eastern Standard Time. Participation will be by teleconference only.

ADDRESSES: Members of the public who wish to obtain the call-in number and access code to participate must contact Ms. Sandra Friedman, EPA Science Advisory Board Staff Office; telephone/voice mail at (202) 564–4526 or via e-mail at *friedman.sandra@epa.gov* in order to register.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information about this conference call meeting should contact Mr. Lawrence Martin, Designated Federal Officer, by telephone/voice mail at (202) 564–6497 or via e-mail at *martin.lawrence@epa.gov.* General information concerning the EPA Science Advisory Board can be found on the EPA Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

1. *Summary*: The U.S. Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) is providing this notification of an upcoming teleconference call meeting of the Ecological Processes and Effects Committee (EPEC).

The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. This committee of the SAB will comply with the provisions of the Federal Advisory Committee Act (FACA) and all appropriate SAB policies and procedures.

During the public conference call meeting, to take place at the date and time noted above, the EPEC will discuss its proposals for self-initiated projects to be considered by the SAB in FY 2004. Self-initiated projects are scientific and technical projects proposed outside of the normal mechanism of Agency-requested consultations, advisories, and peer reviews. Such projects are intended to address critical needs for anticipatory or cross-cutting scientific and technical advice. All SAB self-initiated projects will be evaluated by the SAB's Executive Committee (EC) during a public conference call to be announced in May 2003.

2. *Availability of Meeting Materials*: A copy of the draft agenda for the meeting that is the subject of this notice will be posted on the SAB Web site (*www.epa.gov/sab*) (under the AGENDAs subheading) approximately 10 days before the conference call meeting. Other materials that may be available, such as draft proposals for SAB self-initiated projects to be considered at the EPEC conference call meeting will also be posted on the SAB Web site in this time-frame, linked to the calendar entry for this meeting (*http://www.epa.gov/sab/mtgcal.htm.*)

3. *Providing Oral or Written Comments at SAB Meetings*: It is the policy of the EPA Science Advisory Board (SAB) to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA SAB 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 conference call meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Interested parties should contact the Designated Federal Official (DFO) at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Speakers may attend the meeting and provide comment up to the meeting time. 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 review panel for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted below in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, 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 35 copies of their comments for public distribution. Should comment be provided at the meeting and not in advance of the meeting, they should be in-hand to the DFO up to and immediately following the meeting.

4. *Meeting Access*: Individuals requiring special accommodation to access this meeting, should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: March 28, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–8259 Filed 4–3–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7476–1]

Public Water Supply Supervision Program Revision for the State of New York

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative approval and solicitation of request for a public hearing.

SUMMARY: Notice is hereby given that the United States Environmental Protection Agency (EPA) has determined to approve an application by the State of New York to revise its Public Water Supply Supervision Primacy Program to incorporate regulations no less stringent than the EPA's National Primary Drinking Water Regulations (NPDWR) for the following: Final Rule (Primacy Revisions), promulgated by EPA on April 28, 1998 (63 FR 23362), defining a public water system and Consumer Confidence Reports; Final Rule, promulgated by EPA on August 19, 1998 (63 FR 44512), along with 4 separate Technical Corrections to the Consumer Confidence Reports, promulgated as follows: May 4, 2000 (65 FR 25981), December 16, 1998 (63 FR 69475 and 63 FR 69516), June 29, 1999 (64 FR 34732) and September 14, 1999 (64 FR 49671). The application demonstrates that New York State has adopted drinking water regulations which satisfy the NPDWRs for the above. The USEPA has determined that New York State's regulations are no less stringent than the corresponding Federal Regulations and that New York State continues to meet all requirements for primary enforcement responsibility as specified in 40 CFR 142.10.

DATES: This determination to approve New York State's primacy program revision application is made pursuant to 40 CFR 142.12(d)(3). It shall become final and effective May 5, 2003 unless (1) a timely and appropriate request for a public hearing is received or (2) the Regional Administrator elects to hold a public hearing on her own motion. Any interested person, other than Federal Agencies, may request a public hearing. A request for a public hearing must be submitted to the Regional Administrator at the address shown below by May 5, 2003. If a substantial request for a public hearing is made within the requested thirty day time frame, a public hearing will be held and a notice will be given in the **Federal Register** and a newspaper of general circulation. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on her own motion, this determination shall become final and effective May 5, 2003.

Any request for a public hearing shall include the following information: (1) Name, address and telephone number of the individual organization or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement on information that the requesting person intends to submit at such hearing; (3) the signature of the individual making the requests or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: Requests for Public Hearing shall be addressed to: Regional Administrator, U.S. Environmental Protection Agency—Region 2, 290 Broadway, New York, New York 10007–1866.

All documents relating to this determination are available for inspection between the hours of 9 a.m. and 4:30 p.m., Monday through Friday, at the following offices: Bureau of Public Water Supply Protection, New York State Department of Health Flanigan Square, 547 River Street, Troy, New York 12180–2216.

U.S. Environmental Protection Agency—Region 2, 24th Floor Drinking Water Section, 290 Broadway, New York, New York 10007–1866.

FOR FURTHER INFORMATION CONTACT: Michael J. Lowy, Drinking Water Section, U.S. Environmental Protection Agency—Region 2, (212) 637–3830.

Authority: (Section 1413 of the Safe Drinking Water Act, as amended, 40 U.S.C. 300g–2, and 40 CFR 142.10, 142.12(d) and 142.13).

Dated: March 24, 2003.

Jane M. Kenny,

Regional Administrator, Region 2.

[FR Doc. 03–8155 Filed 4–3–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 03–876]

Consumer Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the first meeting date, agenda, and membership of the Consumer Advisory Committee (hereinafter ''the Committee''), whose purpose is to make recommendations to the Federal Communications Commission (''FCC'' or ''Commission'') regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of consumers (including people with disabilities and underserved populations, such as Native Americans and persons living in rural areas) in proceedings before the Commission. Additional meeting dates for calendar year 2003 are also announced.

DATES: The first meeting of the Committee will take place on Friday, April 25, 2003, from 9 a.m. to 5 p.m. Additional meetings for calendar year 2003 will occur at the same time on July 11 and November 20.

ADDRESSES: The Committee will meet at the Commission's headquarters building, Room TW–C305, 445 12th Street, SW., Washington, DC 20554. Additional meetings during calendar 2003 will be held at the same location.

FOR FURTHER INFORMATION CONTACT: Scott Marshall, 202–418–2809 (voice) or 202–418–0179 (TTY), E-mail: *cac@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice DA 03–876, released March 28, 2003. The Commission announced the first meeting date, meeting agenda, and membership of its Consumer Advisory Committee. Additional meeting dates for calendar year 2003 were also announced. The rechartering of the Committee had been announced by Public Notice dated December 31, 2002 (*see* DA 02–3606) as published in the **Federal Register**, 68 FR 2047, January 15, 2003.

Purpose and Functions

The purpose of the committee is to make recommendations to the Commission regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of consumers (including people with disabilities and underserved populations, such as Native Americans and persons living in rural areas) in proceedings before the Commission.

During its two year term, the Committee will address a number of topics including, but not limited to, the following areas:

- Consumer protection and education (*e.g.*, cramming, slamming, consumer friendly billing, detariffing, bundling of services, Lifeline/Linkup programs, customer service, privacy, telemarketing abuses, and outreach to underserved populations, such as American Indians and persons living in rural areas).
- Access by people with disabilities (*e.g.*, telecommunications relay services, closed captioning, accessible billing, and access to telecommunications products and services).
- Impact upon consumers of new and emerging technologies (*e.g.,* availability of broadband, digital television, cable, satellite, low power FM, and the convergence of these and emerging technologies).
- Implementation of Commission rules and consumer participation in the FCC rulemaking process.

Members

The Commission received over one hundred (100) applications for membership on the Committee, from twenty-eight (28) states and the District of Columbia. After a careful review of these applications, thirty-five (35) members were appointed to the Committee (thirty organizational members and five individual members). This selected group is designed to be represented of the Commission's many constituencies, and the expertise and diversity selected will provide a balanced point of view as required by the Federal Advisory Committee Act. In addition, in accordance with Section K. of the Committee's Charter, Chairman Michael K. Powell hereby appoints Shirley L. Rooker, President, Call For Action, as the Committee's Chairperson. All appointments are effective immediately and shall terminate November 20, 2004 or until the committee is terminated, whichever is earlier.

The roster of the Committee, as appointed by Chairman Powell, is as follows:

1. AARP, Jeff Kramer, Senior Legislative Representatives;
2. Affiliated Tribes of NW Indians Economic Development Corp., Cheryl Johnson, Tribal Telephone Outreach Coordinator;
3. Alliance for Public Technology, Matthew D. Bennett, Public Policy Director;
4. American Council of the Blind, David Poehlman, Technology Access Consultant;
5. AT&T Corp., Michael F. del Casino, Regulatory Director;
6. Bell South, Cindy Cox, Senior Director-Regulatory & External Affairs, Retail Markets;
7. Brugger Consulting, David Brugger, President & CEO;
8. Call For Action, Shirley L. Rooker, President;
9. Cellular Telecommunications and Internet Association, Andrea Williams, Assistant General Counsel;
10. Cingular Wireless, Susan Palmer, Director, Federal Regulatory Affairs;
11. Consumer Policy Consulting, Debra Berlyn, President.
12. Consumer First, Inc., Jim Conran, President.
13. Deaf and Hard of Hearing Consumer Action Network, Claude Stout;
14. Mike Duke (representing interests of blind or visually impaired persons, licensed radio amateur operators, and management of audio information services for the blind);
15. Fight Back Foundation for Consumer Education, David Horowitz, Chairman;
16. Stephen Gregory (representing interests of persons with hearing loss and small business owners);
17. Hamilton Telephone Company, dba Hamilton Relay Service, Dixie Ziegler, Director of Relay;
18. Hometown Online, subsidiary of Warwick Valley Telephone Company, Donald Snoop, Managing Director;
19. Rebecca Ladew (representing the interests of users of speech-to-speech technology);
20. League for the Hard of Hearing, Joseph Gordon, Chair, Telecommunications Committee;
21. LTC Consulting/Teletruth, Thomas Allibone, President and Director of Auditing;
22. MCI, Annette Cleckner, Senior Manager Consumer Affairs;
23. Media Access Group, WGBH, Larry Goldberg, Director;
24. National Association of Broadcasters, Karen Kirsch, Vice President of Regulatory Affairs;
25. National Association of Consumer Agency Administrators, Ronald Mallard, Director, Fairfax County Department of Cable Communications & Consumer Protection;
26. National Association of State Relay Administration, Brenda Kelly-Frey, TRS Administrator-State of Maryland;
27. National Association of State Utility Consumer Advocates, Joy M. Ragsdale, Assistant People's Counsel, Washington, DC;
28. National Consumers League, Susan Grant, Vice President for Public Policy;
29. National Translator Association, Byron W. St. Clair, President;
30. National Urban League, Milton J. Little, Jr., Executive Vice President & Chief Operating Officer;
31. Mark Pranger (representing the interests of academia and consumers concerned with telecommunication service in rural America);
32. San Carlos Apache Telecommunications Utility, Inc., Vernon R. James, General Manager;
33. Telecommunications Industry Association, Eugene Seagriff, Product Accessibility Manager, Product Safety & Compliance Division, Panasonic Techologies, Inc.;
34. Verizon Communications, Richard T. Ellis, Director, Federal Regulatory Advocacy; and
35. Linda West (representing the interests of the Native American community and other consumers concerned with telecommunication services in rural America).

Meeting Dates and Agenda

The first meeting of the Committee will take place on Friday, April 25, 2003, 9 a.m. to 5 p.m., at the Commission's headquarters Building, Room TW–C305, 445 12th Street, SW., Washington, DC 20554. Additional meetings for calendar year 2003 will be held on July 11 and November 20, at the same time and location.

At its April 25, 2003 meeting, the Committee will address matters of

internal business and organization, including the establishment of working groups, and will consider consumer issues within the jurisdiction of the Commission.

Availability of Copies and Electronic Accessibility

A copy of the March 28, 2003 Public Notice is available in alternate formats (Braille, cassette tape, large print or diskette) upon request. It is also posted on the Commission's Web site at *http://www.fcc.gov/cgb/cac.* The Committee meetings will be broadcast on the Internet in Real Audio/Real Video format with captioning at *http://www.fcc.gov/cgb/cac.* Meetings will be sign language interpreted, and real-time transcription and assistive listening devices will be also available. The meeting site is fully accessible to people with disabilities. Copies of meeting agendas and handout materials will also be provided in accessible formats. Meeting minutes will be available for public inspection at the FCC headquarters building and will be posted on the Commission's Web site at *http://www.fcc.gov/cgb/cac.*

The Committee meeting will be open to the public and interested persons may attend the meeting and communicate their views. Members of the public will have an opportunity to address the Committee on issues of interest to them and the Committee. Written comments for the Committee may also be sent to the Committee's Designated Federal Officer, Scott Marshall.

Federal Communications Commission.

K. Dane Snowden,

Chief, Consumer & Government Affairs Bureau.

[FR Doc. 03–8201 Filed 4–3–03; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting

TIME AND DATE: The meeting of the Board of Directors is scheduled to begin at 10 a.m. on Wednesday, April 9, 2003.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Appointment of Federal Home Loan Bank Directors. Section 7 of the Federal Home Loan Bank Act (12 U.S.C. 1427) requires the Federal Housing Finance Board to appoint public interest directors to the boards of directors of the Federal Home Loan Banks.

FOR FURTHER INFORMATION CONTACT: Mary H. Gottlieb, Paralegal Specialist, Office of General Counsel, by telephone at 202/408–2826 or by electronic mail at *gottliebm@fhfb.gov*.

By the Federal Housing Finance Board.

Arnold Intrater,

General Counsel.

[FR Doc. 03–8433 Filed 4–2–03; 4:01 pm]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System

ACTION: Notice

SUMMARY: Background. Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Cindy Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829); OMB Desk Officer—Joseph Lackey—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Final approval under OMB delegated authority of the extension for three years, without revision, of the following report:

Report title: Interagency Notice of Change in Bank Control, Interagency Notice of Change in Director or Senior Officer, and Interagency Biographical and Financial Report

Agency form number: FR 2081a, FR 2081b, and FR 2018c

OMB Control number: 7100–0134

Frequency: On occasion

Reporters: Financial institutions and certain of their officers and shareholders

Annual reporting hours: Interagency Notice of Change in Bank Control–3,900 hours; Interagency Notice of Change in Director or Senior Officer–130 hours; Interagency Biographical and Financial Report–4,420 hours

Estimated average hours per response: Interagency Notice of Change in Bank Control–30 hours; Interagency Notice of Change in Director or Senior Officer–2 hours; Interagency Biographical and Financial Report–4 hours

Number of respondents: Interagency Notice of Change in Bank Control–130; Interagency Notice of Change in Director or Senior Officer–65; Interagency Biographical and Financial Report–1,105

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 1817(j) and 12 U.S.C. 1831(q)) and is not given confidential treatment.

Abstract: The information collected assists the Federal Reserve Board, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC) and the Office of Thrift Supervision (OTS) in fulfilling their statutory responsibilities. These regulatory agencies use the information to evaluate a depository institution's controlling ownership interests and its senior officers and directors. The information collected in the Interagency Notice of Change in Bank Control (FR 2081a) is supplied by persons proposing to make significant investments in bank holding companies or depository institutions. The information collected in the Interagency Notice of Change in Director or Senior Executive Officer (FR 2081b) is required under Section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). The notice is completed, under certain circumstances, by a bank holding company or depository institution making changes in its board of directors or senior executive officers. The Interagency Biographical and Financial Report (FR 2081c) is not a stand–alone report; it is used as a companion report with other reports to gather required information about the individuals involved in certain types of applications and notifications.

Board of Governors of the Federal Reserve System, March 31, 2003.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 03–8173 Filed 4–3–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 18, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. L. Jackson McConnell, Sr., Patricia McConnell, The L. Jackson McConnell, Jr. Family Trust, the L.Jackson McConnell Sr. Retained Annuity Trust, L. Jackson McConnell, Jr. as custodian for Lawson C.McConnell, L. Jackson McConnell, Jr. as custodian for Mary Margaret McConnell, all of Elberton, Georgia, The Kathleen L. Korotzer Family Trust, Kathleen L. Korotzer as custodian for Turner J. Korotzer, Kathleen L. Korotzer as custodian for Nicholas C. Korotzer, all of Walnut Creek, California, Alice M. Eberhardt, Linton W. Eberhardt, III, The Linton W. Eberhardt, IV Family Trust, the Laura Eberhardt Stille Family Trust, and the Alice M. Eberhardt Retained Annuity Trust, all of Royston, Georgia, to retain voting shares of Pinnacle Financial Corporation, Elberton, Georiga, and thereby indirectly retain voting shares of Pinnacle Bank, Elberton, Georgia.

Board of Governors of the Federal Reserve System, March 31, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–8172 Filed 4–3–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Conference Call Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following joint conference call meeting of the Advisory Committee on Immunization Practices and its Smallpox Vaccine Safety Working Group.

Name: Advisory Committee on Immunization Practices (ACIP) and ACIP Smallpox Vaccine Safety Working Group.

Time and Date: 2 p.m.–4 p.m., March 28, 2003.

Place: The conference call will originate at the National Immunization Program (NIP), in Atlanta, Georgia. Please see **SUPPLEMENTARY INFORMATION** for details on accessing the conference call.

Status: Open to the public, limited only by the availability of telephone ports.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents.

In addition, under 42 U.S.C. 1396s, the Committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters to Be Discussed: The Advisory Committee on Immunization Practices and its Smallpox Vaccine Safety Working Group will convene by conference call to discuss whether to recommend to CDC that persons with a history of cardiac disease be deferred from smallpox vaccination during the pre-event phase of the national smallpox vaccination program.

SUPPLEMENTARY INFORMATION: This conference call is scheduled to begin at 2 p.m., Eastern Standard Time. To participate in the conference call, please dial 1–888–849–8924 and reference passcode ACIP. You will then be automatically connected to the call.

As provided under 41 CFR 102–3.150(b), the public health urgency of this agency business requires that the meeting be held prior to the first available date for publication of this notice in the **Federal Register**.

CONTACT PERSON FOR MORE INFORMATION: Demetria Gardner, Epidemiology and Surveillance Division, National Immunization Program, CDC, 1600 Clifton Road, NE., (E–61), Atlanta, Georgia 30333, telephone 404/639–8096, fax 404/639–8616.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and ATSDR.

Dated: March 31, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–8195 Filed 4–3–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–216 and CMS–10079]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Organ Procurement Organization/ Histocompatibility Laboratory

Statement of Reimbursable Costs, Manual Instructions and Supporting Regulations in 42 CFR, 413.20 and 413.24; *Form No.*: CMS–216 (OMB# 0938–0102); *Use:* This form is required by statute and regulation for participation in the Medicare program. The information is used to determine payment for Medicare. Organ Procurement Organizations and Histocompatibility Laboratories are the users; *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government; *Number of Respondents:* 108; *Total Annual Responses:* 108; *Total Annual Hours:* 4,860.

2. *Type of Information Collection Request:* New Collection: *Title of Information Collection*: Hospital Wage Index Occupational Mix Survey; *Form No.:* CMS–10079 (OMB# 0938-NEW); *Use:* In the May 4, 2001 Proposed Rule (66 FR 22674), CMS proposed to conduct a special survey to collect data from a sample of occupational categories that provide a valid measure of wage rates within a geographical area. In the August 1, 2001 Final Rule (66 FR 39860), we responded to comments from the Proposed Rule and stated that, CMS will conduct a special survey of all short-term acute-care hospitals that are required to report wage data to collect these data. Section 304 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 requires CMS to collect wage data on hospital employees by occupational category. The collection is to be completed by September 30, 2003 and to be used to adjust the wage index by October 1, 2004; *Frequency:* Other: once every three years; *Affected Public:* Business or other for-profit, and Not-for-profit institutions; *Number of Respondents:* 4,800; *Total Annual Responses:* 4,800; *Total Annual Hours:* 768,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room: C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 27, 2003.

Dawn Willinghan,

Acting, Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–8177 Filed 4–3–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–284]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Medicaid Statistical Information System (MMIS); *Form No.:* CMS–R–0284 (OMB# 0938–0345); *Use:* State data are reported by a Federally mandated process known as MSIS. These data are the basis for Medicaid actuarial forecasts for service utilization and costs; Medicaid legislative analysis and cost savings estimates; and for responding to requests for information from CMS components, the Department, Congress, and other customers. The national MSIS database will contain details that will allow constructive or predictive analysis of today's Medicaid issues (*e.g.*, pregnant women, and infants); *Frequency:* Quarterly; *Affected Public:* State, Local, or Tribal Government; *Number of Respondents:* 53; *Total Annual Responses:* 212; *Total Annual Hours:* 7,420.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 27, 2003.

Dawn Willinghan,

Acting, Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–8178 Filed 4–3–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0106]

Agency Information Collection Activities; Proposed Collection; Comment Request; Submission of Petitions: Food Additive, Color Additive (Including Labeling), and Generally Recognized as Safe Affirmation; and Electronic Submission Using FDA Forms 3503 and 3504

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the

Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on a proposed consolidation of four existing submissions of petitions.

DATES: Submit written or electronic comments on the collection of information by June 3, 2003.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (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. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the 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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Submission of Petitions: Food Additive, Color Additive (Including Labeling), and GRAS Affirmation; Electronic Submission Using FDA Forms 3503 and 3504 (OMB Control Number 0910–0016)—Extension

This notice solicits comments on a proposed collection of the following four existing submissions of petitions: (1) Food Additive and Food Additive Petitions (FAPs) (OMB Control Number 0910–0016), (2) Affirmation of Generally Recognized as Safe (GRAS) Status (OMB Control Number 0910–0132), (3) Labeling Requirements for Color Additives (Other Than Hair Dyes) and Petitions (CAPs) (OMB Control Number 0910–0185), and (4) Electronic Submission of Food and Color Additive Petitions (OMB Control Number 0910–0480).

Section 409(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(a)) provides that a food additive shall be deemed to be unsafe, unless: (1) The additive and its use, or intended use, are in conformity with a regulation issued under section 409 of the act that describes the condition(s) under which the additive may be safely used; (2) the additive and its use, or intended use, conform to the terms of an exemption for investigational use; or (3) a food contact notification submitted under section 409(h) of the act is effective. FAPs are submitted by individuals or companies to obtain approval of a new food additive or to amend the conditions of use permitted under an existing food additive regulation. Section 171.1 (21 CFR 171.1) specifies the information that a petitioner must submit in order to establish that the proposed use of a food additive is safe and to secure the publication of a food additive regulation describing the conditions under which the additive may be safely used. Parts 172, 173, 175 through 178, and 180 (21 CFR parts 172, 173, 175 through 178, and 180) contain labeling requirements for certain food additives to ensure their safe use.

Section 721(a) of the act (21 U.S.C. 379e(a)) provides that a color additive shall be deemed to be unsafe unless the additive and its use are in conformity with a regulation that describes the condition(s) under which the additive may safely be used, or the additive and its use conform to the terms of an exemption for investigational use issued under section 721(f) of the act. CAPs are submitted by individuals or companies to obtain approval of a new color additive or a change in the conditions of use permitted for a color additive that is already approved. Section 71.1 specifies the information that a petitioner must submit in order to establish the safety of a color additive and to secure the issuance of a regulation permitting its use. FDA's color additive labeling requirements in § 70.25 (21 CFR 70.25) require that color additives that are to be used in food, drugs, devices, or cosmetics be labeled with sufficient information to ensure their safe use.

Under authority of sections 201, 402, 409, and 701 of the act (21 U.S.C. 321, 342, 348, and 371), FDA reviews petitions for affirmation as GRAS that are submitted on a voluntary basis by the food industry and other interested parties. Specifically under section 201(s) of the act, a substance is GRAS if it is generally recognized among experts qualified by scientific training and experience to evaluate its safety, to be safe through either scientific procedures or common use in food. The act has historically been interpreted to permit food manufacturers to make their own determination that use of a substance in food is GRAS. To implement the GRAS provisions of the act, FDA has issued procedural regulations under 21 CFR 170.35(c)(1).

In the **Federal Register** of July 31, 2001 (66 FR 39517), FDA announced the availability of a draft guidance entitled ''Draft Guidance for Industry on Providing Regulatory Submissions to Office of Food Additive Safety in Electronic Format for Food Additive and Color Additive Petitions.'' This guidance describes the procedures for electronic submission of FAPs and CAPs using FDA Form No. 3503 entitled ''Food Additive Petition Submission Application'' and FDA Form No. 3504 entitled ''Color Additive Petition Submission Application.''

FDA scientific personnel review food and color additive and GRAS affirmation petitions to ensure the safety of the intended use of the substance in or on food, or of a food additive that may be present in food as a result of its use in articles that contact food (or for color additives, its use in food, drugs, cosmetics, or medical devices). Respondents are businesses engaged in the manufacture or sale of food, food ingredients, color additives, or substances used in materials that come into contact with food.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section/ FDA Form	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Average Hours per Response	Total Operating & Maintenance Costs	Total Hours
CAPs						
70.25	0	1	0	0	0	0
71.1	2	1	2	1,652	$5,600	3,304
FDA Form 3504	1	1	1	1	0	1
GRAS Affirmation Petitions						
170.35	1	1	1	2,598		2,598
FAPs						
171.1	7	1	7	3,640		25,480
FDA Form 3503	2	1	2	1		2
Total					$5,600	31,385

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate of burden for FAPs and CAPs is based on the average number of new FAPs and CAPs received in calendar years 2000 through 2002 and the total hours expended in preparing the petitions. Although the burden varies with the type of petition submitted, an average FAP or CAP, or GRAS affirmation petition, involves analytical work and appropriate toxicological studies, as well as the work of drafting the petition itself. The burden varies depending on the complexity of the petition, including the amount and types of data needed for scientific analysis.

Electronic submissions of petitions contain the same petition information required for paper submission. The agency estimates that up to 30 percent of the petitioners for both food and color additives will take advantage of the electronic submission process. By using the guidelines and forms that FDA is providing, the petitioner will be able to organize the petition to focus on the information needed for FDA's safety review. Therefore, we estimate that petitioners will only need to spend approximately 1 hour completing the electronic submission application form (Form 3503 or 3504, as appropriate) because they will have already used the guidelines to organize the petition information needed for the submission.

The labeling requirements for food and color additives were designed to specify the minimum information needed for labeling in order that food and color manufacturers may comply with all applicable provisions of the act and other specific labeling acts administered by FDA. Label information does not require any additional information gathering beyond what is already required to assure conformance with all specifications and limitations in any given food or color additive regulation. Label information does not have any specific recordkeeping requirements unique to preparing the label. Therefore, because labeling requirements under § 70.25 for a particular color additive involve information required as part of the CAP safety review process, the estimate for number of respondents is the same for § 70.25 and § 71.1, and the burden hours for labeling are included in the estimate for § 71.1. Also, because labeling requirements under parts 172, 173, 175 through 178, and 180 for particular food additives involve information required as part of the FAP safety review process under § 171.1, the burden hours for labeling are included in the estimate for § 171.1.

Dated: March 31, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–8265 Filed 4–3–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02P–0057]

Determination That Albuterol Sulfate Inhalation Solution 0.5% Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that albuterol sulfate inhalation solution 0.5% (Ventolin) was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for albuterol sulfate inhalation solution 0.5%.

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products with Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Regulations also provide that the agency must make a determination as to whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved (21 CFR 314.161(a)(1)). FDA may not approve an ANDA that does not refer to a listed drug.

Albuterol sulfate inhalation solution 0.5% is the subject of NDA 19–269 held by GlaxoSmithKline. Albuterol sulfate inhalation solution 0.5% is indicated for the relief of bronchospasm in patients with reversible obstructive airway disease and acute attacks of bronchospasm.

On February 1, 2002, Nephron Pharmaceuticals Corp. submitted a citizen petition (Docket No. 02P–0057) under 21 CFR 10.30 to FDA requesting that the agency determine whether albuterol sulfate inhalation solution 0.5% was withdrawn from sale for reasons of safety or effectiveness. The agency has determined that albuterol sulfate inhalation solution 0.5% was not withdrawn for reasons of safety or effectiveness. In support of that finding, we note that GlaxoSmithKline notified the agency in July 2001 that albuterol sulfate inhalation solution 0.5% was being withdrawn from sale because of a decline in sales. FDA has independently evaluated relevant literature and data for adverse event reports and has found no information that would indicate that this product was withdrawn for reasons of safety or effectiveness.

After considering the citizen petition and reviewing its records, FDA determines that, for reasons outlined previously, albuterol sulfate inhalation solution 0.5% was not withdrawn for reasons of safety or effectiveness. Accordingly, the agency will continue to list albuterol sulfate inhalation solution 0.5% in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued for reasons other than safety or effectiveness. ANDAs that refer to albuterol sulfate inhalation solution 0.5% may be approved by the agency.

Dated: March 28, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–8264 Filed 4–3–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03D–0118]

Guidance for FDA Staff on Sampling or Detention Without Physical Examination of Decorative Contact Lenses (Import Alert #86–10); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled ''Guidance for FDA Staff on Sampling or Detention Without Physical Examination of Decorative Contact Lenses (Import Alert #86–10).'' The guidance document includes FDA's guidance to FDA district offices for sampling or detention without physical examination of plano (zero-powered or noncorrective) contact lenses intended solely to change the appearance of the normal eye in decorative fashion, when these products are presented for importation into the United States.

DATES: Submit written or electronic comments on the guidance by June 3, 2003.

ADDRESSES: Submit written requests for single copies of the Import Alert #86–10, to the Division of Import Operations and Policy (HFC–170), Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your request. You may fax your request to 301–594–0413. Submit written comments on this guidance 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. See* the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Thaddeus J. Poplawski, Division of Import Operations and Policy (HFC–170), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6553.

SUPPLEMENTARY INFORMATION:

I. Background

FDA has been receiving reports that certain commercial entities are planning to distribute or may already be distributing plano (zero-powered or noncorrective) contact lenses intended solely to change the normal appearance of the eye in decorative fashion (decorative contact lenses). FDA understands that these products are intended to be distributed without a prescription, without fitting by a qualified eye care professional, and without ongoing professional supervision.

FDA believes that, like other contact lenses, decorative contact lenses can cause a variety of eye injuries and conditions. Lens wear has been associated with corneal ulcer, for example, which can progress rapidly, leading to internal ocular infection if left untreated. Uncontrolled infection

can lead to corneal scarring, which can lead to vision impairment. In extreme cases, corneal ulcer can result in blindness and eye loss. Other risks include conjunctivitis; corneal edema; allergic reaction; abrasion from poor lens fit; and reduction in visual acuity, contrast sensitivity, and other visual functions, resulting in interference with driving and other activities.

FDA believes that these risks cannot be sufficiently controlled unless: (1) The wearer obtains advice from an eye care professional; (2) the lenses are fitted by or under the supervision of such a professional; and (3) the wearer remains under appropriate professional supervision. Eye care professional involvement is legally required (21 CFR 801.109) for contact lenses intended for medical purposes (i.e., prosthetic use or vision correction). These products are regulated by FDA as medical devices under the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*). [1] Such control is not available for decorative contact lenses because these products are cosmetics under section 201(i) of the act (21 U.S.C. 321(i)).

Section 201(i) of the act defines ''cosmetic'' to include ''articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance * * * '' (21 U.S.C. 321(i)(1)). Decorative contact lenses are articles intended to be introduced into the eye, which is a part of the body, to beautify the wearer, promote the attractiveness of the wearer, or alter the wearer's appearance. They are claimed to achieve this cosmetic result by changing the apparent color of the iris; by appearing to add a design to the iris (e.g., a professional sports team insignia); or by imparting a nonhuman or otherwise nonnormal appearance to the eye (e.g., cat's eye). Provided they are not marketed with claims[2] that they effect physical or physiological change, decorative contact lenses are properly regulated as cosmetics under the act (cf. *United States* v. *An Article* * * * ''*Sudden Change*,'' 409 F.2d 734 (2d Cir. 1969) (''claiming to affect the structure of the skin in some physiological way'' makes a product a ''drug''); 21 CFR 700.35 (''sunscreen'' claims make a product a drug)).

The fact that contact lenses are ''devices'' in the colloquial sense does not preclude cosmetic status under the act. FDA has previously determined that section 201(i) of the act applies to appearance-enhancing devices such as wigs, hair brushes, stockings and toothpicks (Refs. 1 through 3).

Moreover, the fact that a product is intended to come into contact with the eye does not make it ineligible for cosmetic regulation (Ref. 4). Indeed, the legislative history accompanying the original 1938 act demonstrates that Congress enacted the cosmetic adulteration provisions to address the risk to users presented by cosmetic products that may cause blindness and other serious injuries (S. Rept. 74–361 at 21 (1935)).

On October 22, 2002, FDA issued Import Alert #86–10, with respect to decorative contact lenses. We are now publishing a revised Import Alert #86–10 in the **Federal Register**. The Import Alert #86–10 does not cover contact lenses that are intended for vision correction or for prosthetic or other medical use.

Section 801(a) of the act (21 U.S.C. 381(a)) authorizes FDA to refuse admission to articles that appear to be adulterated or misbranded. Based on the available evidence, FDA believes that decorative contact lenses presented for importation may appear to be adulterated under section 601(a) of the act (21 U.S.C. 361(a)), in that they contain a deleterious substance that is dangerous to wearers of the lenses when they are put to a labeled, customary, or usual use. The deleterious substance is the matrix in which colorants are embedded. This material can cause the potentially vision-threatening eye conditions discussed previously, particularly if the wearer fails to obtain appropriate professional counseling, fitting, and ongoing supervision; if the wearer trades lenses, fails to use proper disinfection and other care techniques; or if the wearer wears lenses for longer than the recommended period. Consequently, FDA believes that decorative contact lenses appear to be adulterated under section 601(a).

Decorative contact lenses may also be subject to refusal if they appear to contain unsafe color additives (21 U.S.C. 381(a) and 361(e)). FDA understands that certain overseas manufacturers or distributors might have selected color additives for use in decorative contact lenses intended for U.S. distribution based on the fact that they have been approved by FDA for use in medical devices. To be used lawfully in decorative contact lenses, a color additive must be approved by FDA for use in eye area cosmetics. Not all color additives approved for use in medical devices have been approved for eye area use in cosmetics. Consequently, decorative contact lenses may also appear to be adulterated under section 601(e) of the act.

Finally, decorative contact lenses may be subject to refusal on the ground that they are misbranded under section 602(a) of the act (21 U.S.C. 362(a)) because their labeling is false or misleading ''in any particular.'' Under the act, labeling can be misleading by failing to disclose ''facts * * * material with respect to consequences which may result'' from use of a product under customary, usual, or labeled conditions (21 U.S.C. 321(n)). As noted previously, decorative contact lenses may cause serious health problems, including (in extreme cases) blindness. FDA believes these risks are material. If they are not disclosed in labeling, then the labeling would be misleading, and the product would appear to be misbranded under section 602(a) of the act and subject to refusal under section 801(a) of the act.

II. Guidance

FDA's district offices may sample or detain without physical examination decorative contact lenses presented for U.S. importation.

The Import Alert #86–10 applies to contact lenses that are: (1) Intended to change the appearance of the normal eye in decorative fashion; and (2) intended for distribution directly to the wearer, without the involvement of a qualified eye care professional. It does not cover contact lenses that are intended for vision correction or for prosthetic or other medical or therapeutic use and that are, therefore, properly regulated as medical devices under the act.

III. Significance of Guidance

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on the sampling or detention without physical examination of decorative contact lenses that appear to be adulterated under section 601(a) and (e) of the act because they contain a deleterious substance that is harmful to users and/or contain an unapproved color additive, or appear to be misbranded under section 602(a) because their labeling is false or misleading. It does not create or confer

[1] There are some lenses currently on the market under cleared 510(k)s covering contact lenses intended for both vision correction use and for solely decorative purposes.The sponsors in these cases voluntarily included a plano lens in the range of corrective powers described in the 510(k) submissions.

[2] *American Health Prods Co.* v. *Hayes*, 574 F. Supp. 1498, 1505 (S.D.N.Y. 1983), *aff'd on other grounds*, 744 F.2d 912 (2d Cir. 1984) (The courts ''have always read the * * * statuatory definitions employing the term 'intended' to refer to specific marketing representations.'').

any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute and regulations.

This guidance is effective immediately because prior public participation is not feasible or appropriate due to the risks to the public health presented by these products.

IV. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this guidance. Such comments will be considered when determining whether to amend the current guidance. Two paper copies of any mailed comments are to be submitted, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Persons with access to the Internet may obtain the guidance at *http://www.fda.gov/ora/fiars/ora_import_ia8610.html.*

VI. References

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

1. Food and Drug Administration (FDA), Compliance Policy Guide (CPG) 7128.04 (revised August 1996) (hair brushes); (*http://www.fda.gov/ora/compliance_ref/cpg/cpgfod/cpg590–400.htm*).

2. FDA, CPG 7128.05 (revised September 1, 1986) (wigs); (http://www.fda.gov/ora/compliance_ref/cpg/cpgfod/cpg590–600.htm).

3. Hutt, Peter Barton, ''Reconciling the Legal, Medical, and Cosmetic Chemist Approach to the Definition of a 'Cosmetic,' '' *Cosmetic, Toiletry, and Fragrance Association Cosmetic Journal*'', vol. 3, 1971 (excerpted in Peter Barton Hutt & Richard A. Merrill, Food and Drug Law: Cases and Materials, p. 824–825 (2d ed. 1991)).

4. FDA, CPG 7128.03 (revised August 1996) (mascara is an eye-contact cosmetic); (*http://www.fda.gov/ora/compliance_ref/cpg/cpgfod/cpg590–300.htm*).

Dated: April 1, 2003.

John R. Marzilli,

Acting, Associate Commissioner for Regulatory Affairs.

[FR Doc. 03–8315 Filed 4–2–03; 11:42 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03D–0057]

Guidance for Industry: How to Use E-mail to Submit a Protocol; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry (#107) entitled ''How to Use E-mail to Submit a Protocol.'' This guidance describes how sponsors can use e-mail to submit protocols for studies intended to be conducted in support of New Animal Drug Applications (NADAs) to the Center for Veterinary Medicine (CVM). Electronic submission is part of CVM's ongoing initiative to provide a method for paperless submissions. This guidance is intended to implement provisions of the Government Paperwork Elimination Act (GPEA).

DATES: General comments on agency guidance documents are welcome at any time.

Submit written or electronic comments on the information collection requirements by June 3, 2003.

ADDRESSES: Submit written requests for single copies of the guidance document to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

Submit written comments on the guidance document 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.* Comments should be identified with the full title of the guidance document and the docket number found in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the collection of information requirements to the Dockets Management Branch. Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth L. Parbuoni, Center for Veterinary Medicine (HFV–16), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–3845, e-mail: *eparbuon@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 20, 1997 (62 FR 13430), FDA published the electronic records and electronic signatures final regulation. This regulation, part 11 (21 CFR part 11), sets forth the criteria under which the agency considers electronic records, electronic signatures, and handwritten signatures executed to electronic records to be trustworthy, reliable, and generally equivalent to paper records and handwritten signatures executed on paper. Electronic records that meet the requirements of part 11 and are identified in public docket 92S–0251 as being the type of submission the agency will accept in electronic format may be used in lieu of paper records unless paper records are specifically required. CVM has identified protocols in this public docket. The public docket is accessible on the Internet at *http://www.fda.gov/ohrms/dockets/dockets/92s0251/92s0251.htm.*

Establishing a process for acceptance of the electronic submission of protocols for studies conducted by sponsors in support of NADAs is part of CVM's ongoing initiative to provide a method for paperless submissions. Upon request, CVM reviews protocols for safety and effectiveness studies. This protocol review facilitates the animal drug review process by improving the likelihood that the study design will be relevant to NADA approval.

Currently, sponsors submit protocols to CVM in paper format. CVM is publishing this guidance to give sponsors the option to submit a protocol as an e-mail attachment via the Internet. This guidance implements provisions of the GPEA. The GPEA requires Federal agencies, by October 21, 2003, to provide: (1) For the option of the electronic maintenance, submission, or disclosure of information, if practicable, as a substitute for paper; and (2) for the use and acceptance of electronic signatures, where applicable.

In order to submit a protocol for an NADA study by e-mail, sponsors should first register and follow the general instructions in guidance #108 entitled ''How to Use E-mail to Submit Information to the Center for Veterinary Medicine.''

II. Significance of Guidance

This level 2 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking about using e-mail to submit a protocol. The document does not create or confer any rights for or on

any person and will not operate to bind FDA or the public. Alternative methods may be used as long as they satisfy the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (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. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60–day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing a notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the 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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: How to Use E-mail to Submit a Protocol

Description: CVM may review protocols for safety and effectiveness studies of new animal drugs submitted by sponsors. The review of protocols facilitates the drug review and approval processes.

Protocols for nonclinical laboratory studies (safety studies) are required under 21 CFR 58.120. Protocols for effectiveness studies are required under § 514.117(b). The burden hours associated with preparing the protocols and appendices were reported and approved under OMB control number 0910–0119 for nonclinical laboratory studies and OMB control number 0910–0346 for adequate and well-controlled effectiveness studies. In this guidance document CVM is giving sponsors the option to submit a protocol as an attachment via the Internet.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Form FDA No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
3536	190	0.52	100	0.20	20

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimate was calculated as the time it takes to submit the protocol which consists of filling out the form and pressing the ''insertsubmission'' button, adding the password and pressing the ''mail to'' button, since the burden for protocol is already estimated under OMB control number 0910–0119 for nonclinical laboratory studies and OMB control number 0910–0346 for efficacy studies. The number of approved sponsors is 190, we routinely receive about 100 protocols a year, and the 12 minutes (.2 *60 minutes/hour) is an estimate based on talking to participating sponsors and our testing the use of the form.

IV. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* or two hard copies of any written comments, except that individuals may submit one hard copy. Comments are to be identified with the docket number found in brackets in the heading of this document.

Written comments concerning the information collection requirements must be received by the Dockets Management Branch by June 3, 2003. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Electronic comments on the guidance document may be submitted on the Internet at *http://www.fda.gov/dockets/ecomments.* Once on the Internet site, select ''03D–0057 How to Use E-mail to Submit a Protocol'' and follow the directions. A copy of this document may be obtained on the Internet at *http://www.fda.gov/cvm.*

Dated: March 21, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–8166 Filed 4–3–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0094]

Annual Guidance Agenda

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing its annual guidance document agenda. FDA committed to publishing, on an annual basis, a list of possible topics for future guidance document development or revision during the next year, and seeking public comment on additional ideas for new guidance documents or revisions of existing ones. This commitment was made in FDA's September 2000 good guidance practices (GGPs) final rule, which sets forth the agency's policies and procedures for the development, issuance, and use of guidance documents. This list is intended to seek public comment on possible topics for guidance documents and possible revisions to existing guidance.

DATES: Submit written or electronic comments on this list and on agency guidance documents at any time.

ADDRESSES: Submit written comments 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: For general information regarding FDA's GGPs contact: Diane Sullivan-Ford, Office of Policy (HF–26), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3480. For information regarding specific topics or guidance, please see contact persons listed in the table in the **SUPPLEMENTARY INFORMATION** section.

SUPPLEMENTARY INFORMATION:

Background

In the **Federal Register** of September 19, 2000 (65 FR 56468), FDA published a final rule announcing its GGPs, which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents. The agency adopted the GGPs to ensure public involvement in the development of guidance documents and to enhance public understanding of the availability, nature, and legal effect of such guidance.

As part of FDA's effort to ensure meaningful interaction with the public regarding guidance documents, the agency committed to publishing an annual guidance document agenda of possible guidance topics or documents for development or revision during the coming year. The agency also committed to soliciting public input regarding these and additional ideas for new topics or revisions to existing guidance documents (65 FR 56468 at 56477, 21 CFR 10.115(f)(5)).

The agency is neither bound by this list of possible topics nor required to issue every guidance document on this list or precluded from issuing guidance documents not on the list set forth in this document.

The following list of guidance topics or documents represents possible new topics or revisions to existing guidance documents that the agency is considering. The agency solicits comments on the topics listed in this document and also seeks additional ideas from the public.

The guidance topic or documents are organized by the issuing center or office within FDA and are further grouped by topic categories. The agency's contact persons are listed for each guidance in the following table.

TITLE/TOPIC OF GUIDANCE	CONTACT
I. CENTER FOR BIOLOGICS EVALUATION AND RESEARCH (CBER)	
CATEGORY—COMPLIANCE AND INSPECTION	
Guidance for Industry: Reprocessing, Reworking and Blending of Biological Drug Substances and Drug Products	Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210
Guidance for Industry: Process Validation Considerations for Biological Drug Substances and Biological Drug Products	Same as above (Do)
Guidance for Industry: Sterile Drug Products Produced by Aseptic Processing	Do
Guidance for Industry: Design, Installation and Operation of Heating, Ventilation and Air Conditioning (HVAC) Systems Used in the Manufacture of Products Regulated by the Center for Biologics Evaluation and Research and the Center for Drug Evaluation and Research	Do
Guidance for Industry: Content and Format of the Warnings/Precautions Section of Labeling for Drugs and Biologics	Do
Guidance for Industry: Content and Format of the Pregnancy and Lactation Sections of Labeling for Drugs and Biologics	Do
Guidance for Industry and Reviewers: Measuring Patient Reported Outcomes to Support Medical Product Claims in Labeling and Advertising	Do
Compliance Program 7341.001 Inspections of Licensed Therapeutic Drug Products	Do
Compliance Program 7341.002—Inspection of Tissue Establishments	Do
Compliance Program 7342.001—Inspection of Licensed and Unlicensed Blood Banks, Brokers, Reference Laboratories, and Contractors	Do
Compliance Program 7342.002—Inspection of Source Plasma Establishments	Do
Compliance Program 7342.006—Inspection of Plasma Derivatives of Human Origin	Do
Compliance Program 7342.008—Inspections of Licensed Viral Marker Test Kits	Do

TITLE/TOPIC OF GUIDANCE	CONTACT
Compliance Program 7345.001—Inspection of Licensed Allergenic Products	Do
Compliance Program 7345.002—Inspection of Licensed Vaccines	Do
CATEGORY—THERAPEUTICS	
Submission of Information for the National Xenotransplantation Database (NXD)	Do
Guidance for Reviewers: Instructions and Template for Chemistry, Manufacturing, and Controls Reviewers of Human Gene Therapy Investigational New Drug Applications	Do
Guidance for Reviewers: Instructions and Template for Chemistry, Manufacturing, and Controls Reviewers of Human Somatic Cell Therapy Investigational New Drug Applications	Do
Potency Assays for Therapeutic Vaccines	Do
Good Review Practices—Track IV	Do
Submission of Information for Adverse Event and Annual Reports for Gene Therapy Investigational New Drug Applications	
Mechanisms of Regulation for Products Used in the Manufacture of Cellular Products	Do
Submission of Chemistry, Manufacturing, and Controls Information for a Therapeutic Recombinant DNA-Derived Product or a Monoclonal Antibody for In Vivo Use	Do
Submission of Chemistry, Manufacturing, and Controls Information for Synthetic Peptide Substances	Do
Submission of Chemistry, Manufacturing, and Controls Information and Establishment Description for Autologous Somatic Therapy Products	Do
CATEGORY—BLOOD AND BLOOD COMPONENTS	
Blood Establishment Software	Do
Apheresis Guidance	Do
Uniform Donor History Questionnaire	Do
Quality Control of Bacterial Contamination	Do
Content of Premarket Submissions (Instruments)	Do
Medication Deferrals	Do
Validation of Computer Crossmatch	Do
Blood Contact Materials	Do
Red Blood Cell Repositories	Do
Rapid Human Immunodeficiency Virus Tests	Do
Submission of Chemistry, Manufacturing, and Controls and Establishment Description Information for Human Plasma-Derived Biological Products, Animal Plasma or Serum-Derived Products Blood Donor Testing for Syphilis Format and Content of a Biologics License Application for Immune Globulin Intravenous Recommendations for Deferral of Donors of Vaccinated With Smallpox Nucleic Acid Testing for Human Immunodeficiency Virus and Hepatitis C Virus; Testing, Product Disposition, Donor Deferral and Reentry	Do
CATEGORY—VACCINES	
Guidance for Industry: Characterization and Qualification of Cell Substances and Viral Seeds Used to Produce Viral Vaccines	Do

TITLE/TOPIC OF GUIDANCE	CONTACT
Guidance for Industry: Preclinical Toxicity Studies for Prophylactic Vaccines	Do
Guidance for Industry: Immunization Human Plasma Donors to Obtain Source Plasma for Preparation of Specific Immune Globulins	Do
Guidance for Industry: Content and Format of Chemistry, Manufacturing, and Controls Information and Establishment Description Information for a Vaccine or Related Product	Do
Guidance for Industry on the Content and Format of Chemistry, Manufacturing, and Controls Information and Establishment Description Information for an Allergenic Extract or Allergen Patch Test	Do
CATEGORY—OTHER	
Providing Regulatory Submission in Electronic Format—Stability	Do
Environmental Assessment/National Environmental Policy Act	Do
Requests for Engagement of Independent Consultant	Do
Eligibility Determination for Donors of Human Cells, Tissue and Cellular and Tissue-Based Products (HCT/Ps)	Do
Filing and Application When the Applicant Protests a Refusal to File Action	Do
Guidance for Industry: Multi-Product Manufacturing With Spore-Forming Microorganisms	Do
II. CENTER FOR DEVICES AND RADIOLOGICAL HEALTH (CDRH)	
CATEGORY—PREMARKET REVIEW—PROCEDURAL	
Delegation of Investigational Device Exemption (Withdrawal)	Joanne R. Less, Center for Devices and Radiological Health (HFZ–403), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190
Overdue Investigational Device Exemption Annual Progress Report Procedures (Withdrawal)	Do
Humanitarian Device Exemptions (HDE) Regulation: Questions and Answers (Revised)	Do
Guidance for the Medical Device Industry on Premarket Approval Application Shell Development and Modular Review (Revised)	Thinh Nguyen, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186
Modifications to Devices Subject to Premarket Approval Application—The Premarket Approval Application Supplement Decision Making Process (Final)	Do
Real-Time Review Program for Premarket Approval Application (PMA) Supplements (Revised)	Do
Pre-Premarket Approval Application Meetings	Do
A New 510(k) Paradigm—Alternate Approaches to Demonstrating Substantial Equivalence in Premarket Notifications (Revised)	Heather Rosecrans, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190
Frequently Asked Questions on the New 510(k) Paradigm (Revised)	Do
New Section 513(f)(2)—Evaluation of Automatic Class III Designation (Revised)	Do
Implementation of Third Party Programs Under the Food and Drug Modernization Act of 1997 (Revised)	Ronald Parr, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–6597, ext. 109
Statistical Guidance on Reporting Results From Studies Evaluating Diagnostic Tests: Draft Guidance for Industry and FDA Reviewers	Kristen Meier, Center for Devices and Radiological Health (HFZ–542), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–827–4369

TITLE/TOPIC OF GUIDANCE	CONTACT
CATEGORY—PREMARKET REVIEW ANESTHESIOLOGY, DENTAL, INFECTION CONTROL, AND GENERAL HOSPITAL DEVICES	
Biological Indicator (Final)	Chiu S. Lin, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8913
Chemical Indicator (Draft)	Do
Medical Sterilization Packaging (Final)	Do
Antimicrobial Coated Medical Devices (Draft)	Do
Surgical Masks (Final)	Do
Surgical Drapes and Gowns (Draft)	Do
Disinfectants to Reprocess Hemodialyzer Machine and Water Treatment Systems (Draft)	Do
Medical Glove Expiration Dating (Final)	Do
Chemotherapy Glove (Draft)	Do
Intraoral Snoring and Sleep Apnea Devices (Final)	Kevin Mulry, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283, ext. 185
Sonography and Jaw Tracking (Final)	Mary S. Runner, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283
Precious Metal Dental Alloys	Mike Adjodha, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283
Base Dental Alloys	Do
Dental Curing Light	Do
Periodontal Membrane Guidance	Robert Betz, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283
Guidance for Bone Filling and Augmentation Devices	Pam Scott, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283
Cutaneous O_2 and CO_2 Monitors (Final)	Joanna Weitershausen, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8611
General Anesthesia Guidance Document	Do
Pulse Oximeter Guidance Document (Revised)	Do
Vascular Access Flush Devices	Patricia Cricenti, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1287, ext. 169
Needleless Injection Devices	Von Nakayama, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1287
CATEGORY—PREMARKET REVIEW FOR CARDIOVASCULAR DEVICES	
Intravascular Stents (Revised)	Ashley Boam, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8243
Percutaneous Transluminal Coronary Angioplasty Catheters, Class II Special Control Guidance	Do

TITLE/TOPIC OF GUIDANCE	CONTACT
Cardiovascular Intravascular Filters (Revised)	Elisa Harvey, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8262
Arrhythmia Detectors	Elias Mallis, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8517
Medical Device Labeling—Suggested Format and Content (Withdrawal)	Robert Gatling, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190, ext. 140
Class II Special Control Guidance Document: Extracorporeal Life Support Devices (Draft)	Dina J. Fleischer, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8517, ext. 176
CATEGORY—PREMARKET REVIEW FOR CLINICAL LABORATORY DEVICES	
Over-the-Counter (OTC) Drugs of Abuse	Arleen Pinkos, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1243
Glucose Test Systems	Pat Bernhardt, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1243
Automated Coagulation Devices	Valerie Dada, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1293
Analytical and Clinical Validation of Multiplex Tests for Heritable DNA Markers and/or Mutations	Elizabeth Mansfield and Michele Schoonmaker, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1293
Class II Special Controls Guidance Document: Specific Bacteriophage, Antibody Conjugates, and Antigens for Antibody Detection for *Bacillus anthracis* and *Yersinia pestis*	Roxanne Shively, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2096
Class II Special Controls Guidance Document: Antimicrobial Susceptibility Test (AST) Systems (Final)	Sally Selepak, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2096
Draft Guidance on In Vitro Diagnostic (IVD) Device Studies	Jean Toth-Allen, Center for Devices and Radiological Health (HFZ–312), Food and Drug Administration, 2904 Gaither Rd., Rockville, MD 20850, 301–594–4723, ext. 141
CATEGORY—PREMARKET REVIEW FOR GENERAL, RESTORATIVE AND NEUROLOGICAL DEVICES	
Guidance for Thermal Ablation Device 510(k)s; Draft Guidance for Industry and FDA	Binita Ashar, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1307
Class II Exempt Special Controls Guidance for Various Orthopedic Fixation Devices; Final Guidance for Industry	Hollace Rhodes, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2036
Class II Special Controls Guidance Document: Knee Joint Patellofemorotibial and Femorotibial Metal/Polymer Porous-Coated Uncemented Prostheses	Peter Allen, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2036
Class II Special Controls Guidance Document: Surgical Suture	Anthony Watson, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090
Class II Special Controls Guidance Document: Processed Human Dura Mater (Draft)	Charles Durfor, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090
Class II Special Controls Guidance Document: Vascular and Neurological Embolization Devices (Draft)	Stephen Rhodes, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090

TITLE/TOPIC OF GUIDANCE	CONTACT
Guidance for Saline, Silicone Gel, and Alternative Breast Implants (Revised)	Samie Allen, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090
Class II Special Controls Guidance Document: Resorbable Calcium Salt Bone Void Filler Device (Final)	Nadine Sloan, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1296
Class II Special Controls Guidance Document: Transcutaneous Electrical Stimulator for Cosmetic Use (Draft)	Robert DeLuca, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1296
Class II Special Controls Guidance Document: Cutaneous Electrode (Draft)	Do
Class II Special Controls Guidance Document: Electroconductive Media (Draft)	Do
Class II Special Controls Guidance Document: Powered Muscle Stimulator for Muscle Conditioning (Draft)	Do
Class II Special Controls Guidance Document: Powered Muscle Stimulator for Rehabilitation (Draft)	Do
Class II Special Controls Guidance Document: Transcutaneous Electrical Nerve Stimulator for Pain Relief (Draft)	Do
Special Control Guidance for Premarket Notifications for Totally Implanted Spinal Cord Stimulators for Pain Relief (Withdrawal)	Kristen Bowsher, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1296
Guidance for Technical Reporting in the Submission of Research and Marketing Applications for Totally Implanted Spinal Cord Stimulators (Draft)	Do
CATEGORY—PREMARKET REVIEW FOR OPHTHALMIC AND ENT DEVICES	
Class II Special Controls Guidance Document: Rigid Gas Permeable (RGP) by Contact Lens Finishing Laboratories	James F. Saviola, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1744
Premarket Notification (510(k)) Guidance Document for Class II Daily Wear Contact Lenses (Revised)	Do
Class II Special Controls Guidance Document: Artificial Eye Care Products	Do
Class II Special Controls Guidance Document: Intraocular Gases for Retina Tamponade	Do
Retinal Implants: Guidance for Investigational Device Exemptions (IDE) and Premarket Approval (PMA) Applications (Draft)	Do
Guidance for Premarket Approval Applications of Class III Extended Wear Contact Lenses	Do
Guidance for Post Approval Studies of Class III Extended Wear Contact Lenses Worn Beyond Seven Continuous Nights	Do
Labeling Guidance for Ultraviolet Absorbing Contact Lenses	Do
Intraocular Lens Guidance Document	Donna R. Lochner, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2053
Refractive Implants Guidance Document	Do
Guidance Document for Keratomes and Keratome Blades	Everette T. Beers, Chief, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2018

TITLE/TOPIC OF GUIDANCE	CONTACT
Implantable Middle Ear Hearing Device (Final)	Eric C. Mann, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2018
Tinnitis Masking Devices	Do
Laryngoplastic Phonosurgery Devices	Do
Ear Plug Devices	Do
CATEGORY—PREMARKET REVIEW FOR REPRODUCTIVE, ABDOMINAL AND RADIOLOGICAL DEVICES	
Devices for Assisted Reproduction Technologies (ART)	Colin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180, ext. 115
Embolization Agents for Uterine Fibroid Embolization	Do
Condoms	Do
Menstrual Tampons	Do
Devices for Vacuum Assisted Delivery	Do
Device Systems for Endometrial Ablation	Do
Class II Special Controls Guidance Document: External Penile Rigidity Devices	Janine Morris, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194, ext. 117
Guidance for the Treatment of Prostate Cancer	Do
Guidance for Urethral Stents	Do
Class II Special Controls Guidance for Home Uterine Activity Monitors (Revised)	Do
Ultrasound Coupling Gel	Robert A. Phillips, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1212, ext. 130
Diagnostic Ultrasound	Do
Cleaning and Disinfection of Radiological Devices	Do
Sheaths and Covers for Ultrasound Transducers	Do
Bone Sonometers (Revised)	Do
Class II Special Controls Guidance Document: Sorbent Hemoperfusion Systems (Draft) Bone Sonometers (Revised)	Carolyn Neuland, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1220, ext. 131
Content of Premarket Notification Submissions for Conventional and High Permeability Hemodialyzers, Hemoconcentrators, Hemofilters and Hemodiafilters (Revised)	Do
Guidance for the Content of Premarket Notifications for Hemodialysis Delivery Systems	Do
Automated Blood Cell Separators for Therapeutic Purposes (Draft)	Do
Blood Access Devices for Hemodialysis (Draft)	Do
CATEGORY—COMPLIANCE AND INSPECTIONS	
Impact Resistance Lenses: Questions and Answers	Walter Snesko, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–6597, ext. 120
Medical Device Quality Systems Manual for Small Entities (Update)	Joseph Puleo, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–6597, ext. 116

TITLE/TOPIC OF GUIDANCE	CONTACT
Medical Glove Guidance Manual (Update)	Arthur Yellin, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–6597, ext. 146
Draft Guidance on Cabinet X-ray Systems Performance Specifications	Daniel Kassidy, Center for Devices and Radiological Health (HFZ–342), Food and Drug Administration, 2904 Gaither Rd., Rockville, MD 20850, 301–594–4654, ext. 141
Final Guidance on Civil Money Penalties	Casper Uldriks, Center for Devices and Radiological Health (HFZ–300), Food and Drug Administration, 2904 Gaither Rd., Rockville, MD 20850, 301–594–4692
Draft Guidance on the Reports of Corrections and Removals Regulation	Do
Draft Guidance for Field Clinical Engineers	Marian Surge, Center for Devices and Radiological Health (HFZ–300), Food and Drug Administration, 2904 Gaither Rd., Rockville, MD 20850, 301–594–4720, ext. 139
Draft Guidance on Good Laboratory Practice (GLP) for Nonclinical Laboratory Studies	Rodney Allnutt, Center for Devices and Radiological Health (HFZ–300), Food and Drug Administration, 2904 Gaither Rd., Rockville, MD 20850, 301–594–4723, ext. 140
Draft Guidance on the Submission of Abbreviated Reports on Bone Densitometer Devices Utilizing Electronic Product Radiation	Tom Jakub, Center for Devices and Radiological Health (HFZ–333), Food and Drug Administration, 2904 Gaither Rd., Rockville, MD 20850, 301–594–4591, ext. 151
Implementation of the Third Party Domestic Quality System Program	Ronald Parr, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–6597, ext. 109
CATEGORY: CONSUMER INFORMATION	
Breast Implants: An Information Update	Nancy Leonard, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–6597, ext. 141
Modifications and Additions to the Policy Guidance Help System #6	Charles A. Finder, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–827–0009
Modifications and Additions to the Policy Guidance Help System #7	Do
Modifications and Additions to the Policy Guidance Help System #8	Do
Modifications and Additions to the Policy Guidance Help System #9	Do
Modifications and Additions to the Policy Guidance Help System #10	Do
CATEGORY—MEDICAL DEVICE REPORTING	
Needlesticks; Medical Device Reporting Guidance for User Facilities, Manufacturers, and Importers	Sharon Kapsch, Center for Devices and Radiological Health (HFZ–533), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–827–2982
CATEGORY—POSTMARKET SURVEILLANCE	
Preparing a Postmarket Surveillance Plan: Guidance for Manufacturers	Laura Alonge, Center for Devices and Radiological Health (HFZ–510), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3060
CATEGORY—OTHER	
Hospital Bed System Dimensional and Assessment Guidance to Reduce Entrapment: For Industry and Health Care Facilities	Jay A. Rachlin, Center for Devices and Radiological Health (HFZ–230), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3174
III. CENTER FOR DRUG EVALUATION AND RESEARCH (CDER)	
CATEGORY—ADVERTISING	
Advertising and Labeling of Treatment Investigational New Drug Application Protocols	Nancy E. Derr, Center for Drug Evaluation and Research (HFD–5), Food and Drug Administration, 1451 Rockville Pike, Rockville, MD 20852, 301–594–5400

TITLE/TOPIC OF GUIDANCE	CONTACT
Patient Reported Outcomes	Do
Promotion of Combination Oral Contraceptive Products	Do
CATEGORY—BIOPHARMACEUTICS	
Clozapine Tablets—In Vivo Bioequivalence and In Vitro Dissolution Testing	Do
CATEGORY—CHEMISTRY	
Documentation for Antibiotics and Other Cellular Metabolites Produced by Microorganisms Modified Using Recombinant DNA Technology	Do
Drug Products: Chemistry, Manufacturing, and Control Documentation	Do
Drug Substance: Chemistry, Manufacturing, and Control Documentation	Do
CATEGORY—CLINICAL/MEDICAL	
Acne Vulgaris	Do
Analgesics	Do
Clinical Development Programs for Metered Dose Inhaler and Dry Powder Inhalers Products—Revised	Do
Clinical Evaluation of Drugs for the Treatment of Acute Coronary Syndrome	Do
Clinical Evaluation of Combination Estrogen/Progestin-Containing Drug Products Used for Hormone Replacement Therapy in Postmenopausal Women—Revised	Do
Clinical Evaluation of Drugs for Neuropathic Pain	Do
Clinical Evaluation of Drugs for the Treatment of Heart Failure	Do
Collection and Use of Race and Ethnicity Data in Clinical Trials for FDA Regulated Products	Do
Development of New Opiate Formulations	Do
Developing Antiviral Drug for the Mitigation of Complication Associated Vaccine Immunization	Do
Developing Antiviral Drugs for the Treatment of Smallpox	Do
Drug-Coated Cardiovascular Stents	Do
Evaluation of New Treatments for Diabetes Mellitus	Do
Gingivitis	Do
Safety Review of Clinical Data	Do
CATEGORY—CLINICAL/PHARMACOLOGY	Do
Content and Format of the Clinical Pharmacology Section	Do
Content and Format of the Warnings and Precautions, Contradictions and Boxed Warning Sections of Prescription Drugs	Do
Immediate Release to Modified Release Dosage Forms	Do
In Vitro Drug Metabolism/Drug Interaction—Guidance for Reviewers	Do
CATEGORY—COMPLIANCE	
Current Good Manufacturing Practices for Compressed Medical Gases—Revised	Do
Maintaining Adequate and Accurate Records During Clinical Investigations	Do

TITLE/TOPIC OF GUIDANCE	CONTACT
National Drug Code Number and Drug Product Labels	Do
Describing How Positron Emission Tomography Drug Products May Comply With New Current Good Manufacturing Process Requirements—Revised	Do
Sterile Drug Products Produced by Aseptic Processing	Do
CATEGORY—ELECTRONIC SUBMISSIONS	
Providing Electronic Submissions to the Division of Drug Marketing, Advertising, and Communications	Do
Providing Electronic Submissions in Electronic Format: Marketing Applications and Related Submissions	
Providing Regulatory Submissions in Electronic Format—Annual Reports for Approved New Drug Applications	Do
Providing Regulatory Submissions in Electronic Format—General Considerations	Do
Providing Regulatory Submissions in Electronic Format: Postmarketing Periodic Adverse Drug Experience Report	Do
Scope and Implementation of 21 CFR Part 11: Archiving	Do
Scope and Implementation of 21 CFR Part 11: Audit Trails	Do
Standards for Clinical Data Submissions	Do
CATEGORY—GENERICS	
Bioequivalence Studies With Clinical Endpoints for Vaginal Antifungal Drug Products	Do
Chemistry, Manufacturing, and Controls Documentation Unique to Radiopharmaceuticals Submitted in Abbreviated New Drug Applications	Do
Generic Drug Labeling When Pediatric Labeling Information Has Been Added to the Innovator Labeling	Do
CATEGORY—GOOD REVIEW PRACTICES	
General Clinical Review Template	Do
CATEGORY—INVESTIGATIONAL NEW DRUG APPLICATIONS	
Consumer Product Safety Commission—Tamper Resistant Packaging for Investigational New Drug Applications	Do
Pediatric Safety and Efficacy Data in Investigational New Drug Applications	Do
CATEGORY—LABELING	
Drug Names and Dosage Forms	Do
Pregnancy Labeling Revisions	Do
Submitting Proprietary Names for Evaluation	Do
CATEGORY–OVER–THE–COUNTER	
Actual Use Trials	Do
Labeling Comprehension Studies for Over-the-Counter Drug Products	Do
Labeling for Over-the-Counter Human Drug Products	Do
Labeling Over-the-Counter Human Drug Products; Questions and Answers	Do
Time and Extent Applications	Do

TITLE/TOPIC OF GUIDANCE	CONTACT
CATEGORY—PRESCRIPTION DRUG USER FEE AMENDMENTS OF 2002	
Continuous Marketing Application: Pilot 1—Reviewable Units for Fast Track Products Under the Prescription Drug User Fee Amendments of 2002	Do
Continuous Marketing Application: Pilot 2—Scientific Feedback and Interactions During Drug Development of Fast Track Products Under the Prescription Drug User Fee Amendments of 2002	Do
First Cycle Review Performance: Good Review Management Principles	Do
CATEGORY—PHARMACOLOGY/TOXICOLOGY	
Drug-Induced Vasculitis in Nonclinical Studies	Do
Estimating the Safe Starting Dose for Clinical Trials of Therapeutics in Adult Healthy Volunteers	Do
Immunotoxicology Evaluation of Investigational New Drug Applications	Do
Nonclinical Safety Evaluation of Pediatric Drug Products	Do
CATEGORY—PROCEDURAL	
Assessment of Abuse Potential of Drugs	Do
Dispute Resolution Involving Pediatric Labeling	Do
Exocrine Pancreatic Insufficiency Drug Products—New Drug Application Requirements	Do
Process for Contracts and Written Requests Under the Best Pharmaceuticals for Children Act	Do
Qualifying for Pediatric Exclusivity Under Section 505a of the Federal Food, Drug, and Cosmetic Act	Do
Reports on the Status of Postmarketing Studies—Implementation of Section 130 of the Food and Drug Administration Modernization Act of 1997	Do
IV. CENTER FOOD SAFETY AND APPLIED NUTRITION (CFSAN)	
CATEGORY: OFFICE OF PLANTS, DAIRY FOODS, AND BEVERAGES	
Final Guidance on Juice Transport	Amy Green, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2025
Draft Guidance on Use of Food Allergen Test Kits	Jennifer Burnham, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2030
Draft Guidance to Harmonize U.S. Aflatoxin Levels in Peanuts With Codex Levels	Lauren Posnick, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1639
Compliance Policy Guide for Lead Levels in Food Based on Levels Adopted by Codex	Do
Additional Questions and Answers on Juice Hazard Analysis and Critical Control Point	Samir Assar, Center for Food Safety and Applied Nutrition (HFS–235), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1636
Update the Pesticide Compliance Policy Guide to Bring It in Line With the Food Quality Protection Act of 1996 and Changes in Pesticide Programs and Policy Over the Past Few Years	Mike Kashtock, Center for Food Safety and Applied Nutrition (HFS–305), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2022
Guidance for Industry: Standardized Training Curriculum for Application of Hazard Analysis and Critical Control Point Principles to Juice Processing	Do

TITLE/TOPIC OF GUIDANCE	CONTACT
Listeria monocytogenes Draft Guidance	Andreas Keller, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2029
Fresh-Cut Produce Draft Guidance	Julie Schrimpf, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. 301–436–2031
Small Entities Guide for the Juice Hazard Analysis and Critical Control Point Regulations	Amy Green, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2025
Juice Hazard Analysis and Critical Control Point Compliance Program	Dale Wohlers, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2029
Final Compliance Policy Guide 555.600 Filth From Insects, Rodents, and Other Pests in Food	Douglas Park, Center for Food Safety and Applied Nutrition (HFS–345), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2401
Draft Compliance Policy Guide 555.525—Fly Infestations	Do
Draft Compliance Policy Guide 555.500—Classification of Establishment Inspection Report	Do
Draft Compliance Policy Guide 580.100—Pest Infestations	Do
Rescind Compliance Policy Guide 527.600 Use of Dichlorvos Strips in Milk Houses and Milk Rooms	Esther Lazar, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1485
Rescind Compliance Policy Guide 527.450 Milk and Milk Products Containing Penicillin	Do
Update Compliance Policy Guide 527.400 Whole Milk, Low Fat Milk, Skim Milk—Aflatoxin M1	Do
Update Compliance Policy Guide 527.300 Pathogens in Dairy Products	Do
Update Compliance Policy Guide 527.200 Cheese and Cheese Products—Adulteration With Filth	Do
New Compliance Policy Guide on Vitamins A and D in Milk Products	Monica Metz, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2041
New Compliance Policy Guide on Vat Pasteurization	Do
New Compliance Policy Guide on High Temperature/Short Time Pasteurization	Do
New Compliance Policy Guide on Soft Cheeses	Do
We may either update or rescind the following:	Do
Compliance Policy Guide 527.250 Cheese Misbranding Due to Moisture and Fat	To be determined (TBD)
Compliance Policy Guide 527.500 Malted Milk	TBD
Compliance Policy Guide 527.100 Butter—Adulteration Involving Insufficient Fat Content	TBD
Compliance Policy Guide 527.250 Cheese and Cheese Products: Misbranding Involving Net Weights	TBD
CATEGORY: OFFICE OF FIELD PROGRAMS	
Allergen Questions and Answers	Donald Kautter, Center for Food Safety and Applied Nutrition (HFS–615), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1629

TITLE/TOPIC OF GUIDANCE	CONTACT
Allergen Recall Classification Guidance	Do
Juice Hazard Analysis and Critical Control Point Regulator Guide and Training	Do
Spice Reconditioning Inspection Guidance	Do
Spice Reconditioning Industry Guidance	Do
Interstate Travel Handbooks on Sanitation of: • Railroad Servicing Areas • Vessels in Operation • Vessel Construction • Vessel Watering Points • Buses • Airlines Railroad Passenger Cars	Do (pending Office of Field Programs reorganization)
International Travel Program—Guide to Inspections of Interstate Carriers and Support Facilities	Do
Compliance Programs for Milk, Retail Food, and Molluscan Shellfish	Faye Feldstein, Center for Food Safety and Applied Nutrition (HFS–615), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1564
Electronic Inspection System With Model Code Database, Model Inspection Form, Users' Manual	Do
Food Recovery Guidelines	Do
Permanent Outdoor Cooking Guidelines	Do
Temporary Food Establishments Guidance	Do
Voluntary National Retail Regulatory Program Standards and Annexes	Do
Program Standards Clearinghouse Questions and Answers	Do
Conference Position Papers (Shellfish and Milk for 2003)	Do
Food Code Supplements	Do
Center for Food Safety and Applied Nutrition Response to Conference for Food Protection Recommendations	Do
Food Code Interpretations; Questions and Answers	Do
Opinion Letters in Response to Correspondence	Do
Backgrounders	Do
Program Information Manual Additions and Revised	Do
Letters to Industry Alerting Them to a Commodity Problem, Emerging Situations, and How to Respond	Do
Managing Food Safety: A Regulator's Guide for Applying Hazard Analysis and Critical Control Point Principles to Risk-Based Retail and Food Service Inspections	Do
Managing Food Safety: A Guide for the Voluntary Use of Hazard Analysis and Critical Control Point Principles for Operators of Food Service and Retail Establishments	Do
Combined Pasteurized Milk and Dry Milk Ordinance	Do
Annual Report Regarding State Program Evaluations (Milk and Shellfish)	Do
Rescind Guidance Regarding Blending of Milk Products (Compliance Policy Guide?)	Office of Plant and Dairy Foods and Beverages
Compliance Policy Guide—Criteria for Refusal for Entry of Food Products From Firms That Refuse to Allow Inspections	Do

TITLE/TOPIC OF GUIDANCE	CONTACT
Listeria Action Plan	Donald Kautter, Center for Food Safety and Applied Nutrition (HFS–615), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1629
Food Registration Implementation	Do
Molluscan Shellfish: Guide for the Control of Molluscan Shellfish • Model Ordinance • Public Health Reasons and Program Requirements for State Administrative Procedures; Laboratory Procedures; Growing Area Survey and Classification; Controlled Relaying; Patrol of Shellfish Harvesting Areas; Control of Harvesting; Aquaculture; Harvesting, Handling and Shipping Shellfish; Shellfish Processing • Guidance Documents on Growing Areas, Harvesting, Processing, and Distribution • Suggested Forms • Manual of FDA Interpretations of Model Ordinance Requirements	Faye Feldstein, Center for Food Safety and Applied Nutrition (HFS–615), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1564
Program No. 7303.003: Import Acidified and Low Acid Canned Foods Program	TBD
Program No. 7303.037: Domestic and Imported Cheese and Cheese Products	TBD
Program No. 7303.039: National Drug Residue Milk Monitoring Program	TBD
Program No. 7303.803: Domestic Food Safety	TBD
Program No. 7303.803A: Domestic Acidified and Low-Acid Canned Foods	TBD
Program No. 7303.819: Import Foods—General Program	TBD
Program No. 7303.842: Domestic Fish and Fishery Products Inspection Program (Fiscal Years 2001 and 2002)	TBD
Program No. 7303.844: Import Seafood Products	TBD
Program No. 7304.004: Pesticides and Industrial Chemicals in Domestic Foods	TBD
Program No. 7304.016: Pesticides and Industrial Chemicals in Imported Foods	TBD
Program No. 7304.018: Chemotherapeutic in Seafood Compliance Program	TBD
Program No. 7304.019: Toxic Elements in Foods and Foodware Import and Domestic	TBD
Program No. 7304.839: Total Diet Study	TBD
Program No. 7304.803: Domestic Food Safety Program—Primary Project Filed in Chapter 3	TBD
Program No. 7307.001: Mycotoxins in Domestic Foods	TBD
Program No. 7307.002: Mycotoxins in Imported Foods	TBD
Program No.7309.006: Imported Foods and Color Additives	TBD
Program No. 7309.803: Domestic Food Safety Program—Primary Project Filed in Chapter 3)	TBD
Program No. 7309.808: Good Laboratory Practice (Nonclinical Laboratories)—Primary Project Filed in Chapter 48	TBD
Program No. 7309.809: Institutional Review Board Program—Primary Project Filed in Chapter 48	TBD

TITLE/TOPIC OF GUIDANCE	CONTACT
Program No. 7309.810: Sponsors, Contract Research Organizations and Monitors—Compliance With Regulations—Primary Project Filed in Chapter 48	TBD
Program No. 7309.811: Clinical Investigators—Primary Project Filed in Chapter 48	TBD
Program No. 7318.002: Retail Food Protection—State	TBD
Program No. 7318.003: Milk Safety Program	TBD
Program No. 7318.004: Molluscan Shellfish Evaluation	TBD
Program No. 7318.029: Interstate Travel Program	TBD
Program No. 7321.002: Medical Foods—Import and Domestic	TBD
Program No. 7321.005: Domestic Nutrition Labeling and Education Act of 1990, Nutrient Sample Analysis, General Food Labeling Program	TBD
Program No. 7321.006: Infant Formula Program—Import and Domestic	TBD
Program No. 7321.007: Nutrition Labeling and Education Act of 1990 and Enforcement—Imports	TBD
Program No. 7321.008: Dietary Supplements—Imports and Domestic	TBD
Program No. 7329.001: Domestic Cosmetics Program	TBD
Program No. 7329.002: Imported Cosmetics Compliance Program	TBD
CATEGORY: OFFICE OF NUTRITION, PRODUCTS, LABELING AND DIETARY SUPPLEMENTS	
Soy Formulas and Preterm Infants—Draft Guidance	Shawne Suggs-Anderson, Center for Food Safety and Applied Nutrition (HFS–831), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1783
Petition Process for Requesting Labeling of Foods That Have Been Treated With Irradiation—Final Guidance published October 7, 2002	Loretta Carey, Center for Food Safety and Applied Nutrition (HFS–822), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2371
Voluntary Labeling Indicating Whether Foods Have or Have Not Been Developed Using Bioengineering—Final Guidance	Cataline Ferre-Hockensmith, Center for Food Safety and Applied Nutrition (HFS–822), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2371
Compliance Programs	John Foret, Center for Food Safety and Applied Nutrition (HFS–810), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1761
Summary of Regulatory Requirements for Dietary Supplements	Robert Moore, Center for Food Safety and Applied Nutrition (HFS–811), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1441
Dietary Supplement Labeling Guide	Do
CATEGORY: OFFICE FOOD ADDITIVE AND SAFETY	
Points to Consider for the Use of Recycled Plastics in Food Packaging: Chemistry Considerations	Kristina Paquette, Center for Food Safety and Applied Nutrition (HFS–275), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–436–3020
Guidance for Industry: Testing Protocols for Determining Exposure to Radiolysis Products From Packaging Materials Irradiated in Contact With Food	Do
Revised of Four Chapters of ''Toxicological Principles for the Safety Assessment of Direct Food Additives and Color Additives Used in Food'' (Redbook 2000)	Carolyn Young, Center for Food Safety and Applied Nutrition (HFS–275), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 202–418–3059

TITLE/TOPIC OF GUIDANCE	CONTACT
Guidance to Industry: Evaluation of Allergenicity of Proteins Introduced into Bioengineered Foods	Kathleen Jones, Center for Food Safety and Applied Nutrition (HFS–013), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1856. Guidance document reassigned with Kathleen Jones Office of Regulation and Policy (HFS–013)
Preparing a Color Additive Petition for Submission to the Center for Food Safety and Applied Nutrition for Color Additives Used in or on Contact Lenses	Judy Kidwell, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 202–418–3354
Compliance Policy Guideline on Chloropropanols in Soy Sauces and Hydrolyzed Vegetable Protein	Do
Guidance for Preparing a Claim of Categorical Exclusion or an Environmental Assessment for Submissions to the Center for Food Safety and Applied Nutrition	Layla Batarseh, Center for Food Safety and Applied Nutrition (HFS–245), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 202–418–3016
Guidance for Preparing a Claim of Categorical Exclusion or an Environmental Assessment for Submissions to the Center for Food Safety and Applied Nutrition (Appendix D)	Do
Guidance for Industry: Submission of Food Contact Notifications in Electronic Format	Ken McAdams, Center for Food Safety and Applied Nutrition (HFS–205), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 202–418–3392
Submission of Premarket Biotechnology Notices (PBNs) to FDA's Office of Food Addictive Safety—Electronic Copies in Portable Document Format (PDF)	Linda Kahl, Center for Food Safety and Applied Nutrition (HFS–255) Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 202–418–3101
Submission of Premarket Biotechnology Notices (PBNs) to FDA's Office of Food Addictive Safety—Electronic Copies in Hypertest Markup Language (HTML)	Do
Providing Food and Color Additive Petitions in Electronic Format	Do
Guidances Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Title III, Subtitle A	
CATEGORY: OFFICE OF COSMETICS AND COLORS	
Labeling for Topically Applied Cosmetic Products Containing Alpha Hydroxy Acids as Ingredients—Draft Guidance	Julie Barrows, Center for Food Safety and Applied Nutrition (HFS–105), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3407
Cosmetics Handbook for Industry—Draft Guidance	Beth Meyers, Center for Food Safety and Applied Nutrition (HFS–105), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3174
Strategy for Enforcement of 21 CFR 740.10: Required Warning Statement for Cosmetics With Insufficient Data to Substantiate Safety—Draft Guidance	Do
V. CENTER FOR VETERINARY MEDICINE (CVM)	
CATEGORY—HUMAN FOOD SAFETY	
Evaluating the Safety of Antimicrobial New Animal Drugs With Regard to Their Microbiological Effects on Bacteria of Human Health Concern	William Flynn, Center for Veterinary Medicine (HFV–2), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–4514
Mass Spectroscopy Spectrometry for Confirmation of the Identity of Drug Residues	David Heller, Center for Veterinary Medicine (HFV–511), Food and Drug Administration, 8401 Muirkirk Rd., Beltsville, MD 20855, 301–827–8156
Assessment of the Effects of Antimicrobial Drug Residues From Food of Animal Origin on the Human Intestinal Flora	Haydee Fernandez, Center for Veterinary Medicine (HFV–153), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6981
Studies to Evaluate the Utility of Anti-Salmonella Chemical Food Additives in Feed	Henry Ekperigin, Center for Veterinary Medicine (HFV–222), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0174
CATEGORY—NEW ANIMAL DRUG APPLICATIONS	

TITLE/TOPIC OF GUIDANCE	CONTACT
Development of Supplemental Applications for Approved New Animal Drugs (Section 403(b) of the Food and Drug Administration Modernization Act of 1997)	Marilyn Martinez, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7577
Administrative New Animal Drug Application Process	Gail Schmerfeld, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0205
CATEGORY—LABELING	
Manufacture and Labeling of Raw Meat Diets for Consumption by Dogs, Cats, and Captive Non-Companion Animal Carnivores and Omnivores	William Burkholder, Center for Veterinary Medicine (HFV–228), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0179
Labeling and Professional Flexible Labeling	Douglass Oeller, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0131
CATEGORY—TARGET ANIMAL SAFETY	
New Drug Dosage or Dosage Range Characterization	Gail Schmerfeld, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0205
Use of Field Studies to Demonstrate the Effectiveness of a New Animal Drug	Steven Vaughn and Gail Schmerfeld, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7584
CATEGORY—STATUTORY REQUIREMENTS	
Dispute Resolution—Food and Drug Administration Modernization Act of 1997	Marcia Larkins, Center for Veterinary Medicine (HFV–1), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–4535
CATEGORY—INTERNATIONAL HARMONIZATION	
Guidance GL27 International Cooperation on Harmonization of Technical Requirements for Registration of Veterinary Medicinal Products	William Flynn, Center for Veterinary Medicine (HFV–2), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–4514
VI. OFFICE OF THE COMMISSIONER, OFFICE FOR GOOD CLINICAL PRACTICE (OGCP)	
CATEGORY—GOOD CLINICAL PRACTICE; GUIDANCE FOR INSTITUTIONAL REVIEW BOARDS AND CLINICAL INVESTIGATORS	
Cooperative Arrangements for Institutional Review Board's Review of Research	Bonnie M. Lee, Office of the Commissioner, Office for Good Clinical Practice (HF–34), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3340
Institutional Review Board's Review of Research Conducted at Other Sites	Do
Continuing Review After Study Approval	Do
Dates of Continuing Review	Do
Interactions Among FDA, Sponsor, Investigator, and Institutional Review Board	Do
Acceptance of Clinical Studies Conducted Outside the United States	Do
Charging for Investigational Products	Do
Recruiting Study Subjects	Do
Payment to Research Subjects	Do
Screening Tests Prior to Study Enrollment	Do
A Guide to Informed Consent	Do
Use of Investigational Products When Subjects Enter a Second Institution	Do

TITLE/TOPIC OF GUIDANCE	CONTACT
Personal Importation of and Use of Drug Products Not Approved in the United States	Do
Investigational Use of Marketed Drugs, Biologics, and Medical Devices	Do
Emergency Use: Exceptions From the Requirements for Institutional Review Board (IRB) Review and Informed Consent	Do
Emergency Use of an Investigational Drug or Biologic Under 21 CFR Part 312	Do
Expanded Access of Investigational Drugs	Do
Waiver of Institutional Review Board Requirements for Drug and Biologic Studies	Do
Drug Study Designs	Do
Evaluation of Gender Differences in Clinical Investigations	Do
Medical Devices 21 CFR Part 812	Do
Significant Risk and Nonsignificant Risk Medical Device Studies	Do
Emergency Use of Unapproved Medical Devices	Do
FDA Institutional Review Board Inspections	Do
Clinical Investigator Regulatory Sanctions	Do
Recordkeeping in Clinical Investigations	Do
Significant Differences in FDA's and the Department of Health and Human Services' Regulations	Do
A Self-Evaluation Checklist for Institutional Review Boards	Do
VII. OFFICE OF REGULATORY AFFAIRS (ORA)	
INSPECTION GUIDES	
Techniques for Detecting False Data During Bioresearch Monitoring Inspections	Gerald Miller, Division of Field Investigations (HFC–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5655
Guide to Inspections of Bulk Pharmaceutical Chemicals	Do
Guide to International Inspections and Travel	Rebecca Hackett, Division of Field Investigations, (HFC–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD, 20857, 301–827–3777
Guide to Produce Farm Investigations	Ellen Morrison, Emergency Operations (HFC–160), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5660

Dated: March 28, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–8262 Filed 4–3–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03D–0093]

Small Entity Compliance Guide: ''Juice HACCP''; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a small entity compliance guide (SECG) for a final rule published in the **Federal Register** of January 19, 2001, entitled ''Hazard Analysis and Critical Control Point (HACCP); Procedures for the Safe and Sanitary Processing and Importing of Juice.'' This SECG, entitled ''Juice HACCP,'' is intended to set forth in plain language the requirements of that final rule and to help small businesses understand the regulation.

DATES: Submit written or electronic comments on the SECG at any time.

ADDRESSES: Submit written comments concerning this SECG 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.* Submit written requests for single copies of the SECG to Amy Green, Center for Food Safety and Applied Nutrition (CFSAN) (see **FOR FURTHER INFORMATION CONTACT**). Send one self-adhesive address label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the SECG.

FOR FURTHER INFORMATION CONTACT: Amy Green, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2025, FAX 301–436–2651.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 19, 2001 (66 FR 6138), FDA issued a final rule to ensure the safe and sanitary processing of fruit and vegetable juices. The regulations in part 120 (21 CFR part 120) mandate the application of HACCP principles to the processing of these foods. HACCP is a preventive system of hazard control. The effective dates of the final rule are staggered and based on the size of the business. For very small businesses (as defined in § 120.1(b)(1), the effective date is January 20, 2004. For small businesses, the effective date was January 21, 2003, and for all other size businesses the effective date was January 22, 2002.

FDA examined the economic implications of that final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–602). The agency determined that the final rule would have a significant economic impact on a substantial number of small entities.

In compliance with section 212 of the Small Business Regulatory Enforcement Fairness Act (Public Law 104–121), FDA is making available this SECG stating in plain language the requirements of the juice HAACP regulations.

FDA is issuing this SECG as level 2 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115(c)(2)). The SECG represents the agency's current thinking on the subject. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the SECG entitled ''Juice HACCP.'' Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of SECG and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

The SECG also may be viewed on a personal computer with access to the Internet at *http://www.cfsan.fda.gov/guidance.html.*

Dated: March 27, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–8263 Filed 4–3–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1662]

''Guidance for Industry: Source Animal, Product, Preclinical, and Clinical Issues Concerning the Use of Xenotransplantation Products in Humans;'' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Guidance for Industry: Source Animal, Product, Preclinical, and Clinical Issues Concerning the Use of Xenotransplantation Products in Humans'' dated April 2003. The document provides guidance on the production, testing, and evaluation of products intended for use in xenotransplantation. The guidance announced in this notice finalizes the draft guidance document of the same title dated February 2001.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written or electronic requests for single copies of this guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance document 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: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Guidance for Industry: Source Animal, Product, Preclinical, and Clinical Issues Concerning the Use of Xenotransplantation Products in Humans'' dated April 2003. The document provides guidance on the production, testing, and evaluation of products intended for use in xenotransplantation. The guidance document announced in this notice was revised based on public comments received on the draft guidance, and it finalizes the draft document of the same title dated February 2001 (66 FR 9348, February 7, 2001).

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance document represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Comments

Interested persons may, at any time, submit written or electronic comments to the Dockets Management Branch (see **ADDRESSES**) regarding this guidance document. Two copies of any mailed comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in

the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cber/guidelines.htm* or *http://www.fda.gov/ohrms/dockets/default.htm.*

Dated: March 27, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–8167 Filed 4–3–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–14]

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.

DATES: April 4, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1998 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: March 27, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 03–7857 Filed 4–3–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Mayhoffer/Singletree Trail, Boulder County, CO

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: Boulder County Parks and Open Space Department (Applicant) has applied to the Fish and Wildlife Service (Service) for an Incidental Take Permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The permit would authorize the incidental take of Preble's meadow jumping mouse (*Zapus hudsonius preblei*) (''Preble's''), Federally listed as threatened, and loss and modification of its habitat associated with the construction and use of a multiple use trail on the Mayhoffer/Singletree Property, located near the Town of Superior, in unincorporated Boulder County. The permit would be in effect for 10 years from the date of issuance, to allow for construction of the proposed project and all associated mitigation activities.

We announce the receipt of the Applicant's Incidental Take Permit application that includes a combined proposed Habitat Conservation Plan (HCP) and Environmental Assessment (EA) for the Preble's on the Mayhoffer/Singletree property. The proposed HCP/EA is available for public comment. It fully describes the proposed project and the measures the Applicant would undertake to minimize and mitigate project impacts to the Preble's.

The Service requests comments on the HCP/EA for the proposed issuance of an Incidental Take Permit. We provide this notice pursuant to section 10(a) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6). All comments on the HCP and permit application will become part of the administrative record and will be available to the public.

DATES: Written comments on the permit application, HCP, and EA should be received on or before June 3, 2003.

ADDRESSES: Comments regarding the permit application and HCP/EA should be addressed to LeRoy Carlson, Field Supervisor, U.S. Fish and Wildlife Service, Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Linder, Fish and Wildlife Biologist, Colorado Field Office, telephone (303) 275–2370.

SUPPLEMENTARY INFORMATION:

Document Availability

Individuals wishing copies of the HCP/EA and associated documents for review should immediately contact the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the Lakewood, Colorado, Field Office (*see* **ADDRESSES** above).

Background

Section 9 of the Act and Federal regulation prohibit the ''take'' of a species listed as endangered or threatened. Take is defined under the Act, in part, as to kill, harm, or harass a Federally listed species. However, the Service may issue permits to authorize ''incidental take'' of listed species under limited circumstances. Incidental Take is defined under the Act as take of a listed species that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity under limited circumstances. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32.

The Applicant plans to develop a multiple-use trail on the Mayhoffer/Singletree property in the vicinity of Coal Creek near Superior, Boulder County, Colorado, within portions of the property that may constitute habitat for the Preble's. Of the 32 hectares (80 acres) of potential Preble's habitat on the Mayhoffer/Singletree property, the project would impact a total of 0.27 hectare (0.67 acre) of potential Preble's habitat permanently and 0.34 hectare (0.85 acre) temporarily during construction. This reach of the Coal Creek corridor is considered to be viable Preble's habitat by the Service. Preble's have been found near this creek in 1999, approximately 0.8 kilometer (0.5 mile) upstream from the proposed project area, along the Hake Ditch running north of the creek. As discussed below, the Applicant proposes a number of measures to mitigate possible impacts of the proposed action.

Alternatives considered were—no action; alternative trail alignment, which would have taken the trail through a large prairie dog colony and

an important raptor conservation area; and the preferred alternative, with the alignment and mitigation per the proposed HCP. None of these alternatives, except no action, eliminated potential take of Preble's.

To mitigate impacts that may result from incidental take, the HCP provides for the following mitigation: All temporarily impacted areas resulting from trail construction will be mitigated onsite at a minimum of 1.5:1 ratio by replanting these areas into similar native vegetation to what existed prior to trail construction. Primarily, these areas are currently in weedy vegetation and will, instead, be planted back into native grasses. Shrub habitat will be replaced with identical native shrub species. Additional mitigation activities for temporary take will include weed control at a ratio of 8:1 onsite. Mitigation activities for permanent take will be in the form of weed control at a ratio of 15:1 and also will occur onsite.

The County is committed to providing the necessary staff time and resources to support the implementation of the HCP/EA and currently has adequate staff to do so.

This notice is provided pursuant to section 10(c) of the Act. We will evaluate the permit application, the HCP, and comments submitted therein to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, a permit will be issued for the incidental take of the Preble's in conjunction with the construction and use of the proposed trail. The final permit decision will be made no sooner than 60 days from the date of this notice.

Dated: March 11, 2003.

John A. Blankenship,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 03–8197 Filed 4–3–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 1018–AH86

Final Environmental Impact Statement (FEIS) for the Florida Manatees; Incidental Take Rule Under the Marine Mammal Protection Act During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of the FEIS that assesses effects from proposing regulations to authorize the incidental, unintentional take of small numbers of Florida manatees (*Trichechus manatus latirostris*) resulting from government activities related to watercraft and watercraft access facilities within three regions of Florida for the next five years. This FEIS analyzes the environmental and socioeconomic consequences of the proposed action, and alternatives to the proposed action, as required under section 102(2)(c) of the National Environmental Policy Act.

DATES: The Fish and Wildlife Service will execute a Record of Decision based on the FEIS, no sooner than May 3, 2003, or 30 days after the date of publication of this Notice of Availability in the **Federal Register**, and after publication of the related notice by the Environmental Protection Agency.

ADDRESSES: Information regarding this FEIS is available in alternative formats upon request. Comments and materials received on the proposed EIS, as well as supporting documentation used in the preparation of this FEIS, will be available for public inspection, by appointment, during normal business hours from 8 a.m. to 4:30 p.m. Monday through Friday at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216. You may obtain copies of this document online at *http://northflorida.fws.gov,* by electronic mail request to *manatee@fws.gov* or by calling Chuck Underwood of the Jacksonville Field Office at (904) 232–2580 (extension 109).

SUPPLEMENTARY INFORMATION:

Background

The MMPA of 1972 (16 U.S.C. 1361–1407) sets a general moratorium, with certain exceptions, on the taking and importation of marine mammals and marine mammal products and makes it unlawful for any person to take, possess, transport, purchase, sell, export, or offer to purchase, sell, or export, any marine mammal or marine mammal product unless authorized. ''Take'' as defined by the MMPA and its implementing regulations (50 CFR part 18) means ''to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal, including, without limitation, any of the following—the collection of dead animals or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; or the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in the disturbing or molesting of a marine mammal.''

''Harassment'' is defined under the MMPA as, ''any act of pursuit, torment, or annoyance which—(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.''

The prohibitions on take apply to all persons, including Federal, State, and local government agencies with the exception of humane taking (including euthanasia) by government officials while engaged in their official duties, if such taking is (1) for the protection or welfare of a marine mammal; (2) for the protection of the public health and welfare; or (3) the non-lethal removal of nuisance animals. When feasible, steps designed to ensure return of such animals to their natural habitat, if not killed in the course of such taking, must be implemented (16 U.S.C. 1379(h)).

Section 101(a)(5)(A) of the MMPA allows the Secretary of the Department of the Interior, through the Director of the Service, upon request, to authorize by specific regulation the incidental, unintentional take of small numbers of marine mammals by U.S. citizens engaged in specific identified activities (other than commercial fishing) within specific geographic areas. This is the mechanism by which incidental, but not intentional, take of small numbers of marine mammals may be authorized in accordance with Federal law for activities other than commercial fishing if certain findings are made and regulations are enacted pursuant to 50 CFR 18.27. The Director must find that the total of such taking during the specified time period (which cannot be more than five consecutive years) will have no more than a negligible impact on the species or stock and will not have an unmitigable impact on the availability of such species or stock for subsistence uses. The subsistence provision is not applicable to Florida manatees.

The regulations implementing the MMPA define negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 18.27(c)). If negligible impact findings are made, we establish specific regulations identifying permissible

methods of taking by such activity, means of effecting the least practicable adverse impact on the species or stock and its habitat, and requirements for monitoring and reporting such taking. If a finding cannot be made that the total taking will have a negligible impact on the species or stock, the negative finding and the basis for denying the request for the incidental take must be published in the **Federal Register** pursuant to 50 CFR 18.27(d)(4).

We have defined the specified geographic area for this action to be the species range within the State of Florida. Long-term studies suggest four regional populations of manatees in Florida—Northwest, Upper St. Johns River (from Palatka south), Atlantic (including the St. Johns River north of Palatka), and Southwest, and we have defined these populations as stocks.

Based upon the best available scientific information, we concluded in the November 14, 2002, proposed rule and draft Environmental Impact Statement (66 FR 69078) that the total expected takings of Florida manatees resulting from government activities that authorize or regulate watercraft or watercraft access facilities would have a negligible impact on three of the four stocks. In accordance with 50 CFR 18.27, we will publish a final determination on each of the four stocks in the **Federal Register** upon finalization of a record of decision at the close of the waiting period.

If we determine that these activities will have negligible impact, government agencies who engage in the specified activities in the specified area could apply for a Letter of Authorization (LOA), which, if granted, would authorize incidental take associated with the applicant's activities. In return for committing to specific measures that minimize the applicant's impact on the stock and ensure that the total taking remains at the negligible level, the applicant receives authorization for any remaining take that occurs and that would otherwise be unlawful under the MMPA. General procedures for obtaining an LOA are described at 50 CFR 18.27(f).

Author

The primary author of this notice is Pete Benjamin (904/232–2580).

Authority

The authority to establish regulations that would authorize for the next five years the incidental, unintentional take of small numbers of Florida manatees is provided by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), as amended.

Dated: March 26, 2003.

Judy Pulliam,

Acting Regional Director.

[FR Doc. 03–8274 Filed 4–3–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–070–1610–DQ]

Notice of Availability of the Farmington Proposed Resource Management Plan and Final Environmental Impact Statement, Farmington Field Office, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the Farmington Proposed Resource Management Plan (PRMP) and Final Environmental Impact Statement (FEIS).

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Farmington PRMP Revision and FEIS for the Farmington Field Office (FFO) and portions of the Albuquerque Field Office (AFO), New Mexico. This document identifies and analyzes land use planning options for managing approximately 2 million acres of public lands and just over 3 million acres of Federal mineral estate administered by the FFO and the San Juan Basin portion of the AFO in New Mexico. The planning area for the PRMP/FEIS includes all of San Juan County and portions of McKinley, Rio Arriba, and Sandoval Counties in northwest New Mexico. The PRMP revises and will replace the previous 1988 RMP.

DATES: The Farmington PRMP/FEIS will be available for a 30-day protest period in accordance with BLM's land use planning regulations (43 CFR 1610.5–2). These regulations state that any person who participated in the planning process and has an interest which may be adversely affected may protest. A protest may raise only those issues which were submitted for the record during the planning process. Instructions for filing of protests are described in the PRMP/FEIS and included in the Supplementary Information section of this notice.

FOR FURTHER INFORMATION, CONTACT: RMP Project Manager, Farmington Field Office, 1235 La Plata Highway, Suite A, Farmington, NM 87401–8754. Copies of the PRMP/FEIS have been sent to affected Federal, State, and Local Government agencies and to interested parties. Copies of the PRMP/FEIS are available for public inspection at the Bureau of Land Management, Farmington Field Office, 1235 La Plata Highway, Farmington, New Mexico 87401. Interested persons may also review the PRMP/FEIS on the Internet at *http://www.nm.blm.gov.*

SUPPLEMENTARY INFORMATION: The PRMP/FEIS pertains to public lands in the FFO area, except where a small portion of the San Juan Oil and Gas Basin lies within the administrative boundary of the AFO. The PRMP/FEIS fulfills the requirements of the Federal Land Policy and Management Act and the National Environmental Policy Act. The preferred alternative from the Draft RMP was carried forward in the FEIS as the proposed RMP and focuses on the comprehensive management of the public lands and the resolution of five key issues, identified during the planning process. The five major issues are: (1) Oil and gas leasing and development; (2) landownership adjustments; (3) specially designated areas; (4) off-highway vehicle (OHV) use; and (5) coal leasing suitability assessment.

Specific to Each Issue the Proposed RMP Would

1. Continue to make lands available for oil and gas development. The FEIS documents the analysis of approximately 9,942 new oil and gas wells on public lands over the next 20 years for the PRMP.

2. Make available a total of 340,118 acres of public lands for disposal while another 178,237 acres are identified for possible acquisition.

3. Place a total of 649,901 acres in Specially Designated Areas (Research Natural Areas, Areas of Critical Environmental Concern, Wilderness Areas, Recreation, Paleontological, and Wildlife Areas). The PRMP includes removal of the Areas of Critical Environmental Concern (ACECs) designated on four areas totaling 2,765 acres because the designation is no longer necessary (three are within a Wilderness Area, and one was for a plant species that is more widely spread than previously known), designating 14 new ACECs totaling 16,884 acres, and changing the size or use limitations of 42 existing ACECs.

4. Place in the Limited OHV use category 1,353,301 acres of public lands until OHV activity plans are prepared. A total of 57,369 acres would remain closed to OHV use. Within the limited category, 5,806 acres have the potential to be placed in the open category pending the development of OHV activity plans.

5. Make approximately 378,275 acres of Federal minerals available for coal leasing. Comments on the Draft RMP/Draft EIS received from the public and internal BLM review comments were incorporated into the proposed plan. Public comments resulted in the addition of clarifying text, but did not significantly change proposed land use decisions.

Instructions for filing a protest with the Director of the BLM regarding the PRMP may be found at 43 CFR 1610.5. Any person who participated in the planning process and has an interest, which is or may be affected by the approval of the proposed Resource Management Plan, may protest such approval. A protest may raise only those issues that were submitted for the record during the planning process. Protests must be in writing and must be filed with the Director within 30 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**. E-mail protests will not be accepted. Faxed protests will be considered as potential valid protests provided (1) that the signed faxed letter is received by the Washington Office protest coordinator by the closing date of the protest period and (2) that the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Please direct faxed protests to ''BLM Protest Coordinator'' at (202) 452–5112. Please direct the follow-up letter to the appropriate address provided below. The protest must contain:

i. The name, mailing address, telephone number, and interest of the person filing the protest;

ii. A statement of the issue or issues being protested;

iii. A statement of the part or parts of the plan or amendment being protested;

iv. A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record; and

v. A concise statement explaining why the State Director's decision is believed to be wrong.

The Director will promptly render a decision on the protest. The decision will be in writing and will be sent to the protesting party by certified mail, return receipt requested. The decision of the Director shall be the final decision of the Department of the Interior. File written protest by Surface mail: U.S. Department of the Interior, Bureau of Land Management, Director (210), Attn: Brenda Williams, PO Box 66538, Washington, DC 20035 or Overnight mail: U.S. Department of the Interior, Bureau of Land Management, Director (210), Attn: Brenda Williams, 1620 L Street, NW., Suite 1075, Washington, DC 20036.

Dated: February 11, 2003.

Linda S.C. Rundell,

New Mexico State Director.

[FR Doc. 03–5895 Filed 4–3–03; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–1990–EX]

Draft Environmental Impact Statement; Glamis Marigold Mining Company/Marigold Mine Millennium Expansion Project, Humboldt Co., NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is given that the Winnemucca Field Office of the Bureau of Land Management (BLM) has prepared, by third party contractor, a Draft Supplemental Environmental Impact Statement on the Glamis Marigold Mining Company/Marigold Mine Millennium Expansion Project, located in Humboldt County, Nevada.

EFFECTIVE DATES: The Draft Supplemental Environmental Impact Statement will be distributed and made available to the public on April 4, 2003. The period of availability for public review for the Final Environmental Impact Statement ends June 5, 2003. At that time public comments will be reviewed and a response prepared.

ADDRESSES: A copy of the Draft Supplemental Environmental Impact Statement can be obtained from: Bureau of Land Management, Winnemucca Field Office, 5100 East Winnemucca Blvd., Winnemucca, Nevada 89445.

FOR FURTHER INFORMATION CONTACT: Jeffrey D. Johnson, Project Manager, at the above Winnemucca Field Office address or telephone (775) 623-1500.

SUPPLEMENTARY INFORMATION: The Draft Supplemental Environmental Impact Statement analyzes the direct, indirect and cumulative impacts related to expansion of existing mine facilities (pits, overburden dumps & heap leach pads) and development of the Millennium Projects. Development includes construction of five new pits, overburden disposal areas, two additional heap leach facilities, drainage diversions, haul and exploration roads and ancillary facilities. Alternatives analyzed include (1) Moving the Trout Creek Diversion toward the west, farther from the Red Rock Pit, (2) increase backfilling along the west high wall of the Red Rock Pit, and (3) the No Action.

Dated: March 27, 2003.

Jeffrey D. Johnson,

Field Manager.

[FR Doc. 03–7882 Filed 4–3–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–010–5101–ER–G043–NMNM 106570]

Notice of Availability of the Draft Environmental Impact Statement for a Proposed Refined Petroleum Products Pipeline Right-of-Way Across Land in Lea, Eddy, Chaves, Lincoln, Guadalupe, Torrance, Sandoval, McKinley and San Juan Counties, NM; Ector and Winkler Counties, TX

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Draft Environmental Impact Statement (DEIS).

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, a Draft Environmental Impact Statement (DEIS) has been prepared for the Bureau of Land Management, New Mexico State Director, under the administrative direction of the Albuquerque Field Office. The DEIS was prepared to analyze the impacts of issuing a Right-of-Way (ROW) for the conversion of an existing pipeline and construction of a new pipeline and above ground structures for the transportation of refined petroleum products across public lands in New Mexico and Texas. The proposed pipeline will cross land managed by BLM, the National Forest System, the State, as well as private lands. This notice initiates the public review process for the DEIS.

DATES: Written comments on the DEIS will be accepted for 45 days following the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**. Future meetings or hearings and any other public involvement activities will be announced at least 15 days in advance through public notices, media news releases, the NM BLM Web site (*http://www.nm.blm.gov*), and/or mailings. Written and oral comments will be accepted at public meetings.

ADDRESSES: Written comments should be addressed to NMPP Project Manager,

Bureau of Land Management, Albuquerque Field Office, 435 Montano Road, NE, Albuquerque, NM 87107–4935. Comments, including names and street addresses of respondents, will be available for public review at the BLM Albuquerque Field Office and will be subject to disclosure under the Freedom of Information Act (FOIA). They may be published as part of the final EIS and other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the FOIA, you must state this definitively at the beginning of your written comments. 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. Copies of the DEIS are available for review at the following repositories: Albuquerque City Library; Government Public Dept., UNM Library; Aztec Public Library; Carlsbad Public Library; Cuba Public Library; Edgewood Community Library; Farmington Public Library; Roswell Public Library; and Woolworth Community Library (Odessa, TX). Copies are also available at the following BLM Offices: Albuquerque, Field Office, 435 Montano Road NE, Albuquerque, NM 87107–4935; Roswell Field Office, 2909 West Second Street, Roswell NM 88201–2019; Farmington Field Office, 1235 La Plata Highway, Farmington, NM 87401; Carlsbad Field Office, 620 E. Greene St. Carlsbad, NM 88220–6292; New Mexico State Office, 1474 Rodeo Road, Santa Fe, NM 87505. The DEIS is also accessible at BLM's Web site *http://www.nm.blm.gov.*

FOR FURTHER INFORMATION: Please contact Joseph Jaramillo, (505) 761–8700, *Joe_Jaramillo@blm.gov*

SUPPLEMENTARY INFORMATION: Shell Pipeline Company LP (Shell) is the successor-in-interest to Equilon Pipeline Company LLC, the project proponent listed in the Notice of Intent to prepare an EIS published in the **Federal Register** on December 27, 2001. Shell filed a ROW application with BLM to convert an existing 406-mile pipeline and to construct approximately 93 miles of new pipeline to carry refined petroleum products, such as gasoline, diesel, and aviation fuel, from Odessa, Texas to Bloomfield, New Mexico.

Shell's existing 406-mile, 16-inch pipeline was formerly used to carry crude oil from Bisti, New Mexico to Jal, New Mexico. Shell intends to extend the length of this pipeline, reverse its direction of flow, and convert it to refined products service. The approximately 93 miles of new pipeline will be constructed in two segments: (1) A segment from Odessa to Jal of approximately 60 miles and (2) a Bisti to Bloomfield segment of approximately 33 miles. Twenty miles of the Bisti to Bloomfield segment will be located within an existing utility corridor. Thirteen miles of new pipeline would extend beyond the established corridor.

In addition to the new pipeline segments, a number of new facilities will be constructed, including a new truck loading terminal in Moriarty, New Mexico; new block and check valves; new pump stations; new pressure control stations; a new metering station at the terminus of the pipeline at Bloomfield; and other equipment at the pump stations and along the pipeline, such as meters, launchers and receivers, cathodic protection systems, and aerial markers. The project will require approximately 700 worksites for construction and maintenance activities along the existing pipeline, construction of the new pipeline segments, and construction of the new facilities required for the operation of the pipeline.

The BLM considered issues and concerns identified during the scoping process in the preparation of the DEIS. These issues can be broadly categorized as issues related to the protection of public safety, water quality, threatened and endangered species and the human environment. The DEIS analyzes the proposed action, a no-action alternative, and three action alternatives, namely pipeline replacement in sensitive areas, pipeline reroute in sensitive areas, and the proposed action with enhanced mitigation. The pipeline replacement alternative was developed to address public concerns about the existing pipeline's integrity and the potential effects of leaks on groundwater resources. It would involve the installation of new pipe in sensitive areas parallel to the existing pipe within the existing ROW. The existing pipe in those areas would be abandoned in place. Under the pipeline reroute alternative, portions of the existing pipeline would be relocated to less developed areas to reduce the risk to public safety. The new route would reduce the number of residences in close proximity to the pipeline and would minimize new disturbance by utilizing other existing ROW corridors as much as possible.

In the proposed action with enhanced mitigation alternative, the BLM identifies several additional mitigation measures to address the protection of public safety, water quality, threatened and endangered species and the human environment.

The purpose of the DEIS is to disclose to the public and agency decision makers the environmental impacts of constructing and operating the proposed project. If the project is approved, the BLM, as lead agency, would sign the necessary Record of Decision (ROD) for the issuance of a single ROW under the Mineral Leasing Act, which would consolidate and replace the eleven ROW grants that currently authorize the existing pipeline and would authorize the additional project features described above occurring on public lands.

Dated: December 12, 2002.

Richard A. Whitley,

Acting State Director.

[FR Doc. 03–8078 Filed 4–2–03; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–ET; SDM 87066]

Cancellation of Proposed Withdrawal; South Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice cancels a withdrawal application affecting .25 acre of National Forest System land for the National Park Service for construction of temporary quarters for summer seasonal employees. The segregative effect of the application was previously terminated and the land was opened to surface entry and mining, subject to other segregations of record. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: April 4, 2003.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, Bureau of Land Management, Montana State Office, PO Box 36800, Billings, Montana 59107, 406–896–5052.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Withdrawal was published in the **Federal Register** March 20, 1998 (63 FR 13687). This action will terminate the proposed withdrawal. The land was described as follows:

Black Hills Meridian

T. 3 S., R. 4 E.,
Sec. 23, portion of the S½ of lot 19.

The area described contains .25 acre in Custer County.

The segregative effect associated with the application terminated March 19, 2000, in accordance with the notice published as FR Doc. 00–3267 in the **Federal Register** (65 FR 7057–8) dated February 11, 2000.

Dated: January 21, 2003.

Howard A. Lemm,

Acting Deputy State Director, Division of Resources.

[FR Doc. 03–8170 Filed 4–3–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of a Record of Decision (ROD) on the Final Supplemental Environmental Impact Statement for the Winter Use Plans for Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr., Memorial Parkway

AGENCY: National Park Service, Department of the Interior.

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969, Pub. L. 91–190, 83 Stat. 852, 853, codified as amended at 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of the Record of Decision for the Winter Use Plans for Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr., Memorial Parkway; Wyoming, Montana, and Idaho. On March 24, 2003, the Director, Intermountain Region approved the Record of Decision for the project with the decision effective at 12 noon m.s.t. on March 25, 2003. Beginning in the winter of 2003–2004, the National Park Service will implement this Decision although certain provisions will not apply until implementing regulations are promulgated or until the winter of 2004–2005. The following course of action will occur under alternative 4, the preferred alternative, as modified in the ROD: the use of snowmobiles in the parks and the parkway will be permitted, provided all machines meet best available technology (BAT) standards for sound and air emissions. All snowmobile users in Yellowstone will be required to be to be accompanied by NPS permitted guides. Monitoring and adaptive management strategies will allow for the adjustment of oversnow vehicle numbers should monitoring and carrying capacity studies indicate that standards are not being met.

This specific course of action was not included as an alternative in the Draft Supplemental Environmental Impact Statement, but was included and analyzed, along with 4 additional alternatives, in the Final Supplemental Environmental Impact Statement. The full range of foreseeable environmental consequences was assessed, and appropriate mitigating measures were identified.

The Record of Decision includes a statement of the decision made, synopses of other alternatives considered, the basis for the decision, a description of the environmentally preferable alternative, a finding regarding impairment of park resources and values, a listing of measures to minimize environmental harm, an overview of public involvement in the decision-making process, and a Statement of Findings.

FOR FURTHER INFORMATION CONTACT: John Sacklin, Yellowstone National Park, PO Box 168, Yellowstone, WY 82190, (307) 344–2020, *John_Sacklin@nps.gov.*

SUPPLEMENTARY INFORMATION: Copies of the Record of Decision may be obtained from the contact listed above or online at *nps.gov/grte/winteruse/winteruse.htm.*

Dated: March 25, 2003.

Karen Wade,

Director, Intermountain Region, National Park Service.

[FR Doc. 03–8191 Filed 4–3–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Dream Lake Dam Management Plan; Lassen Volcanic National Park, Plumas County, California; Notice of Intent to Prepare an Environmental Impact Statement

SUMMARY: Pursuant to § 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91–190) and Council on Environmental Quality regulations (40 CFR 1502.9(c)), the National Park Service intends to prepare an Environmental Impact Statement for a Management Plan for the Dream Lake Dam in the Warner Valley area of Lassen Volcanic National Park. Notice is hereby given that a public scoping process has been initiated with the purpose of eliciting public comment regarding current issues and concerns, a suitable range of alternatives, the nature and extent of potential environmental impacts, appropriate mitigating measures, and other matters that should be addressed in the forthcoming draft Environmental Impact Statement (EIS).

Background: Dream Lake Dam was built by Alex Sifford in 1932, prior to the National Park Service (NPS) acquiring the land on which the lake sits. The lake was built by Sifford to provide scenic benefits and recreational opportunities to guests at the nearby Drakesbad Guest Ranch, which Sifford owned. Drakesbad Guest Ranch is over 100 years old and is still in operation to this day. It is owned by the National Park Service and is located within the boundaries of Lassen Volcanic National Park. Drakesbad is operated by the Park's concessioner, California Guest Services. Drakesbad, with nearby Dream Lake, is a popular destination and has been visited by many generations of families. Dream Lake is a contributing feature to the cultural landscape of Drakesbad Guest Ranch, which has been nominated for placement on the National Register of Historic Places.

Dream Lake Dam is an earthfill embankment that forms a lake with a surface area of approximately 2 acres, containing approximately 11 acre-feet of water. The dam was examined by the Bureau of Reclamation (BOR) on July 21, 1999 and found to have numerous deficiencies including sloughing, sinkholes, settlements, and seepage. The BOR states in its November 6, 2000 *Condition Survey Report* that ''the seepage and sinkholes could endanger the stability of the dam, and should be investigated and necessary corrective action should be performed * * *'' The BOR, in its *Downstream Hazard Classification* stated that ''without maintenance the failure of the dam in the next few years is likely.'' The BOR went on the make a recommendation that one of two alternatives be implemented. Those alternatives included: (1) repairing the dam and/or lowering and widening the spillway or (2) in a planned and controlled manner, breach the dam so that no water is stored in the lake and the area reverts back to pre-lake conditions.

Lassen Volcanic National Park will be preparing a draft EIS because of the conflict between natural and cultural resource management issues in determining the future of Dream Lake Dam. The park currently does not have a preferred alternative. The park is looking for public input as to what alternatives, in addition to those recommended by the BOR, should be examined. In order to move forward with a decision regarding the future management of Dream Lake Dam, a plan must first be developed and that plan will be fully scoped for public input and comment and it will contain a full environmental impact analysis for all of the viable alternatives.

As a key step in the overall conservation planning and

environmental impact analysis process, the NPS is seeking public comments and relevant information to guide the preparation of the Draft EIS. The objectives of this public scoping effort are to:

Inform all interested parties of the scope of the problem and the need to find a solution;

Identify a preliminary range of management alternatives that may include those posted by the BOR;

Identify substantive environmental and cultural issues which warrant detailed environmental impact analysis, and identify any issues or topics which may not require analysis;

Identify potential environmental and cultural consequences and suitable mitigation strategies.

Comment Process: The public will be invited to participate from the outset of the scoping process through completion of the draft and final EIS. The initial scoping period has already begun and public meetings have been held in order to: (1) Present information developed to date, (2) answer questions about the planning process, and (3) solicit and accept comments from the public. To initiate this collaboration, four scoping meeting were held during the month of November, 2002 as follows: November 4 (Chico), November 5 (Red Bluff), November 6 (Redding), and November 7 (Chester). The exact locations and times of the meetings were announced via regional and local news media, direct mailings, and on the Park's webpage at *http://www.nps.gov/lavo.* All interested individuals, organizations, and agencies were invited to attend these meetings and/or provide written comments or suggestions during the scoping period.

While the public meetings have already been held, the scoping period remains open. All scoping comments should be submitted in writing, and must be postmarked or transmitted no later than 30 days from the date of publication of this notice in the **Federal Register** (as soon as this date has been determined, it will be announced on the park's website). Please send all comments to: Superintendent, Lassen Volcanic National Park, PO Box 100, Mineral, CA 96063 (Attn: Dream Lake Dam Management Plan). Electronic comments may be transmitted to *LAVO_DreamLake@nps.gov.*

All parties wishing to express concerns, ideas, support, or provide information about management issues which should be addressed in the forthcoming conservation planning and environmental impact analysis process are strongly encouraged to submit written comments. All comments will become part of the public record. If individuals who submit comments request that their name and/or address be withheld from public disclosure, the request will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always, the NPS will make available to public inspection all submission from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses. Anonymous comments may not be considered.

Decision Process: Availability of the Draft EIS for review and comment will be announced by formal Notice in the **Federal Register**, through local and regional news media, the Park's Webpage (listed above), and direct mailing. At this time, the Draft EIS is anticipated to be available for public review and comment in the Fall of 2003. Comments on the Draft EIS will be fully considered as an aid in preparing a Final EIS as appropriate. At this time, it is anticipated that the Final EIS will be completed in the spring of 204. As a delegated EIS, the official responsible for the decision is the Regional Director, Pacific West Region; subsequently the official responsible for implementation is the Superintendent, Lassen Volcanic National Park.

Dated: March 7, 2003.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. 03–8189 Filed 4–3–03; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Repatriate a Cultural Item: Field Museum of Natural History, Chicago, IL

AGENCY: National Park Service, Interior

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, Sec. 7, of the intent to repatriate a cultural item in the possession of the Field Museum of Natural History, Chicago, IL, that meets the definition of ''cultural patrimony'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003, Sec. 5(d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The cultural item is a wampum belt, which is composed of purple beads with white beads forming the design of four pairs of diamonds. It is interwoven with buckskin and has fringe at the ends. The wampum belt measures 3 feet 8⅛ inches long without the fringe.

The Field Museum of Natural History purchased the wampum belt in 1900 from Henry Hysen of Wisconsin. The Field Museum of Natural History assessioned the wampum belt into its collection the same year (catalog number 68567). Museum records indicate that Mr. Hysen purchased the wampum belt ''from the owner who lived on the Stock Ridge Reservation, one of the Brotherton Indians whose family had held the belt since it was sent to them by Chief Black Hawk as a message to the tribes of the Michigan and Wisconsin Indians assembled at Travers bay to hold them in control during his warfare.'' A separate catalog entry, that is neither attributed nor dated, identifies the belt as the Peace and Friendship Belt sent by ''Black Hawk war chief of the Sauk tribe of Indians in the year A.D. 1832 to the Ottawa tribe, residing near Traverse Bay, Michigan, asking them to remain neutral in the war which Black Hawk was about to wage against the American Government.'' It further provides that the belt had ''been kept in the family of the old chief Ta-ko-se-gun and by his son-in-law presented to G.T. Wendell.''

The wampum belt is culturally affiliated with the Brotherton Indians. Expert opinion submitted to the Field Museum of Natural History by the Stockbridge Munsee Community, Wisconsin supports the finding that any Brotherton Indian living on the Stockbridge Reservation at the time the wampum belt was acquired would have been considered a full member of the Stockbridge tribe (now called the Stockbridge Munsee Community, Wisconsin). The determination of cultural affiliation was also confirmed by the Field Museum of Natural History's consulting with an outside expert familiar with wampum belts of this time period. The Field Museum of Natural History has determined that the large size, composition, and design of the wampum belt indicates that it is an important ''historical'' belt, meaning that the belt was a record of a historical event marked and remembered by the tribe, and as such would qualify as an

object having ongoing historical, traditional, or cultural importance central to the Stockbridge Munsee Community, Wisconsin. Consultation evidence presented by representatives of the Stockbridge Munsee Community, Wisconsin also indicates that no individual had or has the right to alienate a wampum belt.

Officials of the Field Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001, Sec. 2(3)(D), this cultural item has ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Officials of the Field Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001, Sec. 2(2), there is a relationship of shared group identity that can be reasonably traced between the wampum belt and the Brotherton Indians as full members of the Stockbridge Munsee Community, Wisconsin.

Officials of the Field Museum of Natural History assert that, pursuant to 25 U.S.C. 3001, Sec. 2(13), the Field Museum of Natural History has right of possession of the wampum belt. Officials of the Field Museum of Natural History also recognize that the wampum belt is significant to the Stockbridge Munsee Community, Wisconsin and have reached an agreement with the Stockbridge Munsee Community, Wisconsin that allows the Field Museum of Natural History to return the wampum belt to the tribe voluntarily, pursuant to the compromise of claim provisions of the Field Museum of Natural History's repatriation policy.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object of cultural patrimony should contact Jonathan Haas, MacArthur Curator of North American Anthropology, Field Museum of Natural History, 1400 South Lake Shore Drive, Chicago, IL 60605, telephone (312) 665–7829, before May 5, 2003. Repatriation of this object of cultural patrimony to the Stockbridge Munsee Community, Wisconsin may proceed after that date if no additional claimants come forward.

The Field Museum of Natural History is responsible for notifying the Brotherton Indians of Wisconsin (a nonfederally recognized Indian group); Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; and Stockbridge Munsee Community, Wisconsin that this notice has been published.

Dated: February 28, 2003.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 03–8193 Filed 4–3–03; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Franklin Pierce College, Rindge, NH

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of Franklin Pierce College, Rindge, NH. These human remains were removed from the Smyth site (NH38-4), on the upper terrace of the eastern bank of the Merrimack River above Amoskeag Falls, Manchester, Hillsborough County, NH.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by professional staff and consultants of Franklin Pierce College, in consultation with the Abenaki Nation of Missisquoi, representing a coalition of Western Abenaki groups, consisting of the Abenaki Nation of New Hampshire, Cowasuck Band of the Pennacook-Abenaki People, and First Nation of New Hampshire (all nonfederally recognized Indian groups); the Wampanoag Confederation, representing Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Tribe (a nonfederally recognized group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized group); and the Wabanaki Confederacy, representing Aroostook Band of Micmac Indians of Maine, Houlton Band of Maliseet Indians of Maine, Indian Township Reservation of the Passamaquoddy Tribe of Maine, Penobscot Tribe of Maine, and Pleasant Point Reservation of the Passamaquoddy Tribe of Maine.

In 1968, human remains representing a minimum of eight individuals were removed from the Smyth site (NH 38-4) in Manchester, Hillsborough County, NH. Museum documentation indicates that the human remains were removed during salvage excavation at the construction site of the Amoskeag bridge, and were curated at Franklin Pierce College. No known individuals were identified. No associated funerary objects are present.

In 1997, the remains of two of these individuals were transferred from Franklin Pierce College to the New Hampshire Division of Historical Resources (NHDHR). The NHDHR determined that the two individuals in its possession could not be affiliated with an Indian tribe as defined in 25 U.S.C. 3001 (2), and presented a disposition proposal to the Native American Graves Protection and Repatriation Review Committee. According to the Review Committee's charter, the Review Committee is responsible for recommending specific actions for disposition of culturally unidentifiable human remains. The proposal presented by the NHDHR was considered by the Review Committee at its May 1999 meeting, during which the Review Committee recommended disposition of the human remains of the two individuals to the Abenaki Nation of Missisquoi, representing a coalition of Western Abenaki groups, consisting of the Abenaki Nation of New Hampshire, Cowasuck Band of the Pennacook-Abenaki People, and First Nation of New Hampshire (all nonfederally recognized Indian groups). A Notice of Inventory Completion for the repatriation of the human remains of the two individuals was published in the Federal Register on July 9, 2002 (67 FR 45536-39).

In September 2001, Franklin Pierce College presented another disposition proposal to the Review Committee to repatriate five sets of human remains from the Smyth site that are in the possession of Franklin Pierce College to the Abenaki Nation of Missisquoi. The remains of another individual are reported in the archeological report prepared at the time of excavation of the Smyth site, but have not been located at Franklin Pierce College.

At its November 2001 meeting, the Review Committee recommended disposition of an additional five sets of human remains to the Abenaki Nation of Missisquoi contingent upon the museum's meeting four requirements, which were confirmed in a September 3, 2002, letter from the Manager, National

NAGPRA program to Franklin Pierce College. The Review Committee required that the museum submit an inventory of culturally unidentifiable human remains containing information set forth in 43 CFR 10.9 (c); that the inventory be sent to the Wabanaki Confederacy, representing Aroostook Band of Micmac Indians of Maine, Houlton Band of Maliseet Indians of Maine, Indian Township Reservation of the Passamaquoddy Tribe of Maine, Penobscot Tribe of Maine, and Pleasant Point Reservation of the Passamaquoddy Tribe of Maine; and the Wampanoag Confederation, representing Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts, Mashpee Wampanoag Tribe, and the Assonet Band of the Wampanoag Nation; that both the Wabanaki Confederacy and the Wampanoag Confederation provide written concurrence with the proposed disposition; and that a Notice of Inventory Completion be published in the Federal Register.

Franklin Pierce College, in a January 14, 2003, letter to the Review Committee, documented that three of the requirements had been met, noting that the fourth requirement would be met with the publication of this Notice of Inventory Completion.

Additional analysis, completed between November 2001 and January 2003, showed that the human remains from the five burials, which were originally reported as five sets of human remains, represent a minimum of eight individuals. The completed inventory reports a minimum of eight individuals, and correspondence from the Wabanaki Confederacy and the Wampanoag Confederation concurs with the proposed disposition of eight individuals.

The archeological and stratigraphic context for the Smyth site burials indicates a Middle or Late Woodland period date (A.D. 1-1500). Archeological, historical, and ethnographic sources, along with the oral traditions of the Western Abenaki, indicate that this portion of New Hampshire is within the aboriginal and historic homeland of the Western Abenaki from at least the Late Archaic period (3000-1000 B.C.) through the Historic period (post-A.D. 1500). The Western Abenaki are represented today by the Abenaki Nation of Missisquoi, Abenaki Nation of New Hampshire, Cowasuck Band of the Pennacook-Abenaki People, and the First Nation of New Hampshire (all nonfederally recognized Indian groups).

Officials of Franklin Pierce College have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains listed above represent the physical remains of eight individuals of Native American ancestry. Officials of Franklin Pierce College also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Abenaki Nation of Missisquoi, representing a coalition of Western Abenaki groups, consisting of the Abenaki Nation of New Hampshire, Cowasuck Band of the Pennacook-Abenaki People, and First Nation of New Hampshire (all nonfederally recognized Indian groups).

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Robert G. Goodby, Assistant Professor, Department of Anthropology, Franklin Pierce College, PO Box 60, College Road, Rindge, NH 03461, telephone (603) 899-4362, before May 5, 2003. Repatriation of these human remains to the Abenaki Nation of Missisquoi, representing a coalition of Western Abenaki groups, consisting of the Abenaki Nation of New Hampshire, Cowasuck Band of the Pennacook-Abenaki People, and First Nation of New Hampshire (all nonfederally recognized Indian groups), may proceed after that date if no additional claimants come forward.

Franklin Pierce College is responsible for notifying the Abenaki Nation of Missisquoi, Abenaki Nation of New Hampshire, Aroostook Band of Micmac Indians of Maine, Assonet Band of the Wampanoag Nation, Cowasuck Band of the Pennacook-Abenaki People, First Nation of New Hampshire, Houlton Band of Maliseet Indians of Maine, Indian Township Reservation of the Passamaquoddy Tribe of Maine, Mashpee Wampanoag Tribe, Penobscot Tribe of Maine, Pleasant Point Reservation of the Passamaquoddy Tribe of Maine, Wabanaki Confederacy, Wampanoag Confederation, and Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts that this notice has been published.

Dated: February 27, 2003.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 03–8192 Filed 4–3–03; 8:45 am]

BILLING CODE 4310–70–S

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–490]

In the Matter of Certain Power Amplifier Chips, Broadband Tuner Chips, Transceiver Chips, and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 3, 2002, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Broadcom Corporation of Irvine, California. Supplements to the Complaint were filed on March 19 and 28, 2003. The Complaint, as supplemented, alleges violations of section 337 in the importation into the United States and the sale within the United States after importation of certain power amplifier chips, broadband tuner chips, transceiver chips and products containing same, by reason of infringement of claim 1 of U.S. Patent No. 6,445,039 and claim 2 of U.S. Patent No. 5,682,379. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint and supplements, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–II) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2572.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2002).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on March 31, 2003 *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation, of certain power amplifier chips, broadband tuner chips, transceiver chips or products containing same, by reason of infringement of claim 1 of U.S. Patent No. 6,445,039 or claim 2 of U.S. Patent No. 5,682,379, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Broadcom Corporation, 16215 Alton Parkway, Irvine, California 92618.

(b) The respondent is the following company alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Microtune, Inc., 2201 Tenth Street, Plano, Texas 75074.

(c) Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to that respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

By order of the Commission.
Issued: March 31, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–8200 Filed 4–3–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—eManufacturing Security Framework (Formerly Semiconductor Equipment and Materials International)

Notice is hereby given that, on March 5, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Semiconductor Equipment and Materials International has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its name and membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Semiconductor Equipment and Materials International, San Jose, CA, has been dropped as a party to this venture and Advanced Micro Devices, Inc. (AMD), one of the partners, has assumed the principal investigation and administrative role in the research and development project. In addition, the venture has been renamed and will henceforth be called the eManufacturing Security Framework.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and eManufacturing Security Framework (formerly Semiconductor Equipment and Materials International (SEMI)) intends to file additional written notification disclosing all changes in membership.

On January 8, 2002, eManufacturing Security Framework (formerly Semiconductor Equipment and Materials International (SEMI)) filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 8, 2002 (67 FR 10762).

The last notification was filed with the Department on July 3, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 13, 2002 (67 FR 52746).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–8266 Filed 4–3–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Global Climate and Energy Project

Notice is hereby given that, on March 12, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Global Climate and Energy Project has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identifies of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Leland Stanford Junior University, Stanford, CA; Exxon Mobil Corporation, Irving, TX; General Electric Company, Fairfield, CT; and Schlumberger Technology Corporation, Sugarland, TX. The nature and objectives of the venture are to conduct long-term pioneering research to identify options for commercially viable, technological systems for energy supply and use with substantially reduced net greenhouse emissions; to identify presently existing barriers to commercializing those options (barriers such as cost, performance, safety, regulation, and consumer acceptance); to identify

potential solutions to those barriers; to conduct pre-commercial research to explore those options, barriers, and potential solutions; and to publicize such options, barriers, solutions, and research, including fundamental science and pre-commercial research in the following topics: low greenhouse gas electric power production, storage, and distribution, advanced transportation techniques; production, distribution, and use of hydrogen; production, distribution and use of biomass fuels; advanced nuclear technologies; renewable energy supplies; carbon sinks, carbon dioxide separation and storage; coal utilization; enabling infrastructure; materials, and combustion and systems science; and geo-engineering.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–8268 Filed 4–3–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Spray Drift Task Force

Notice is hereby given that, on March 3, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Spray Drift Task Force has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the membership held by Aventis CropScience LP, Research Triangle, NC has been transferred to Nippon Soda Company, Ltd., Tokyo, JAPAN; and Chimac-Agriphar S.A., Ougree, BELGIUM has become a party to the venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Spray Drift Task Force intends to file additional written notification disclosing all changes in membership.

On May 15, 1990, Spray Drift Task Force filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 5, 1990 (55 FR 27701).

The last notification was filed with the Department on February 26, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 27, 2002 (67 FR 14731).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–8267 Filed 4–3–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

DATES: March 28, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on 202–693–4129 or e-mail: *King.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Extension of a currently approved collection.

Title: State Unified Plan Planning Guidance for State Unified Plans and Unified Plan Modifications submitted under Section 501 of the Workforce Investment Act of 1998.

OMB Number: 1205–0407.

Affected Public: State, Local, or Tribal Government.

Type of Response: Reporting.

Frequency: As needed.

Number of Respondents: 57.

Total Annual Responses: 57.

Average Response Time: 25 hours.

Total Annual Burden Hours: 1,425.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services):: $15.00.

Description: Title V, Section 501 of the Workforce Investment Act of 1998 provides an optional model for States to submit a single plan for up to 16 Federal education and training programs. While not required, following the model outlined in this guidance will reduce burden on the State and ensure that the State has met the individual program state planning requirements. This information request deals with modifications to these plans that are submitted in accordance with 20 CFR 661.230 and 661.240.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–8225 Filed 4–3–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

March 31, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King at (202) 693–4129 or by E-Mail *King.Darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer OASAM, Office of Management and Budget, Room

10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• enhance the quality, utility, and clarity of the information to be collected; and

• minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Office of the Assistant Secretary for Administration and Management (OASAM), Civil Rights Center.

Type of Review: Extension of a currently approved collection.

Title: Compliance Information Report—29 CFR part 37 Nondiscrimination-Workforce Investment Act of 1998.

OMB Number: 1225–0077.

Affected Public: State, Local, or Tribal Government.

Frequency: On occasion.

Type of Response: Recordkeeping and Reporting.

Number of Respondents: 1,662.

Requirement	Annual responses	Average response time (hours)	Annual burden hours
Data Collection & Maintenance:			
Demographic data	40,720,528	0.006	226,225
Employment data	0	0	0
Data maintenance	0	0	0
Complaint log	1,662	0.05	83
Administrative Findings	1	0.33	0.3
Methods of Administration:			
Initial development	0	0	0
Notification of changes	5	0.5	2.5
Two-year re-certification	58	3	174
Complaint Information Form	1,500	0.25	375
Written Justifications	20	2	40
Totals	40,723,774	.....	226,900

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $166,200.

Description: The information collection requirements of 29 CFR part 37 provide DOL with data to ensure that grantees do not discriminate. The information collected on the form DL–1–2014A (Compliant Information Form) provides a basis for conducting investigations of complaints.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–8226 Filed 4–3–03; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment and Training Administration

Grants for Small Faith-Based and Community-Based Non-Profit Organizations SGA/DFA 03–105

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA). This notice contains all of the necessary information and forms needed to apply for grant funding.

SUMMARY: The Employment and Training Administration (ETA), U.S. Department of Labor (DOL) announces the availability of $250,000 to award grants to eligible ''grass-roots'' organizations with the ability to connect to the local One-Stop delivery system. The term ''grassroots'' is defined under the Eligibility Criteria.

The selected grantees will be expected to achieve the following objectives:

• Apply the grant resources to meet defined community needs through provision of a variety of workforce services to specific populations and/or through the provision of particular supportive services not currently provided through the One-Stop delivery system;

• Expand the access of faith-based and community-based organizations' clients and customers to the training, job and career services offered by the local One-Stops;

• Thoroughly document the impact and outcomes of these grant investments through quarterly and annual reporting; and,

• Establish methods and mechanisms to ensure sustainability of these partnerships and participation levels beyond the life of the grant.

DATES: Applications will be accepted commencing on April 4, 2003. The closing date for receipt of applications under this announcement is May 9, 2003. Applications must be received by 4 p.m. (e.t.) at the address below: no exceptions to the mailing and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be honored. Telefacsimile (FAX) applications will not be honored.

ADDRESSES: Applications must be mailed to: U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Linda Forman, SGA/DFA 03–105, 200 Constitution Avenue, NW., Room S–4203, Washington, DC 20210. Telefacsimile (FAX) applications will not be accepted. Applicants are advised that mail in the Washington area may be delayed due to mail decontamination procedures.

FOR FURTHER INFORMATION CONTACT: Linda Forman, Grants Management Specialist, Division of Federal Assistance, Telephone (202) 693–3301 (this is not a toll free-number). You must specifically ask for Linda Forman.

Questions can also be faxed to Linda Forman, Telephone (202) 693–2879, please include the SGA/DFA 03–105, a contact name, fax and phone numbers. This announcement will be also published on the Employment and Training Administration (ETA) Web page at *http://www.doleta.gov/usworkforce.* This Web page will also provide responses to questions that are raised by applicants during the period of grant application preparation. Award notifications will also be announced on this Web page.

SUPPLEMENTARY INFORMATION:

Part I. Delivery of Applications

1. Late Applications. Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made and it:

• Was sent by U.S. Postal Service registered or certified mail not later than May 9, 2003; or

• Was sent by U.S. Postal Service Express Mail Next Day Service, Post Office to addressee, not later than 5 p.m. at the place of mailing two working days before May 9, 2003. The term ''working days'' excludes weekends and U.S. Federal holidays. ''Post-marked'' means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service.

2. Withdrawal of Applications. Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

3. Hand Delivered Proposals. It is preferred that applications be mailed at least five days before the closing date. To be considered for funding, hand-delivered applications must be received at the designated address by 4 p.m., (e.t.) May 9, 2003. All overnight mail will be considered to be hand delivered and must be received at the designated place by the specified closing date and time. Telegraphed, e-mailed and/or faxed proposals will not be honored. Failure to adhere to the above instructions will be a basis for determination of non-responsive.

Part II. Authorities

These grants are made under the following authorities:

• The Workforce Investment Act of 1998 (WIA or the Act) (Pub. L. 105–220, 29 U.S.C. 2801 *et seq.*)

• The WIA final rule, 20 CFR parts 652, 660–671 (65 FR 49294 (August 11, 2000));

• Executive Order 13198; ''Rallying the Armies of Compassion'';

• Training and Employment Guidance Letter 17–01 (''Incorporating and Utilizing Grassroots, Community-Based Organizations Including Faith-Based Organizations in Workforce Investment Activities and Programs'');

• Executive Order 13279; ''Equal Protection of the Laws for Faith-Based and Community Organizations.''

Part III. Background

The Workforce Investment Act of 1998 (WIA) established a comprehensive reform of existing Federal job training programs with amendments impacting service delivery under the Wagner-Peyser Act, Adult Education and Literacy Act, and the Rehabilitation Act. A number of other Federal programs are also identified as required partners in the One-Stop delivery system to provide comprehensive services for all Americans to access the information and resources available that can help in the achievement of their career goals. The intention of the One-Stop system is to establish a network of programs and providers in co-located and integrated settings that are accessible for individuals and businesses alike in approximately 600 workforce investment areas established throughout the nation. There are currently over 1,900 comprehensive Centers and over 1,600 affiliated Centers across the United States.

WIA established State and Local Workforce Investment Boards focused on strategic planning, policy development, and oversight of the workforce investment system, and accorded significant authority to the nation's Governors and local chief elected officials to further implement innovative and comprehensive delivery systems. The vision, goals and objectives for workforce development under the WIA decentralized system are fully described in the State strategic plan required under section 112 of the legislation. This State strategic workforce investment plan—and the operational experience gained by all the partners to date in implementing the WIA-instituted reforms—help identify the important ''unmet needs'' and latent opportunities to expand access to One-Stop by all the population segments within the local labor market.

Engagement of Faith-Based and Community Organizations Under the Workforce Investment Act

On January 29, 2001, President George W. Bush issued Executive Order 13198, creating the Office for Faith-Based and Community Initiatives in the White House and centers in the departments of Labor, Health and Human Services (HHS), Housing and Urban Development (HUD), Education (ED), Justice (DOJ). President Bush charged the Cabinet centers with identifying statutory, regulatory, and bureaucratic barriers that stand in the way of effective faith-based and community initiatives, and to ensure, consistent with the law, that these organizations have equal opportunity to compete for federal funding and other support.

In early 2002, the Department's Center for Faith-Based and Community Initiatives (CFBCI) and ETA developed and issued Solicitations for Grant Applications (SGAs) to engage intermediary and grass-roots organizations in our workforce system-building. These grants were designed to involve the faith-based and community-based organizations in service delivery, strengthen their existing partnership with the local One-Stop delivery system, while providing additional points of entry for customers into that system.

These 2002 grants embodied the Department's principal strategy for implementing the Executive Order by creating new avenues through which qualified organizations can more fully participate under the Workforce Investment Act while applying their particular strengths and assets in service provision to our customers. These grants also proceeded from an ETA–CFBCI mutual premise: That the involvement of community-based organizations and faith-based organizations can both complement and supplement the efforts of local workforce investment systems in providing universal access and serving the training, job and career-support needs of many of our citizens.

Both ETA and CFBCI are committed to bringing new Intermediary and grass-roots organizations to workforce system-building through the issuance of a new solicitation in 2003. This new solicitation draws on ''lessons learned'' in 2002 while introducing several ''promising practices'' introduced by other ETA grantees. The new solicitation also places significant emphasis on performance outcomes—documenting and quantifying the additional value the Intermediary and its sub-grantees bring to the One-Stop delivery system in the community.

Through this competition, ETA seeks to ensure that an important Workforce Investment Act tenet—universal access to the programs and services offered under WIA—is further rooted in the customer-responsive delivery systems already established by the Governors, local elected officials and local Workforce Investment Boards. ETA also reaffirms its continuing commitment to those customer-focused reforms instituted by State and local governments which help Americans access the tools they need to manage their careers through information and high quality services, and to help U.S. companies find skilled workers.

Faith-based and community-based organizations present strong credentials for full partnership in our mutual system-building endeavors. Faith-based and community-based organizations are trusted institutions within our poorest neighborhoods. Faith-based and community-based organizations are home to a large number of volunteers who bring not only the transformational power of personal relationships to the provision of social service but also a sustained allegiance to the well-being and self-sufficiency of the participants they serve. Through their daily work and specific programs, these organizations strive to achieve some common purposes shared with government—reduction of welfare dependency, attainment of occupational skills, entry and retention of all our citizens in good-paying jobs. Through this solicitation, ETA and CFBCI strive to leverage these programs, resources and committed staff into the workforce investment strategies already embodied in State and local strategic plans.

Application of the Establishment Clause of the First Amendment of the United States Constitution

The Establishment Clause of the First Amendment of the United States Constitution prohibits the government from directly funding religious activity.* These grants may not be used for instruction in religion or sacred literature, worship, prayer, proselytizing or other inherently religious practices. The services provided under these grants must be secular and non-ideological. Neutral, secular criteria that neither favor nor disfavor religion must be employed in their selection of sub-grantees. In addition, under the WIA and DOL regulations implementing the Workforce Investment Act, a recipient may not train a participant in religious activities, or permit participants to construct, operate, or maintain any part of a facility that is primarily used or devoted to religious instruction or worship. Under WIA, ''no individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity because of race, color, religion, sex (except as otherwise permitted under Title IX of the Education Amendments of 1972), national origin, age, disability, or political affiliation or belief.''

* The term ''direct'' funding is used to describe funds that are provided ''directly'' by a governmental entity or an intermediate organization with the same duties as a governmental entity, as opposed to funds that an organization receives as the result of the genuine and independent private choice of a beneficiary. In other contexts, the term ''direct'' funding may be used to refer to those funds that an organization receives directly from the Federal government (also known as ''discretionary'' funding), as opposed to funding that it receives from a State or local government (also known as ''indirect'' or ''block grant'' funding). In this SGA, the term ''direct'' has the former meaning.

Part IV. Funding Availability and Period of Performance

ETA has identified $250,000 from the FY 2002 appropriation for One-Stop/America's Labor Market Information System. The agency expects to award 10–12 grants. The grant amount for each grass-roots organization is expected to range between $20,000 and $25,000. The period of performance is one year, beginning July 1, 2003 and ending on June 30, 2004.

Part V. Eligible Applicants

For purposes of this announcement, eligible grassroots organizations must be non-profits which:

1. Have social services as a major part of their mission;
2. Are headquartered in the local community to which they provide these services;
3. Have a total annual operating budget of $300,000 or less, or
4. Have 6 or fewer full-time equivalent employees.

Note: For purposes of this announcement local affiliates of national social service organizations are not considered ''grassroots'' and are not be eligible to apply.

Part VI. Government Requirements/ Statement of Work

Applicants must submit one copy with an original signature and two additional copies of their proposal. The Statement of Work must be limited to 5 pages. The only attachments permitted will be agreements with or letters of support from local Workforce Investment Boards and/or local One-Stop operators. The application must be double-spaced, and on single-sided, numbered pages. A font size of at least twelve (12) pitch is required with one-inch margins (top, bottom and sides.)

There are three required sections:

- Section I—Application for Federal Assistance (SF 424A)
- Section II—Budget Information (SF 424B)
- Section III—Statement of Work

Section I—Application for Federal Assistance

The SF–424A is included in the announcement as Attachment A. It must be signed by a representative authorized by the governing body of the applicant to enter into grant agreement.

Section II—Budget Information

The SF–424B is included in the announcement as Attachment B.

Note: Except as specifically provided, DOL/ETA acceptance of a proposal and an award of federal funds to sponsor any program(s) does not provide a waiver of any grant requirement and/or procedures. For example, the OMB circulars require that an entity's procurement procedures must require that all procurement transactions must be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the DOL/ETA's award does not provide the justification or basis to sole-source the procurement, *i.e.,* avoid competition.

Section III—Statement of Work (Not To Exceed 5 Pages)

The Statement of Work sets forth a strategic plan for the use of awarded funds and establishes measurable goals for increasing organizational participation in the One-Stop service delivery system to more fully serve the clientele and members of community-based and faith-based organizations. Below are the required elements of the Statement of Work and the rating criteria that reviewers will use to evaluate the proposal.

1. Organizational History and Description of Community Need (15 Points)

- Describe the structure of the applicant's organization. Describe the history of the organization in meeting community needs including a brief listing of services provided.
- Describe the overall community need, *i.e.*, how will these resources allow your organization to address a need which the One-Stop Career Center is not fully addressing? (This description should include coverage of population(s) to be served and the

services to be provided. Populations could include ex-offenders, immigrants, limited English-speaking, homeless and individuals with disabilities. Services can include soft-skills training, pre- and post-job placement mentoring, translation services, and job coaching. Other populations and services can be identified.)

Rating Criteria

• Does the description reflect a clear understanding of a community need? Does the description of need reflect an understanding of the resources provided by the One-Stop delivery system in the community?

2. Description of Partnerships and Linkages (20 Points)

• Please describe your plans to work as partners with the One-Stop Delivery system to help the target population enter and succeed in the Workforce. If you have not previously worked with the One-Stop, please describe actions you have taken to develop the relationships as you developed this grant. If you have worked with the One-Stop, please describe what actions you have taken to further develop your relationship.

• Please describe the relationships you have with other non-profit organizations who provide similar or complementary services and how you will leverage pre-existing relationships and partnerships to help achieve your goals for the population you will service and how you will avoid duplication.

Rating Criteria

• Does the narrative describe an approach and process by which the organization will successfully partner with the One-Stop delivery system to address the unmet need?

• Does the applicant present evidence of discussions with the One-Stop delivery system (*e.g.*, a signed letter from the Local Board or other One-Stop delivery system principals)?

• Does the organization's history of collaboration with other non-profits in the community support the conclusion that these grant activities will be successful?

3. Presentation of Strategic Plan, Goals, and Timeline (50 Points)

• The applicant should describe the methodology for providing services, including any training curriculum or other tools to be used. Describe the staff/volunteer positions that will be providing services under this grant.

• The applicant must present a timeline of major, measurable tasks and activities to be undertaken. The timeline should include how many people will receive services and/or participate and complete classes detailed in the training curriculum.

• The applicant should also describe specifically measurable outcomes and other goals, which will be achieved by these grant activities. Measurable outcomes can include how many individuals will enter employment or retain employment or complete an educational certificate because they have received services provided under this grant in conjunction with services provided by the One-Stop Career Centers and other partners.

Rating Criteria

• Do the activities and tasks presented on the timeline appear to be achievable with the likelihood of project success given available resources?

• Does the applicant provide tangible outcome measures and goals for success for both the organization and Department to gauge the impact of the activities on meeting the community need? Do these goals include tracking employment outcomes and/or retention outcomes for those served?

4. Description of Measurements of Success (15 Points)

• Describe what mechanisms you will develop, in partnership with the One-Stop delivery system, to track your success in achieving promised goals and outcomes.

• Describe any other methods you will use for evaluating your project's success.

Rating Criteria

• Does this applicant reflect an understanding of what it would need to do in order to track progress and success?

Part VII. Review Process of the Evaluation Criteria

The technical review panel will make careful evaluation of applications against the criteria. The review panel recommendations are advisory. The ETA grant officer will fully consider the panel recommendations and take into account geographic balance to ensure the most advantageous award of these funds to accomplish the system-building purposes outlined in the Summary and Statement of Work. The grant officer may consider any information that comes to his or her attention. The grant officer reserves the right to award without negotiation.

Part VIII. Reporting

Grantees will be required to submit quarterly financial and narrative progress reports. Financial reporting will be required quarterly using the on-line electronic reporting system for the Standard Form 269–Financial Status Report (FSR). A narrative progress report will be required quarterly.

Part IX. Resources for the Applicant

The Department of Labor maintains a number of web-based resources that may be of assistance to applicants. The Web page for the Department's Center for Faith-Based & Community Initiatives (*http://www.dol.gov/cfbci*) is a valuable source of background on this initiative. America's Service Locator (*www.servicelocator.org*) provides a directory of our nation's One-Stop Career Centers. The National Association of Workforce Boards maintains a Web page (*www.nawb.org/asp/wibdir.asp*), which contains contact information for the State and local Workforce Investment boards. Applicants are encouraged to review ''Understanding the Department of Labor Solicitation for Grant Applications and How to Write an Effective Proposal'' (*http://www/dol.gov/cfbci/sgabrochure.htm*). ''Questions and Answers'' regarding this solicitation will be posted and updated on the Web (*www.doleta.gov/usworkforce*). For a basic understanding of the grants process and basic responsibilities of receiving Federal grant support, please see ''Guidance for Faith-Based and Community Organizations on Partnering with the Federal Government (*www.fbci.gov*).

Signed in Washington, DC, this 1st day of April, 2003.

James W. Stockton,

Grant Officer.

Attachments:

Appendix A—SF–424

Appendix B—Budget Form

Appendix C—Survey of Ensuring Equal Opportunity for Applicants

BILLING CODE 4510–30–P

APPLICATION FOR FEDERAL ASSISTANCE

APPENDIX "A"

OMB Approval No. 0348-0043

		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, telephone number and fax number of the 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. Municipa
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. Typed Name of Authorized Representative	b. Title	c. Telephone number

d. Signature of Authorized Representative	e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

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 ave 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: **Entry:**

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & 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 this assistance 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 completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from 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 program under which assistance is required.

11. Enter a brief descriptive title of the project. If more than one program is involved, you 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 the project.

Item: **Entry:**

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 only 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 include 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.)

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories ***APPENDIX "B"***

	(A)	(B)	(C)
1. Personnel	$		
2. Fringe Benefits (Rate)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: *Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).*

SECTION A - Budget Summary by Categories

1. ***Personnel:*** *Show salaries to be paid for project personnel which you are required to provide with W2 forms.*

2. ***Fringe Benefits:*** *Indicate the rate and amount of fringe benefits.*

3. ***Travel:*** *Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. ***Equipment:*** *Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more. Also include a detailed description of equipment to be purchased including price information.*

5. ***Supplies:*** *Include the cost of consumable supplies and materials to be used during the project period.*

6. ***Contractual:*** *Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. ***Other:*** *Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. ***Total, Direct Costs:*** *Add lines 1 through 7.*

9. ***Indirect Costs:*** *Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. ***Training /Stipend Cost:*** *(If allowable)*

11. ***Total Federal funds Requested:*** *Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE: PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

SURVEY ON ENSURING EQUAL OPPORTUNITY FOR APPLICANTS

Federal Agency Use Only

OMB No. 1225-0083 Exp. 02/28/2006

NOTE: Please place survey form directly behind the Standard Application for Federal Assistance (SF 424) fact sheet.

Purpose: This form is for applicants that are private nonprofit organizations (not including private universities). Please complete it to assist the federal government in ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for federal funding. Information provided on this form will not be considered in any way in making funding decisions and will not be included in the federal grants database.

1. Does the applicant have 501(c)(3) status?

❑ Yes ❑ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*

❑ 3 or Fewer ❑ 15-50
❑ 4-5 ❑ 51-100
❑ 6-14 ❑ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*

❑ Less Than $150,000
❑ $150,000 - $299,999
❑ $300,000 - $499,999
❑ $500,000 - $999,999
❑ $1,000,000 - $4,999,999
❑ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?

❑ Yes ❑ No

5. Is the applicant a non-religious community-based organization?

❑ Yes ❑ No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?

❑ Yes ❑ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local)?

❑ Yes ❑ No

8. Is the applicant a local affiliate of a national organization?

❑ Yes ❑ No

Survey Instructions on Ensuring Equal Opportunity for Applicants

1. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1225-0083**. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** Departmental Clearance Officer, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-1301, Washington, D.C. 20210. **If you have comments or concerns regarding the status of your individual submission of this form, write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

[FR Doc. 03–8227 Filed 4–3–03; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment and Training Administration

Grants for Intermediaries; SGA/DFA 03–104

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA). This notice contains all of the necessary information and forms needed to apply for grant funding.

SUMMARY: The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), announces the availability of $3.5 million to award grants to eligible intermediary organizations. Under this 2003 competition, eligible ''intermediaries'' are defined as those non-profit, community, and/or faith-based organizations with established connections and working relationships to grassroots faith-based and community organizations with the ability to connect those smaller organizations and the people they serve to the local One-Stop delivery system.

In achieving the grant purposes, the intermediary is expected to sub-grant a substantial portion of its award to eligible local grass-roots organizations. In their collaboration, the intermediaries will achieve the following objectives:

• Organize collaboration between sub-grantees and workforce boards to address a well-defined unmet community need by leveraging the resources of both faith-based and community organizations and the One-Stop Career Center system. The faith-based and community organizations resources may include, but are not limited to, services such as mentoring, soft skills training, transportation, childcare, or use of space and volunteer hours. ''Soft skills'' commonly refers to skills and characteristics that allow individuals to succeed in the workplace, such as a strong work ethic, an ability to work in teams, self-discipline, self-confidence, punctuality and courtesy.

• Increase the number of faith-based and community-based organizations serving as committed and active partners in the One-Stop delivery system.

• Establish methods and mechanisms to ensure sustainability of these partnerships and participation levels beyond the life of the grant.

• Expand the access of faith-based and community-based organizations' clients and customers to the training, job and career services offered by the local One-Stops.

• Tthoroughly document the impact and outcomes of these grant investments through quarterly and annual reporting.

DATES: Applications will be accepted commencing on April 4, 2003. The closing date for receipt of applications under this announcement is May 5, 2003. Applications must be received by 4 p.m. (ET) at the address below: No exceptions to the mailing and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be honored. Telefacsimile (FAX) applications will not be honored.

ADDRESSES: Applications must be mailed to: U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Denise Roach, SGA/DFA 03–104, 200 Constitution Avenue, NW., Room S–4203, Washington, DC 20210. Telefacsimile (FAX) applications will not be accepted. Applicants are advised that mail in the Washington area may be delayed due to mail decontamination procedures.

FOR FURTHER INFORMATION CONTACT: Denise Roach, Grants Management Specialist, Division of Federal Assistance, Telephone (202) 693–3301 (this is not a toll free-number). You must specifically ask for Denise Roach. Questions can also be faxed to Denise Roach, Telephone (202) 693–2879, please include the SGA/DFA 03–104, a contact name, fax and phone numbers. This announcement will be also published on the Employment and Training Administration (ETA) Web page at *http://www.doleta.gov/usworkforce.* This Web page will also provide responses to questions that are raised by applicants during the period of grant application preparation. Award notifications will also be announced on this Web page.

Part I. Delivery of Applications

1. *Late Applications.* Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made and it:

• Was sent by U.S. Postal Service registered or certified mail not later than May 5, 2003 (*e.g.*, an application submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been post marked by the 15th of the that month); or

• Was sent by U.S. Postal Service Express Mail Next Day Service, Post Office to addressee, not later than May 5, 2003 by 5 p.m. at the place of mailing two working days before to the deadline date specified for receipt of applications. The term ''working days'' excludes weekends and U.S. Federal holidays. ''Post-marked'' means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service.

2. *Withdrawal of Applications.* Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

3. *Hand Delivered Proposals.* It is preferred that applications be mailed at least five days before to the closing date. To be considered for funding, hand-delivered applications must be received at the designated address by 4 p.m., (ET). All overnight mail will be considered to be hand delivered and must be received at the designated place by the specified closing date and time. Telegraphed, e-mailed and/or faxed proposals will not be honored. Failure to adhere to the above instructions will be a basis for determination of non-responsiveness.

Part II. Authorities

These grants are made under the following authorities:

• The Workforce Investment Act of 1998 (WIA or the Act) (Public Law 105–220, 29 U.S.C. 2801 *et seq.*)

• The WIA Final Rule, 20 CFR parts 652, 660–671 (65 FR 49294 (August 11, 2000));

• Executive Order 13198; ''Rallying the Armies of Compassion''

• Training and Employment Guidance Letter 17–01 (''Incorporating and Utilizing Grassroots, Community-Based Organizations Including Faith-Based Organizations in Workforce Investment Activities and Programs'')

• Executive Order 13279; ''Equal Protection of the Laws for Faith-Based and Community Organizations''

Part III. Background

The Workforce Investment Act of 1998 (WIA) established a comprehensive reform of existing

Federal job training programs with amendments impacting service delivery under the Wagner-Peyser Act, Adult Education and Literacy Act, and the Rehabilitation Act. A number of other Federal programs are also identified as required partners in the One-Stop delivery system to provide comprehensive services for all Americans to access the information and resources available that can help in the achievement of their career goals. The intention of the One-Stop system is to establish a network of programs and providers in co-located and integrated settings that are accessible for individuals and businesses alike in approximately 600 workforce investment areas established throughout the nation. There are currently over 1,900 comprehensive Centers and over 1,600 affiliated Centers across the United States.

WIA established State and Local Workforce Investment Boards focused on strategic planning, policy development, and oversight of the workforce investment system, and accorded significant authority to the nation's Governors and local chief elected officials to further implement innovative and comprehensive delivery systems. The vision, goals and objectives for workforce development under the WIA decentralized system are fully described in the State strategic plan required under section 112 of the legislation. This State strategic workforce investment plan—and the operational experience gained by all the partners to date in implementing the WIA-instituted reforms—help identify the important ''unmet needs'' and latent opportunities to expand access to One-Stop by all the population segments within the local labor market.

Engagement of Faith-Based and Community Organizations Under the Workforce Investment Act

On January 29, 2001, President George W. Bush issued Executive Order 13198, creating the Office for Faith-Based and Community Initiatives in the White House and centers in the departments of Labor, Health and Human Services (HHS), Housing and Urban Development (HUD), Education (ED), Justice (DOJ). President Bush charged the Cabinet centers with identifying statutory, regulatory, and bureaucratic barriers that stand in the way of effective faith-based and community initiatives, and to ensure, consistent with the law, that these organizations have equal opportunity to compete for federal funding and other support.

In early 2002, the Department's Center for Faith-Based and Community Initiatives (CFBCI) and ETA developed and issued Solicitations for Grant Applications (SGAs) to engage intermediary and grass-roots organizations in our workforce system-building. These grants were designed to involve the faith-based and community-based organizations in service delivery, strengthen their existing partnership with the local One-Stop delivery system, while providing additional points of entry for customers into that system.

These 2002 grants embodied the Department's principal strategy for implementing the Executive Order by creating new avenues through which qualified organizations can more fully participate under the Workforce Investment Act while applying their particular strengths and assets in service provision to our customers. These grants also proceeded from an ETA–CFBCI mutual premise: that the involvement of community-based organizations and faith-based organizations can both complement and supplement the efforts of local workforce investment systems in providing universal access and serving the training-, job- and career-support needs of many of our citizens.

Both ETA and CFBCI are committed to bringing new Intermediary and grass-roots organizations to workforce system-building through the issuance of a new solicitation in 2003. This new solicitation draws on ''lessons learned'' in 2002 while introducing several ''promising practices'' introduced by other ETA grantees. While many Statement of Work elements in the 2002 solicitation have been preserved, the 2003 competition also sharply focuses on the ability of the Intermediary grantee and its sub-grantees to bridge the ''gaps'' in types of service provision and/or meeting the needs of historically hard-to-serve populations reached in the community (Note: While several of the Intermediary grantees in 2002 served multiple jurisdictions in various States, the 2003 competition focuses on the ability of the Intermediary to serve a single defined geographic area or contiguous geographic areas.) The new solicitation also places significant emphasis on performance outcomes—documenting and quantifying the additional value the Intermediary and its sub-grantees bring to the One-Stop delivery system in the community.

Through this competition, ETA seeks to ensure that an important Workforce Investment Act tenet—universal access to the programs and services offered under WIA—is further rooted in the customer-responsive delivery systems already established by the Governors, local elected officials and local Workforce Investment Boards. ETA also reaffirms its continuing commitment to those customer-focused reforms instituted by State and local governments which help Americans access the tools they need to manage their careers through information and high quality services, and to help U.S. companies find skilled workers.

Faith-based and community-based organizations present strong credentials for full partnership in our mutual system-building endeavors. Faith-based and community-based organizations are trusted institutions within our poorest neighborhoods. Faith-based and community-based organizations are home to a large number of volunteers who bring not only the transformational power of personal relationships to the provision of social service but also a sustained allegiance to the well-being and self-sufficiency of the participants they serve. Through their daily work and specific programs, these organizations strive to achieve some common purposes shared with government—reduction of welfare dependency, attainment of occupational skills, entry and retention of all our citizens in good-paying jobs. Through this solicitation, ETA and CFBCI strive to leverage these programs, resources and committed staff into the workforce investment strategies already embodied in State and local strategic plans.

Legal Rules That Apply to Faith-Based Organizations That Receive Government Funds

The government is prohibited from directly funding religious activity.* These grants may not be used for religious instruction, worship, prayer, proselytizing or other inherently religious practices. Neutral, secular

criteria that neither favor nor disfavor religion must be employed in the selection of grant and sub-grant recipients. In addition, under the WIA and DOL regulations implementing the Workforce Investment Act, a recipient may not train a participant in religious activities, or permit participants to construct, operate, or maintain any part of a facility that is primarily used or devoted to religious instruction or worship. Under WIA, ''no individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity because of race, color, religion, sex (except as otherwise permitted under Title IX of the Education Amendments of 1972), national origin, age, disability, or political affiliation or belief.''

* The term ''direct'' funding is used to describe funds that are provided ''directly'' by a governmental entity or an intermediate organization with the same duties as a governmental entity, as opposed to funds that an organization receives as the result of the genuine and independent private choice of a beneficiary. In other contexts, the term ''direct'' funding may be used to refer to those funds that an organization receives directly from the Federal government (also known as ''discretionary'' funding), as opposed to funding that it receives from a State or local government (also known as ''indirect'' or ''block grant'' funding). In this SGA, the term ''direct'' has the former meaning.

Part IV. Funding Availability and Period of Performance

ETA has identified $3.5 million from the FY 2002 appropriation for One-Stop/America's Labor Market Information System for achieving these objectives. The agency expects to award 7 to 12 grants. The grant amount for each intermediary organization is expected to range from $300,000 to $500,000. Final award amounts may be negotiated at the discretion of the grant officer. The period of performance is one year, beginning July 1, 2003 and ending on June 30, 2004.

Grant funds awarded through this competition are not intended to replace or supplant existing activities or resources that are currently offered (''maintenance of effort''), but to augment the range of services available in the community. Organizations, which have not previously partnered with the One-Stop delivery system are the specific target for these Federal investments.

Part V. Eligible Applicants

For purposes of this announcement, ''intermediaries'' are defined as those non-profit, community, and/or faith-based organizations with existing connections to grassroots faith-based and community organizations, and the demonstrated ability to connect those organizations to the local workforce investment system. These Intermediary organizations must possess strong financial and grant management skills, and the ability to mentor smaller organizations to increase their capacity to fully participate in One-Stop service delivery. (Note: Intermediary organizations that received grants in 2002 are not eligible to apply for these resources.) For the purposes of this grant, neither Workforce Investment Boards nor One-Stop operators qualify as intermediaries. The intermediary should issue sub-grants to non-profit grassroots organizations which:

1. Have social services as a major part of their mission;

2. Are headquartered in the local community to which they provide these services;

3. Have a total annual operating budget of $300,000 or less, or

4. Have 6 or fewer full-time equivalent employees.

Note: For purposes of this competition, local affiliates of national social service organizations are not considered ''grassroots'' and are not eligible for a sub-grant award.

Part VI. Government Requirements/ Statement of Work

Applicants must submit one copy with an original signature and two additional copies of their proposal. The application must be double-spaced, and on single-sided, numbered pages. A font size of at least twelve (12) pitch is required throughout.

There are five required sections:

Section I—Application for Federal Assistance (SF 424A)
Section II—Budget Information (SF 424B)
Section III—Executive Summary
Section IV—Statement of Work

Section I—Application for Federal Assistance

The SF–424A is included in the announcement as Attachment A. It must be signed by the representative authorized by the governing body of the applicant to enter into grant agreement.

Section II—Budget Information

The SF–424B is included in the announcement as Attachment B.

Note: Except as specifically provided, DOL/ETA acceptance of a proposal and an award of federal funds to sponsor any program(s) does not provide a waiver of any grant requirement and/or procedures. For example, the OMB circulars require that an entity's procurement procedures must require that all procurement transactions must be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the DOL/ETA's award does not provide the justification or basis to sole-source the procurement, *i.e.,* avoid competition.

Section III—Executive Summary

A one to two page ''Executive Summary'' reflecting the timeline and focusing on the outcomes to be achieved under this grant is also required. This Executive Summary does not count against the overall page limitation. The Executive Summary should include:

- The name of the local investment workforce area in the State proposed to be served through the activities of this grant. (If you plan to serve two or more contiguous areas, please identify in this Section.)
- Years of intermediary's service to the residents in this area.
- The ''need to be addressed''—*i.e.,* the services to be provided and populations to be served that may not fully be addressed by the local workforce investment system.
- Intermediary and sub-grantee projects and activities that address the defined needs with twelve-month timelines for their accomplishment.
- Summary of outcomes, benefits and value added by the project.

Section IV—Statement of Work (Not To Exceed 15 Pages Including Attachments)

The Statement of Work represents the applicant's plans to address the previously documented unmet need(s) in the community, including the opportunity to serve specific populations (*e.g.,* ex-offenders, limited English-speaking, immigrants, displaced homemakers, homeless) and/or offer specific services critical to obtaining employment for disadvantaged populations (*e.g.,* soft-skills training, pre- and post-job placement mentoring, translation services, job coaching). (This description should include coverage of population(s) to be served and the services to be provided. Populations could include ex-offenders, immigrants, limited English-speaking, homeless and individuals with disabilities. Services can include soft-skills training, pre- and post-job placement mentoring, translation services, and job coaching. Other populations and services can be identified.) The Department expects that the intermediary and its sub-grantees can complement, augment and supplement the services currently provided through the local One-Stop delivery system.

The intermediary will assist the sub-grantees, as appropriate, in

administrative tasks so that maximum efforts can be focused on providing direct assistance to their service population(s). The Department expects the intermediary's staff to provide mentoring and technical assistance to build the smaller organizations' capacity to be a permanent contributor to the local One-Stop system as well as compete successfully for future governmental grants and private funding opportunities.

The Statement of Work will specifically include:

(1) Performance History with Grants Management and the One-Stop System.

(2) Description of the proposed plan and activities of the intermediary and its sub-grantees.

(3) Enumeration of evaluation criteria, measure(s), outcomes and reporting/tracking.

(4) Mechanisms for both intermediary and sub-grantees.

1. Performance History With Grants Management and the One-Stop System (15 points)

Each applicant must provide a statement of its performance history with the management of resources under governmental grants-in-aid programs, including:

- Relevant history of the applicant in managing resources through grant awards from Federal Departments (particularly those from the Departments of Labor, Justice, Education, Housing and Urban Development, and Health and Human Services), State governments, units of local governments or private foundations.
- Relevant history of the applicant in working with small organizations. (Note: Be sure to include past experience in developing technical assistance and developing other organizations' capacity for social service delivery, competing for grants, managing grants, conducting information campaigns.)
- Recent participation of the intermediary in the One-Stop Stop delivery system for employment and training services. Describe any current working relationship with the local Workforce Investment Board(s). If your organization did not previously work with a Local Board, please describe how the applicant worked with the Local Board in the development of this grant proposal.

The Department will evaluate this narrative based on the scope, strength, and ''record of achievement.''

2. *Description of the proposed plan and activities of the intermediary and its sub-grantees (50 points)*

This section of the narrative provides the applicant's strategy for addressing the community's unmet workforce investment needs, and the prospects for strengthening the local One-Stop system through an expanded set of relationships with smaller grass-roots organizations. This section of the narrative should fully describe the specific needs in the community that the intermediary and grassroots organization partnerships will address. The proposal's narrative should:

- Describe the unmet service needs and conditions of unemployed or underemployed workers that the applicant will organize sub-grantees and other partners to address. The narrative should include how the applicant identified this need, including consultation with grassroots and faith-based and community organizations and the One-Stop delivery system;
- Document existing networks of faith-based and community groups, the organization's relationship with these networks, and plans for additional outreach to identify additional faith-based and community-based organizations. The emphasis should be on outreach to those groups that can help the grantee address the identified community need(s).
- Describe the methodology for awarding sub-grants. Describe how the applicant will organize the sub-grantees to address the community's need including what resources and services it will solicit from sub-grantees.
- Describe technical assistance the applicant will provide to potential sub-grantees before and after grant award. This should include activities to help FBOs/CBOs apply for sub-grant award.
- Describe the activities that have and will be undertaken to build the administrative capacity of the sub-grantees.
- Describe how the applicant and sub-grantees will use One-Stop system resources and collaborate with the local Workforce Investment Board to address the identified community issues.
- Submit a timeline for the tasks and activities beginning July 1.

The Department will evaluate the proposal against the following criteria:

- The activities associated with outreach and identification of grassroots organizations eligible for sub-grant awards appear appropriate, reasonable and achievable within the first months of the grant period.
- The defined set of inter-relationships among intermediary, grass-roots organizations and the local One-Stop delivery system during the life of the grant suggest that the grant objectives will be successfully met.
- The approaches and strategies for meeting the unmet workforce investment needs in the community appear appropriate, reasonable and achievable within the grant period.

3. Description of evaluation criteria, measure(s), outcomes and reporting/tracking mechanisms for both intermediary and sub-grantees (35 points) The narrative should specifically and carefully define how grant success will be determined by the intermediary and the Department. The review panels should be able to answer three key questions: What will be different once the project is complete? What value will be added to the local One-Stop delivery system? How will the ''competitive'' posture (i.e., capabilities to deliver services/act as partner) of the sub-grantees in the local One-Stop delivery system be enhanced? The narrative, therefore, should:

- Define the measurable outcomes and other goals for both the intermediary and its sub-grantees in executing the proposed tasks and activities. These outcomes include how many individuals will obtain and retain employment, or complete an educational certificate. Other goals may include how many individuals will receive job training, life-skills training or other services, which remove specific barriers to employment.
- Describe how the intermediary organization will track and report outcomes for those assisted under the sub-grants. Describe any formal agreement with the local One-Stop delivery system to track such outcomes or other mechanisms that have been established for this purpose.
- Define how the intermediary will determine its overall success in improving the posture of the sub-grantees in increasing their administrative capacity to remain active in local workforce development and compete for future funding opportunities.

The Department will evaluate the proposal against the following criteria:

- Are the goals and objectives, and the plans and procedures for achieving them, innovative, worthwhile, achievable and measurable?
- Are the methods and activities to achieve the objectives adequately described?

Note: These should be consistent with the timeline, and present the order and the date of completion (month or quarter) for the accomplishment of the intermediary's and sub-grantees' tasks.

- Is there evidence that the intermediary's technical assistance efforts will enhance the posture of the

sub-grantees by increasing their administrative capacity and their ability to remain active in the local workforce development system and to compete for other funding opportunities?

Part VII. Reporting

Grantees will be required to submit quarterly financial and narrative progress reports. Financial reporting will be required quarterly using the on-line electronic reporting system for the Standard Form 269–Financial Status Report (FSR). A narrative progress report will be required quarterly.

Part VIII. Review Process and Evaluation Criteria

The technical review panel will make careful evaluation of applications against the rating criteria. The review panel recommendations are advisory. The ETA grant officer will fully consider the panel recommendations and take into account geographic balance to ensure the most advantageous award of these funds to accomplish the system-building purposes outlined in the Summary and Statement of Work. The grant officer may consider any information that comes to his or her attention. The grant officer reserves the right to award without negotiation.

Part IX. Resources for Applicant

The Department of Labor maintains a number of web-based resources that may be of assistance to applicants. The webpage for the Department's Center for Faith-Based & Community Initiatives (*http://www.dol.gov/cfbci*) is a valuable source of background on this initiative. America's Service Locator (*http://www.servicelocator.org*) provides a directory of our nation's One-Stop Career Centers. The National Association of Workforce Boards maintains a webpage (*http://www.nawb.org/asp/wibdir.asp*), which contains contact information for the State and local Workforce Investment boards. Applicants are encouraged to review ''Understanding the Department of Labor Solicitation for Grant Applications and How to Write an Effective Proposal'' (*http://www/dol.gov/cfbci/sgabrochure.htm*). ''Questions and Answers'' regarding this solicitation will be posted and updated on the web (*http://www.doleta.gov/usworkforce*). For a basic understanding of the grants process and basic responsibilities of receiving Federal grant support, please see ''Guidance for Faith-Based and Community Organizations on Partnering with the Federal Government'' (*http://www.fbci.gov*).

Signed at Washington, DC, this 1st day of April, 2003.

James W. Stockton,

Grant Officer.

Attachments:

Appendix A: SF–424A—Application for Federal Assistance
Appendix B: Budget Form
Appendix C: Survey on Ensuring Equal Opportunity for Applicants
Appendix D: Checklist (whether the applicant is a Faith-Based organization or a Community-Based organization)

BILLING CODE 4510–30–P

APPLICATION FOR FEDERAL ASSISTANCE

APPENDIX "A"

OMB Approval No. 0348-0043

		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, telephone number and fax number of the 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. Municipa
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. Typed Name of Authorized Representative	b. Title	c. Telephone number

d. Signature of Authorized Representative	e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

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 ave 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: **Entry:**

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & 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 this assistance 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 completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from 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 program under which assistance is required.

11. Enter a brief descriptive title of the project. If more than one program is involved, you 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 the project.

Item: **Entry:**

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 only 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 include 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.)

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories **APPENDIX "B"**

	(A)	(B)	(C)
1. Personnel	$		
2. Fringe Benefits (Rate)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: *Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).*

SECTION A - Budget Summary by Categories

1. ***Personnel:*** *Show salaries to be paid for project personnel which you are required to provide with W2 forms.*

2. ***Fringe Benefits:*** *Indicate the rate and amount of fringe benefits.*

3. ***Travel:*** *Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. ***Equipment:*** *Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more. Also include a detailed description of equipment to be purchased including price information.*

5. ***Supplies:*** *Include the cost of consumable supplies and materials to be used during the project period.*

6. ***Contractual:*** *Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. ***Other:*** *Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. ***Total, Direct Costs:*** *Add lines 1 through 7.*

9. ***Indirect Costs:*** *Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. ***Training /Stipend Cost:*** *(If allowable)*

11. ***Total Federal funds Requested:*** *Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE: PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

SURVEY ON ENSURING EQUAL OPPORTUNITY FOR APPLICANTS

Federal Agency Use Only

OMB No. 1225-0083 Exp. 02/28/2006

NOTE: Please place survey form directly behind the Standard Application for Federal Assistance (SF 424) fact sheet.

Purpose: This form is for applicants that are private nonprofit organizations (not including private universities). Please complete it to assist the federal government in ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for federal funding. Information provided on this form will not be considered in any way in making funding decisions and will not be included in the federal grants database.

1. Does the applicant have 501(c)(3) status?

❑ Yes ❑ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*

❑ 3 or Fewer ❑ 15-50
❑ 4-5 ❑ 51-100
❑ 6-14 ❑ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*

❑ Less Than $150,000
❑ $150,000 - $299,999
❑ $300,000 - $499,999
❑ $500,000 - $999,999
❑ $1,000,000 - $4,999,999
❑ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?

❑ Yes ❑ No

5. Is the applicant a non-religious community-based organization?

❑ Yes ❑ No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?

❑ Yes ❑ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local)?

❑ Yes ❑ No

8. Is the applicant a local affiliate of a national organization?

❑ Yes ❑ No

Survey Instructions on Ensuring Equal Opportunity for Applicants

1. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1225-0083**. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** Departmental Clearance Officer, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-1301, Washington, D.C. 20210. **If you have comments or concerns regarding the status of your individual submission of this form, write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Appendix D

Application for funding under SGA/DFA 03-104 "Grants for Intermediaries"

Name of Applicant:_____

(MUST CHECK ONE)

____ Faith Based Organization

____ Community Based Organization

[FR Doc. 03–8228 Filed 4–3–03; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR part 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 of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decision being modified.

Volume I

Connecticut
- CT020001 (Mar. 1, 2002)
- CT020002 (Mar. 1, 2002)
- CT020003 (Mar. 1, 2002)
- CT020004 (Mar. 1, 2002)

New York
- NY020002 (Mar. 1, 2002)
- NY020003 (Mar. 1, 2002)
- NY020004 (Mar. 1, 2002)
- NY020005 (Mar. 1, 2002)
- NY020007 (Mar. 1, 2002)
- NY020008 (Mar. 1, 2002)
- NY020010 (Mar. 1, 2002)
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- NY020075 (Mar. 1, 2002)
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- DC020001 (Mar. 1, 2002)
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Maryland
- MD020002 (Mar. 1, 2002)
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- MD020016 (Mar. 1, 2002)
- MD020021 (Mar. 1, 2002)
- MD020028 (Mar. 1, 2002)
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OH020037 (Mar. 1, 2002)
Wisconsin
WI020022 (Mar. 1, 2002)
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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 Act''. 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 determination issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov) of* the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2069. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 27th day of March, 2003.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determination.

[FR Doc. 03–7886 Filed 4–3–03; 8:45 am]

BILLING CODE 4510–27–M

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

Sunshine Act Meeting

TIME AND DATE: 9 a.m. to 3 p.m., Friday, April 25, 2003.

PLACE: The offices of the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, 130 South Scott Avenue, Tucson, AZ 85701.

STATUS: This meeting will be open to the public, unless it is necessary for the Board to consider items in executive session.

MATTERS TO BE CONSIDERED: (1) A report on the U.S. Institute for Environmental Conflict Resolution; (2) A report from the Udall Center for Studies in Public Policy; (3) A report on the Native Nations Institute; (4) Program Reports; (5) A report on the Udall Archives; and (6) A Report from the Management Committee.

PORTIONS OPEN TO THE PUBLIC: All sessions with the exception of the session listed below.

PORTIONS CLOSED TO THE PUBLIC: Executive session.

CONTACT PERSON FOR MORE INFORMATION: Christopher L. Helms, Executive Director, 130 South Scott Avenue, Tucson, AZ 85701, (520) 670–5529.

Dated: April 1, 2003.

Christopher L. Helms,

Executive Director, Morris K. Udall Scholarship and Excellence in Naitonal Environmental Policy Foundation, and Federal Register Liaison Officer.

[FR Doc. 03–8326 Filed 4–2–03; 10:42 am]

BILLING CODE 6820–FN–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before May 5, 2003, to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Brooke Dickson, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on January 16, 2003 (68 FR 2368). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (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 information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Records Management Conference Electronic Registration Form and Records Management Training Class Registration Form.

OMB number: 3095–NEW.

Agency form number: NA Forms 14123 and 14124.

Type of review: Regular.

Affected public: Business or for-profit, nonprofit organizations and institutions, and Federal, State and local government agencies.

Estimated number of respondents: 400.

Estimated time per response: 5 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 33 hours.

Abstract: Each year NARA conducts a records management conference and a variety of records management training classes. Federal government employees and interested state and local government and private sector individuals such as contractors and vendors also attend the records management conference and training classes. Attendees are required to pre-register for both the records management conference and for the records management training classes and these forms provide for standardized collection of necessary registration and payment information.

Dated: March 28, 2003.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 03–8164 Filed 4–3–03; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste Meeting on Planning and Procedures; Notice of Meeting

The ACNW will hold a Planning and Procedures meeting on April 22, 2003, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows: *Tuesday, April 22, 2003—8:30 a.m.–10 a.m.*

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Howard J. Larson (Telephone: (301) 415–6805) between 7:30 a.m. and 4:15 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: March 28, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–8206 Filed 4–3–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Meeting of the ACRS Subcommittee on Materials and Metallurgy; Notice of Meeting

The ACRS Subcommittee on Materials and Metallurgy will hold a meeting on April 22–23, 2003, Commissioners' Conference Room O–1G16, 11555 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday and Wednesday, April 22–23, 2003—8:30 a.m. until the conclusion of business

The purpose of this meeting is to review NRC inspection requirements and guidance, Wastage Research, and the Electric Power Research Institute Materials Reliability Program (EPRI/MRP) and industry efforts related to vessel head penetration cracking and reactor pressure vessel head degradation. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, the EPRI/MRP, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Ms. Maggalean W. Weston (telephone 301/415–3151) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8 a.m. and 5:30 p.m. (e.t.). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: March 28, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–8205 Filed 4–3–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Meeting of the Subcommittee on Reactor Fuels; Notice of Meeting

The ACRS Subcommittee on Reactor Fuels will hold a meeting on April 21, 2003, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Monday, April 21, 2003—10 a.m. until the conclusion of business

The purpose of this meeting is to review the Duke Cogema Stone & Webster construction application request resubmittal for a mixed oxide (MOX) fuel fabrication facility. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Duke Cogema Stone & Webster, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Ms. Maggalean W. Weston (telephone 301/415–3151) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8 a.m. and 5:30 p.m. (e.t.). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: March 28, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–8207 Filed 4–3–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Model Application Concerning Technical Specification Improvement To Modify Requirements Regarding Mode Change Limitations Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model application relating to the modification of requirements regarding technical specifications (TS) mode change limitations. The purpose of this model is to permit the NRC to efficiently process amendments that propose to modify requirements for TS mode change limitations as generically approved by this notice. Licensees of nuclear power reactors to which the model applies could request amendments utilizing the model application.

DATES: The NRC staff issued a **Federal Register** Notice (67 FR 50475, August 2, 2002) which provided a model safety evaluation relating to modification of requirements regarding TS mode change limitations;[1] similarly, the NRC staff, herein provides a Model Application, including a revised model safety evaluation. The NRC staff can most efficiently consider applications based upon the Model Application, which reference the model safety evaluation, if the application is submitted within a year of this **Federal Register** Notice.

FOR FURTHER INFORMATION CONTACT: Robert Dennig, Mail Stop: O–12H4, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1161.

[1] [In conjunction with the proposed change, technical specifications (TS) requirements for a bases control program, consistent with the TS Bases Control Program described in Section 5.5 of the applicable vendor's standard TS (STS), shall be incorporated into the licensee's TS, if not already in the TS. Similarly, the STS requirements of SR 3.0.1 and associated bases shall be adopted by units that do not already contain them.]

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000–06, ''Consolidated Line Item Improvement Process for Adopting Standard Technical Specification Changes for Power Reactors,'' was issued on March 20, 2000. The consolidated line item improvement process (CLIIP) is intended to improve the efficiency of NRC licensing processes. This is accomplished by processing proposed changes to the standard technical specifications (STS) in a manner that supports subsequent license amendment applications. The CLIIP includes an opportunity for the public to comment on proposed changes to the STS following a preliminary assessment by the NRC staff and finding that the change will likely be offered for adoption by licensees. The CLIIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either reconsider the change or to proceed with announcing the availability of the change for proposed adoption by licensees. Those licensees opting to apply for the subject change to technical specifications are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. The included model safety evaluation provides the justification for the changes, stands alone, and is not an endorsement of the TSTF–359, Revision 8, Change Description and Justification. Each amendment application made in response to the notice of availability will be processed and noticed in accordance with applicable NRC rules and procedures.

This notice involves the modification of requirements regarding mode change limitations in technical specifications. The change referenced in the **Federal Register** Notice (FRN) 67 FR 50475, of August 2, 2002, is TSTF–359, Revision 7. TSTF–359, Revision 8, incorporates most, but not all responses to the public comments. Two additional changes to TSTF–359, Revision 8, are required and discussed in this notice. TSTF–359, Revision 7; TSTF–359, Revision 8; and TSTF–359, Revision 8, as modified; can all be viewed on the NRC's Web page at *http://www.nrc.gov/reactors/operating/licensing/techspecs/changes-issued-for-adoption.html*.

Applicability

This proposed change to modify technical specification requirements for TS mode change limitations is applicable to all licensees who currently have or who will adopt, in conjunction with the proposed change, technical specification requirements for a bases control program consistent with the Technical Specifications (TS) Bases Control Program described in section 5.5 of the applicable vendor's STS, and STS Surveillance Requirement (SR) 3.0.1 and associated bases.

To efficiently process the incoming license amendment applications, the staff requests each licensee applying for the changes addressed by TSTF–359, Revision 8, as modified, using the CLIIP to include bases for the proposed technical specification consistent with the bases proposed in the TSTF–359, Revision 8, as modified by staff responses to public comments 8 and 20 below. In addition, for those licensees that have not adopted requirements for a bases control program or STS SR 3.0.1 by converting to the improved STS or by other means, the staff requests that they include the requirements for a bases control program and STS SR 3.0.1 and associated bases consistent with the STS, in your request for the proposed change. The need for a bases control program stems from the need for adequate regulatory control of some key elements of the proposal that are contained in the proposed bases for Limiting Condition for Operation (LCO) 3.0.4, SR 3.0.4, and SR 3.0.1. The staff is requesting that the bases be included with the proposed license amendments because, in this case, the changes to the technical specifications and changes to the associated bases form an integrated change to a plant's licensing basis. To ensure that the overall change, including the bases, includes the appropriate regulatory controls, the staff plans to condition the issuance of each license amendment on incorporation of the changes to the bases document and on ensuring the licensee's TS have a bases control program for controlling changes to the bases. The CLIIP does not prevent licensees from requesting an alternative approach or proposing the changes without the requested bases and bases control program. Variations from the approach recommended in this notice may, however, require additional justification, additional review by the NRC staff and may increase the time and resources needed for the review.

Public Notices

The staff issued a **Federal Register** Notice (67 FR 50475, August 2, 2002) that requested public comment on the NRC's pending action to approve modification of technical specification (TS) requirements regarding mode change limitations. In particular, following an assessment and draft safety evaluation by the NRC staff, the staff sought public comment on proposed changes to the standard technical specifications (STS), designated as TSTF–359, Revision 7. TSTF–359, Revision 8, incorporates most, but not all responses to the public comments. Two additional changes to TSTF–359, Revision 8, are required and discussed in this notice. TSTF–359, Revision 7; TSTF–359, Revision 8; and TSTF–359, Revision 8, as modified; can all be viewed on the NRC's Web page at, *http://www.nrc.gov/reactors/operating/licensing/techspecs/changes-issued-for-adoption.html*. The TSTF–359, Revision 7, change request, the TSTF–359, Revision 8, change request, the TSTF–359, Revision 8, change request as modified by this notice, as well as the NRC staff's safety evaluation may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records are accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Library component on the NRC Web site, (the Electronic Reading Room).

In response to the notice soliciting comments from interested members of the public about modifying the TS requirements regarding mode change limitations, the staff received eight sets of comments (three from individual licensees, one from an industry contractor, and four from members of the public). Specific comments on the model SE are discussed below:

1. *Comment*: The last sentence of the first paragraph of Section 3.0, ''Technical Evaluation'' states, ''Good practice should dictate that such transitions should normally be initiated only when all required equipment is operable and that mode transition with inoperable equipment should be the exception rather than the rule.'' If the required risk evaluation determines that it is acceptable to enter a Mode with certain required equipment inoperable, then this restriction is unnecessary. There may be some situations that recur routinely where the plant would benefit by changing modes with certain equipment inoperable. If the risk evaluation has determined that this change in modes is acceptable, then it should not matter if it is done routinely or as an ''exception rather than the rule.''

Staff Response: The statement reiterates a longstanding staff position. On June 4, 1987, Generic Letter 87–09 provided the first step in mode change flexibility, allowing mode changes where action requirements permitted continued operation for an indefinite

period (the starting point for the current increase in flexibility). As part of the discussion, that letter stated:

> For an LCO that has Action Requirements permitting continued operation for an unlimited period of time, entry into an operational mode or other specified condition of operation should be permitted in accordance with those action requirements * * *. However, nothing in this staff position should be interpreted as endorsing or encouraging a plant startup with inoperable equipment. The staff believes that good practice should dictate that plant startup should normally be initiated only when all required equipment is operable and that startup with inoperable equipment must be the exception rather than the rule.

Any risk, whether large or small, should be incurred only when necessary. With appropriate planning, it should not be necessary to ''routinely'' start up with inoperable equipment.

2. *Comment*: Section 2.0, first paragraph, second to last sentence: Change ''provide'' to ''provides.''

Staff Response: The staff agrees.

3. *Comment*: Section 3.0, second paragraph, third sentence: Change ''plants'' to ''plant's.''

Staff Response: The staff agrees.

4. *Comment*: Section 3.0, second paragraph, fourth sentence: Change ''allowances'' to ''allowance.''

Staff Response: The staff agrees.

5. *Comment*: Section 3.1.1, fifth paragraph, third sentence: Change ''the systems/components not to be granted the LCO 3.0.4 or SR 3.0.4 allowances for the various modes listed'' to ''the systems/components not to be granted the LCO 3.0.4 or SR 3.0.4 allowances for the various modes are listed.''

Staff Response: The staff agrees.

6. *Comment:* Section 3.1.2, first paragraph, second sentence: change ''delta DCDF'' to ''delta CDF.''

Staff Response: The staff agrees.

7. *Comment:* Section 2.1 Proposed Change to LCO 3.0.4 and SR 3.0.4 where it talks about SR 3.0.4 wording changes (about halfway through 5th paragraph on page 50478): The revised new wording, ''The revised SR 3.0.4 will conform to the changes to LCO 3.0.4 and read: ''Entry into a MODE or other specified condition in the Applicability of an LCO shall not be made unless the LCO's Surveillances have been met within their specified frequency.'' is incompatible with TSTF 359 regarding the new SR 3.0.3 on missed surveillances that the NRC recently approved.

New SR 3.0.4 requires Surveillances to be met within their specified Frequency prior to entry into a MODE or other specified condition in the Applicability. If SR 3.0.3 is applied to a missed Surveillance and a risk evaluation supports a delay beyond 24 hours, new SR 3.0.4 would only allow this delay to be applied in the MODE or other specified condition in the Applicability in which the plant is operating at the time of discovery that the Surveillance has been missed. While this provision does not prevent a shutdown, it would prevent entry into a higher MODE of operation with a Surveillance that had not been performed within its specified Frequency.

To address this situation, SR 3.0.4 needs to be modified to state that SR 3.0.4 prohibits entry into a MODE or other specified condition in the Applicability of an LCO unless the associated Surveillances have been met within their specified Frequency, except as provided by SR 3.0.3. The bases for SR 3.0.4 need to be modified also to provide the flexibility for entry into higher MODES with a missed Surveillance since the equipment is still OPERABLE and the risk evaluation is still valid for this situation. SR 3.0.3 evaluation considers missed surveillance equipment to be still OPERABLE, and new SR 3.0.4 would allow going up in MODES except that it specifically says no mode entry ''unless the LCO's Surveillances have been met within their specified frequency.'' and doesn't talk about OPERABLE equipment.

To fix this, reword new SR 3.0.3 to say, ''Entry into a MODE or other specified condition in the Applicability of an LCO shall not be made unless the LCO's Surveillances have been met within their specified frequency, except as provided by SR 3.0.3.'' (And add the bases wording indicated above.)

Rev. 7 of TSTF 359 had addressed this issue but it does not appear to be addressed by the NRC in the FR notice.

Staff Response: The staff agrees. SR 3.0.4 will be modified to included the phrase, ''* * * , except as provided by SR 3.0.3.'' The bases wording will be modified accordingly.

In reviewing LCO 3.0.4 and SR 3.0.4, the redundancy in stating the criteria (items a, b and c) for allowing entry into a Mode or other specified condition in the Applicability is unnecessary. The listing of the criteria (items a, b and c) are more appropriately stated in LCO 3.0.4, since it controls the Mode transition; the LCO is not met due to a SR not being met. Therefore, to eliminate the redundancy and make the statements more accurate, SR 3.0.4 is changed to read, in its' entirety:

> ''Entry into a MODE or other specified condition in the Applicability of an LCO shall only be made when the LCO's Surveillances have been met within their specified frequency, except as provided by SR 3.0.3. When an LCO is not met due to Surveillances not having been met, entry into a MODE or other specified condition in the Applicability shall only be made in accordance with LCO 3.0.4.
>
> This provision shall not prevent entry into MODES or other specified conditions in the Applicability that are required to comply with ACTIONS or that are part of a shutdown of the unit.''

Related consistency changes are made throughout the SE.

8. *Comment*: If the NRC requires a Revision 8 be prepared before the Notice of Availability is published, then the Notice of Availability should use that revision (#8) as the basis for licensee applications.

Staff Response: The staff agrees; the staff will reference the latest approved TSTF–359 revision; TSTF–359, Revision 8, as modified by the response to Comment 20 below and the following modification to the TSTF–359 Revision 8 LCO 3.0.4 bases Insert. The 11th paragraph shall be re-written to read:

> ''Upon entry into a MODE or other specified condition in the Applicability with the LCO not met, LCO 3.0.1 and LCO 3.0.2 require entry into the applicable Conditions and Required Actions for no more than the duration of the applicable ACTIONS Completion Time or until the LCO is met or the unit is not within the Applicability of the TS.''

9. *Comment*: For Boiling Water Reactors (BWRs) with Mark 1 containments, the Table lists the Hardened Wetwell Vent as such a SSC that should be excluded. However, the Hardened Wetwell Vent is not a SSC included within Technical Specifications (TS). Thus, the proposed TSTF implies that TS Actions should be applied to a non-TS SSC. This is inappropriate and not necessary to properly manage overall risk. The existing plant programs that implement paragraph (a)(4) of the Maintenance Rule (10 CFR 50.65) are the appropriate mechanism for this specific SSC. Consequently, we request that TSTF–359 be clarified to not include the Hardened Wetwell Vent.

Staff Response: The tables included in TSTF–359 and the draft safety evaluation were provided by the BWR Owners Group as a result of generic analysis, which the staff has reviewed and accepted. The analysis and tables are comprehensive and do cover systems that are not in TS. The staff does not believe that the presence in the analysis and tables implies that TS actions are required for those systems such as the Hardened Wetwell Vent system.

10. *Comment*: Second, this table and the accompanying mark-up of the actual TS pages for BWRs included in TSTF–359, Revision 7, state that the Limiting Conditions for Operation (LCO) 3.0.4.b exclusion note should be added to the TS LCO 3.4.9, Residual Heat Removal (RHR) Shutdown Cooling System-Cold Shutdown, such that a MODE change from MODE 5 to MODE 4 would be precluded with LCO 3.4.9 not met. However, LCO 3.0.4 only applies to MODE changes in MODES 1, 2, or 3. Thus, the proposed change to LCO 3.4.9 is inconsistent with the existing wording of the LCO 3.0.4 applicability. Therefore, we believe that the LCO 3.0.4 Note to LCO 3.4.9 should not be included in the proposed changes.

Staff Response: The notes limiting the applicability (to Modes 1, 2, 3, and 4 for PWRS, and to Modes 1, 2, and 3 for BWRs) of the current STS LCO 3.0.4 and STS SR 3.0.4 are holdovers from the existing Standard Technical Specifications (STS). The notes limiting the applicability of LCO 3.0.4 and SR 3.0.4 are no longer needed and are removed by TSTF–359, Revision 8. The industry owners groups' analyses would subsequently support adding notes to various TS, as defined by the tables of higher risk systems in the FRN, precluding entry into Modes 5 and 6 for PWRs, and Modes 4 and 5 for BWRs. However, the addition of notes in these cases is made unnecessary by action statements that require immediate completion times, which means that entry into the Mode or other specified condition in the Applicability is not allowed and the notes would be superfluous.

11. *Comment*: Two editorial corrections to TSTF–359, Revision 7, are needed. First, in INSERT 6 (SR 3.0.4 BASES) the word ''that'' in the second line, after the word ''Surveillance,'' should be deleted. Second, the second sentence to INSERT 8 (RCS SPECIFIC ACTIVITY BASES) should be deleted, since it is redundant to the existing Bases and therefore need not be included.

Staff Response: The staff agrees.

12. *Comment*: Reliance on a licensee's 50.65 (a)(4) ''program'' appears to be a flawed basis. While this proposed change to the TS as well as the previous one for surveillance interval and completion time extensions (66 FR 49714) rely on the ''program'', that program is not required by 50.65 (a)(4) to be a written program, it's not required by the regulation to meet the risk management objectives of RG 1.177 or any other standard, nor does it require a licensee to find any particular level of risk to be unacceptable. It, in fact, only requires that the risk be assessed (without specifying a method, a degree of rigor or even that the assessment be documented) and managed (with no definition what that means). While Page 23 of the document states ''Risk assessments will be conducted using the procedures and guidance endorsed by Regulatory Guide 1.182, ''Assessing and Managing Risk Before Maintenance Activities at Nuclear Power Plants.'', licensee adherence to this standard or the NUMARC guidance it endorses is neither required in the regulation nor are any licensees committed to those documents through their license or FSAR. The fact that licensees will be inspected in this area using IP 71111.13 and Supplemental IP 62709 is of little value if those inspections are not being done against specific standards that the licensees are required to meet rather than the general standard of (a)(4) which has the limitations discussed above.

Staff Response: A licensee adopting this change will be required to commit in the bases to the Technical Specifications to follow Regulatory Guide 1.182. In addition, the licensee will be required to adopt a bases control program identical to that contained in the Standard Technical Specifications. Regulatory Guide 1.182, ''Assessing and Managing Risk Before Maintenance Activities at Nuclear Power Plants,'' endorses NUMARC 93–01 Section 11, ''Assessment of Risk Resulting from Performance of Maintenance Activities,'' which provides risk assessment and management ''methods that are acceptable to the NRC staff for complying with the provision of 10 CFR 50.65 (a)(4).'' NUMARC 93–01 Section 11 requires that this assessment process be proceduralized. Furthermore, Inspection Procedure 71111.13 provides inspection guidance on, among other things, the verification of the performance of maintenance risk assessments, the adequacy of risk assessments and the management of the resulting risk.

13. *Comment*: It is noted that the Standard TS Bases for the revised TS 3.0.4 has not been provided for comment. Are the standards above such as Reg Guide 1.182 being included in the TS Bases and therefore subject to the bases control program? If not, why not?

Staff Response: The proposed STS bases are included in TSTF–359 and were open for comment. The portion of the question related to the TS Bases and bases control program was answered in the response to comment 12 above.

14. *Comment*: Notwithstanding statements like ''Good practice should dictate that such transitions should normally be initiated only when all required equipment is operable and that mode transition with inoperable equipment should be the exception rather than the rule'' and ''* * * the expected low frequency of the proposed mode changes with inoperable equipment * * *'', isn't it just as likely (and perfectly acceptable under this proposed change) that once the licensee has justified a mode change with a certain piece of equipment inoperable during a particular startup, that during subsequent startups the licensee could actually plan into the startup the return of that equipment after the Mode change it was required for, by using that previous assessment? What would prevent the licensee from doing that (assuming other system alignments are equivalent)? Taking it a step further, what will prevent the licensee from, over time, developing a whole combination of assessments that justify not having multiple pieces of equipment operable during a particular mode change and routinely using those assessments in subsequent startups? Similarly, wouldn't the proposed TS allow multiple mode changes in the same startup with same piece(s) of inoperable equipment as along as the assessment covers each mode? Is that what was intended?

Staff Response: See the response to comment 1 above. It is acceptable for licensees to utilize pre-existing risk assessments, as long as they adequately address the existing plant conditions. The applicability of TS frequently covers multiple modes, and therefore mode changes within the applicability of the TS would be allowed, as long as the risk assessment is re-evaluated prior to each mode change.

15. *Comment*: [Page 21][The SE] states ''For systems and components which are not higher risk, any temporary risk increase associated with the proposed allowance will be smaller than what is considered acceptable when the same systems and components are inoperable at power. This is due to the fact that the CTs associated with the majority of TS systems and components were developed for power operation and pose smaller plant risk for action statement entries initiated or occurring at lower modes operation as compared to power operations.'' The first sentence above is only restricted by whether something is higher or lower risk but the justifying statement only applies to the majority of TS systems which are associated with power operations. What is the minority of TS systems for which plant risk is higher in lower modes of operation? Are all those systems on the list of higher risk systems? If all those systems are not included on the list of high risk systems

how is the first quoted sentence true?! How do the lists of high and low risk systems at power and in lower modes discussed in this proposal compare with the results of the shutdown risk analysis the NRC now has underway? If there are differences what is the justification?

Staff Response: The ''minority of TS systems for which plant risk is higher in lower modes of operation,'' are those systems identified in the analyses and listed in the SE. These systems are determined by a qualitative analysis that compares risk in the shutdown mode with that at power. The qualitative analysis also takes into account potential risk increases (*e.g.*, due to realignments and human errors) when entering a new mode or configuration. Those systems that have a potential to be more important to risk in the lower modes, are conservatively selected and mode changes are precluded when there is an inoperability associated with any of these potentially higher risk systems. The lists of ''higher risk'' systems, being based on both deterministic and probabilistic arguments with conservative assumptions, are not expected to conflict with the results of any shutdown risk analysis.

16. *Comment*: Appendix A Examples—In a number of the examples it says ''if there is reasonable assurance'' that the inoperable component will be restored within the CT, a risk assessment has been done, and the requisite risk management actions have been taken. Where does this need for ''reasonable assurance'' come from and how does the LCO require it? If a component is inoperable, what in the new LCO prevents the licensee from assuming the full CT in the risk assessment, managing the risk for that full time and simply hoping (whether that is reasonable or not) that they will get the component back before the end of the CT?

Staff Response: Unplanned reactor scrams and unplanned power changes are two of the Reactor Safety Performance Indicators that the ROP utilizes to assess licensee performance and inform the public. Thus, the ROP provides a disincentive to entering a mode or other specified condition in the applicability of an LCO and moving up into power operation (Mode 1), when there is a significant likelihood that the mode would have to be subsequently exited due to failure to restore the unavailable equipment within the completion time. Additional disincentives are the 10 CFR 50.72(b)(2)(i) and 10 CFR 50.73(a)(2)(i)(A) reporting requirements. NUREG–1022, ''Event Reporting Guidelines 10 CFR 50.72 and 50.73,'' makes it clear that a report is required when a nuclear plant shutdown required by Technical Specifications is initiated or completed.

17. *Comment:* Carrying the logic above a step further—What in the LCO (not in some voluntary cumulative risk monitoring) will prevent a licensee from changing Mode without a piece of equipment after doing the assessment and management of risk, reaching the CT, returning to a nonapplicable mode doing another assessment for the same piece of equipment that is still inoperable, changing Mode again with the proper management of the risk and simply hoping that the equipment is operable before the CT expires yet again?

Staff Response: While feasible from a legalistic perspective, such actions by a licensee would be indication of a poorly run plant and should result in close scrutiny by plant management and the NRC. Such licensee actions would constitute clear evidence of poor performance that would be reviewed by the performance based ROP, and management corrective oversight should result. Also, see the related response to comment 16 above.

18. *Comment:* Are the provisions of SR 3.0.2 applicable if a licensee changes mode without first doing a required surveillance? If the provisions are to be applicable, there appears to be a problem in the language of SR 3.0.2. For example, if the surveillance has a 7-day frequency but has not been performed for some months, the wording of SR 3.0.2 would require that the surveillance be performed within 1.25 times ''as measured from the previous performance or as measured from the time a specified condition of Frequency is met.'' Given that the surveillance had last been performed months before application of 1.25 from the previous performance would appear problematic. The language of SR 3.0.2 appears to assume (based on the present requirements of SR 3.0.4 that the surveillance be successfully performed within the required frequency before the mode change) that there will be a previous ''in-frequency'' performance of the surveillance from which the 1.25 can be measured. Assuming that the 1.25 interval is supposed to be available, it should start from the time of entry into the applicable Mode, however that does not appear to be ''a specified condition of Frequency'' as now defined in TS usage examples or bases.

Staff Response: SR 3.0.2 (25% extension) does not apply; the SR must be met within the required action completion time, except as provided by SR 3.0.3.

19. *Comment:* Is the ''which ever is greater'' provision of SR 3.0.3 meant to apply to cases where a licensee changes modes without performing a surveillance? While the word ''discover'' would appear to argue against such a use, the first sentence of the Bases for SR 3.0.3 make it less clear ''* * * when a surveillance has not been met * * *''?

Staff Response: See the response to Comment 7 above. The applicable portion of SR 3.0.4 will be reworded to say, ''Entry into a MODE or other specified condition in the Applicability of an LCO shall only be made when the LCO's Surveillances have been met within their specified frequency, except as provided by SR 3.0.3.''

20. *Comment:* Section 3.1.3 states ''It should be noted that, the risk assessment, for the purposes of LCO 3.0.4(b) and SR 3.0.4(b), must take into account all inoperable TS equipment regardless of whether the equipment is included in the licensee's normal 10 CFR 50.65(a)(4) risk assessment scope.'' How is the NRC going to require this ''must'' provision if it is not incorporated into the requirements of 10 CFR 50.65(a)(4), the TS themselves, the license or the plant FSAR?

Staff Response: If TS equipment is not covered by the 10 CFR 50.65(a)(4) program, in order to transition up in mode with that TS equipment inoperable, the licensee would have to incorporate it into the program. The following sentence is to be added to the one-sentence fourth paragraph of the LCO 3.0.4 bases insert that begins, ''The risk assessment may use quantitative, qualitative, or blended approaches * * *'':

> The risk assessment, for the purposes of LCO 3.0.4 (b), must take into account all inoperable TS equipment regardless of whether the equipment is included in the licensee's normal 10 CFR 50.65(a)(4)risk assessment scope.''

21. *Comment:* Similarly Section 3.1.3 goes on to state ''The requirements associated with the proposed change are established to ensure that such conditions will not occur.'' What is the legal basis for calling voluntary conformance with the guidelines of RG 1.174, 1.177 and 1.182, a set of requirements? Will findings under the ROP that find deviations from implementation of these standards constitute legal violations?

Staff Response: Paragraph (a)(4) of 10 CFR 50.65, by itself, does not prohibit putting a plant in high-risk configurations due to maintenance activities. It only requires that maintenance-related risk be assessed

and managed. The industry guidance for implementation of (a)(4), the revised Section 11 of NUMARC 93–01, as endorsed by NRC Regulatory Guide 1.182, is more restrictive. Section 11 states that configurations for which the incremental core damage probability (ICDP) is greater than 10EXP–5 should not be entered voluntarily. While the regulatory guidance is not a regulatory requirement with respect to compliance with 10 CFR 50.65(a)(4), the requirements associated with the proposed change to TS 3.0.4 are a different matter.

Unlike (a)(4), the revised TS 3.0.4 is intended to ensure that high-risk configurations are not allowed; although like (a)(4), the TS is also intended to ensure that any risk that is allowed is adequately managed. Therefore, mode changes with a potentially ''higher-risk system'' inoperable (see definition of ''higher risk system'' in the SE) are prohibited by the TS; and in addition to this restriction, the revised TS 3.0.4 will also require licensees to comply in all other respects with their programs established to implement 10 CFR 50.65(a)(4). Note that the Commission has determined that such a program is a satisfactory replacement for a configuration risk management program (CRMP). With regard to the basis for treatment of RG 1.182 provisions, it is noted that: (1) The regulatory guide is one way to meet the TS requirements; (2) the licensee would commit to follow RG 1.182 in the TS Bases (see also the staff's response to Comment No. 12); and, (3) if the licensee did not follow RG 1.182, the ROP would inspect the licensees process for acceptability.

With regard to ROP inspection findings in support of the requirements in the proposed change to TS 3.0.4, the associated TS Bases will reference the provisions of certain regulatory guides and the industry guidance that they endorse. This will, in effect, make a licensee's compliance with the provisions of certain otherwise voluntary industry guidance documents be governed by the TS Bases Control Program. It is envisioned that the significance of this potential TS violation, to the extent that the violation involves inadequate risk assessment and/or inadequate risk management, will be determined in a manner similar to that in which the significance of (a)(4) violations is determined. When issued, the specialized significance determination process (SDP) designed for (a)(4) violations would be used under such circumstances.

Dated at Rockville, Maryland, this 28th day of March 2003.

For the Nuclear Regulatory Commission.

William D. Beckner,

Program Director, Operating Reactor Improvements Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

Model Safety Evaluation

1.0 Introduction

On July 17, 2002, the Nuclear Energy Institute (NEI) Risk Informed Technical Specifications Task Force (RITSTF) submitted proposed change, TSTF–359, Revision 7, to the standard technical specifications (STS) (NUREGs 1430–1434) on behalf of the industry. TSTF–359, Revision 7, is a proposal to change the STS Limiting Condition for Operation (LCO) 3.0.4 and Surveillance Requirement (SR) 3.0.4 requirements regarding mode change limitations. The proposed change would modify LCO 3.0.4 and SR 3.0.4 by risk informing limitations on entering the mode of applicability of a LCO. The first Consolidated Line Item Improvement Process (CLIIP) **Federal Register** Notice with respect to this change was published on August 2, 2002, requesting public comments. In response to the public comments, the NRC staff decided that TSTF–359, Revision 7, be revised. The RITSTF submitted TSTF–359, Revision 8, on December 4, 2002. Two additional changes were deemed necessary. The NRC staff has prepared this revised model safety evaluation incorporating changes resulting from public comments. TSTF–359, Revision 8, as modified, provides the complete approved change. This proposal is one of the industry's initiatives under the risk-informed technical specifications program. These initiatives are intended to maintain or improve safety while reducing unnecessary burden and to make technical specification requirements consistent with the Commission's other risk-informed regulatory requirements, in particular the maintenance rule.

The current technical specifications (TS) specify that a nuclear power plant cannot go to higher modes of operation [2] (*i.e.*, move towards power operation) unless all TS systems, normally required for the higher mode, are operable. This limitation is included (with several exceptions for some plants) in LCO 3.0.4 and SR 3.0.4. LCO 3.0.4 and SR 3.0.4 in the STS currently state in part that when an LCO or SR is not met, ''entry into a MODE or other specified condition in the applicability shall not be made except when the associated actions to be entered permit continued operation in the MODE or other specified condition in the applicability for an unlimited period of time.'' The industry believes that this requirement is unnecessarily restrictive and can unduly delay plant startup while considerable resources are being used to resolve startup issues that are risk insignificant or low risk. A maintenance activity that takes longer than planned can delay a mode change and adversely impact a utility's orderly plant startup and return to power operation. The objective of the proposed change is to provide additional operational flexibility without compromising plant safety.

The proposed changes to LCO 3.0.4 and SR 3.0.4 would allow, for systems and components, mode changes into a TS condition that has a specific required action and completion time. The licensee will utilize the LCO 3.0.4 and SR 3.0.4 allowances only when they determine that there is a high likelihood that the LCO will be satisfied within the LCO completion time (CT), after the mode change. In addition, the LCO 3.0.4 and SR 3.0.4 allowances can be applied to values and parameters in specifications when explicitly stated in the TS (non-system/component TS such as: Reactor Coolant System Specific Activity). These changes are in addition to the current mode change allowance when a required action has an indefinite completion time. The LCO 3.0.4 and SR 3.0.4 mode change allowances are not permitted for the systems and components (termed ''higher risk'') listed in Section 3.1.1, ''Identification of Risk-Important TS Systems and Components,'' for the modes specified. Two examples are: (1) Westinghouse plants cannot transition from Mode 5 to Mode 4 without a High Head Safety Injection System train operable; and, (2) Westinghouse plants cannot transition up into any mode with an inoperable required emergency diesel generator.

2.0 Regulatory Evaluation

In 10 CFR 50.36, the Commission established its regulatory requirements related to the content of TS. Pursuant to 10 CFR 50.36, TS are required to include items in the following five specific categories related to station operation: (1) Safety limits, limiting safety system settings, and limiting control settings; (2) limiting conditions for operation (LCOs); (3) surveillance requirements (SRs); (4) design features; and (5) administrative controls. The rule does not specify the particular requirements to be included in a plant's TS. As stated in 10 CFR 50.36(c)(2)(i), the ''Limiting conditions for operation

[2] MODE numbers decrease in the transition ''up to a higher mode of operation;'' power operation is MODE 1.

are the lowest functional capability or performance levels of equipment required for safe operation of the facility. When a limiting condition for operation of a nuclear reactor is not met, the licensee shall shut down the reactor or follow any remedial action permitted by the technical specification * * *'' By convention, the LCOs are contained in Sections 3.1 through 3.10 of the TS. TS Section 3.0, on ''LCO and SR Applicability,'' provides details or ground rules for complying with the LCOs. LCO 3.0.4 and SR 3.0.4 address requirements for LCO compliance when transitioning between modes of operation.

Technical specifications have taken advantage of risk technology as experience and capability have increased. Since the mid-1980's, the NRC has been reviewing and granting improvements to technical specifications that are based, at least in part, on probabilistic risk assessment (PRA) insights. In its final policy statement on technical specification improvements of July 22, 1993, the Commission stated that it expects that licensees will utilize any plant specific PRA or risk survey in preparing their technical specification-related submittals. In evaluating these submittals, the staff applies the guidance in RG 1.174, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis,'' dated July 1998 and in RG 1.177, ''An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications,'' dated August 1998. The staff has appropriately adapted this guidance to assess the acceptability of upward mode changes with equipment inoperable. This review had the following objectives:

- To ensure that the plant risk does not increase unacceptably during the actual implementation of the proposed change (*e.g.*, when the plant enters a higher mode while an LCO is not met). This risk increase is referred to as ''temporary.''
- To compare and assess the risk impact of the proposed change to the acceptance guidelines of the Commission's Safety Goal Policy Statement, as documented in RG 1.174. The risk impact, which is measured by the average yearly risk increase associated with the change, aims at minimizing the ''cumulative'' risk associated with the proposed change so that the plant's average baseline risk is maintained within a minimal range.
- To assess the licensee's ability to identify risk-significant configurations resulting from maintenance or other operational activities and take appropriate compensatory measures to avoid such configurations.

The staff reviewed the reliance on 10 CFR 50.65(a)(4) for the non-higher-risk systems and components, and related guidance to assess and manage the risk of upward mode changes. The Commission has found that compliance with the industry guidance for implementation of 10 CFR 50.65(a)(4), as endorsed by RG 1.182 and mandated by LCO 3.0.4, SR 3.0.4 and SR 3.0.3, satisfies the configuration risk management objectives of RG 1.177 for technical specification surveillance interval and completion time extensions. Reliance on 10 CFR 50.65(a)(4) processes that are consistent with the provisions of the NRC-endorsed industry guidance was also found adequate for managing risk of missed surveillances as described in the **Federal Register** on September 28, 2001 (66 FR 49714).

The staff review also had the objective of ensuring that existing inspection programs have the necessary controls in place to allow NRC staff to oversee the implementation of the proposed change, reliance on 10 CFR 50.65(a)(4) processes or programs, and the ability to adequately assess the licensee's performance associated with risk assessments. The review encompassed inspection procedures (*i.e.*, NRC Inspection Procedure 62709 (12/28/00), ''Configuration Risk Assessment and Risk Management Process,'' and NRC Inspection Procedure 71111.13 (1/17/02), ''Maintenance Risk Assessments and Emergent Work Control''), the significance determination process (SDP) (*i.e.*, draft ''Maintenance Risk Assessment and Risk Management Significance Determination Process''), enforcement guidance (*i.e.*, draft Enforcement Manual Section 8.1.11, ''Actions Involving the Maintenance Rule''), and the associated reactor oversight process.

2.1 Proposed Change to LCO 3.0.4 and SR 3.0.4

Currently LCO 3.0.4 does not allow entrance into a higher mode (or other specified condition) in the applicability when an LCO is not met, except when the associated actions to be entered permit continued operation in that mode or condition indefinitely or a specific exception is granted. Similarly, when an LCO's surveillances have not been met within their specified frequency, entry into a higher mode (or other specified condition) is not allowed by SR 3.0.4. The current STS [3] LCO 3.0.4 reads:

''When an LCO is not met, entry into a MODE or other specified condition in the Applicability shall not be made except when the associated ACTIONS to be entered permit continued operation in the MODE or other specified condition in the Applicability for an unlimited period of time. This Specification shall not prevent changes in MODES or other specified conditions in the Applicability that are required to comply with ACTIONS or that are part of a shutdown of the unit.

Exceptions to this Specification are stated in the individual Specifications. These exceptions allow entry into MODES or other specified conditions in the Applicability when the associated ACTIONS to be entered allow unit operation in the MODE or other specified condition in the Applicability only for a limited period of time.

LCO 3.0.4 is only applicable for entry into a MODE or other specified conditions in the Applicability in [MODES 1, 2, 3, and 4 {for PWRs}][MODES 1, 2, and 3 {for BWRs}].''

The revised LCO 3.0.4 will read:

''When an LCO is not met, entry into a MODE or other specified condition in the Applicability shall only be made

(a) When the associated Actions to be entered permit continued operation in that MODE or other specified condition in the Applicability for an unlimited period of time, or

(b) After performance of a risk assessment addressing inoperable systems and components, consideration of the results, determination of the acceptability of entering the MODE or other specified condition in the Applicability, and establishment of risk management actions, if appropriate; exceptions to this Specification are stated in the individual Specifications, or

(c) When an allowance is stated in the individual value or parameter Specification.

This Specification shall not prevent changes in MODES or other specified conditions in the Applicability that are required to comply with ACTIONS or that are part of a shutdown of the unit.''

The current STS [4] SR 3.0.4 reads:

''Entry into a MODE or other specified condition in the Applicability of an LCO shall not be made unless the LCO's Surveillances have been met within their specified frequency. This provision shall not prevent entry into MODES or other specified conditions in the Applicability that are required to comply with ACTIONS or that are part of a shutdown of the unit.

SR 3.0.4 is only applicable for entry into a MODE or other specified conditions in the Applicability in [MODES 1, 2, 3, and 4 {for PWRs}][MODES 1, 2, and 3 {for BWRs}].''

The revised SR 3.0.4 will conform to the changes to LCO 3.0.4 and read:

[3] Plant specific wording for current equivalent LCO 3.0.4 is similar to current STS LCO 3.0.4 wording.

[4] Plant specific wording for current equivalent SR 3.0.4 is similar to current STS SR 3.0.4 wording.

''Entry into a MODE or other specified condition in the Applicability of an LCO shall only be made when the LCO's Surveillances have been met within their specified frequency, except as provided by SR 3.0.3. When an LCO is not met due to Surveillances not having been met, entry into a MODE or other specified condition in the Applicability shall only be made in accordance with LCO 3.0.4.

This provision shall not prevent entry into MODES or other specified conditions in the Applicability that are required to comply with ACTIONS or that are part of a shutdown of the unit.''

The proposed LCO 3.0.4(a) retains the current allowance for when the required actions allow indefinite operation. The proposed LCO 3.0.4(b) allows entering modes or other specified conditions in the applicability except when higher-risk systems and components (listed in Section 3.1.1), for the mode being entered, are inoperable. The decision for entering a higher mode or condition in the applicability of the LCO will be made by plant management after the required risk assessment has been performed and requisite risk management actions established, through the program established to implement 10 CFR 50.65(a)(4). Entry into the modes or other specified conditions in the applicability of the TS shall be for no more than the duration of the applicable required actions completion time, or until the LCO is met. Current notes in individual specifications that permitted mode changes are now encompassed by LCO 3.0.4(b) and can be removed. Notes that prohibit mode changes under LCO 3.0.4(b) must be added (*i.e.*, for higher-risk systems and components). The proposed LCO 3.0.4(b) allowance can involve multiple components in a single LCO or in multiple LCOs; however, use of the LCO 3.0.4(b) provisions are always contingent upon completion of a 10 CFR 50.65(a)(4) based risk assessment.

The notes limiting the applicability (to Modes 1, 2, 3, and 4 for PWRS, and to Modes 1, 2, and 3 for BWRs) of the current STS LCO 3.0.4 and STS SR 3.0.4 are holdovers from the existing Standard Technical Specifications (STS). The notes limiting the applicability of LCO 3.0.4 and SR 3.0.4 are no longer needed and are removed by TSTF–359, Revision 8. The industry owners groups analyses would subsequently support adding notes to various TS, as defined by the tables of higher-risk systems, precluding entry into Modes 5 and 6 for PWRs, and Modes 4 and 5 for BWRs. However, the addition of notes in these cases is made unnecessary by action statements that require immediate completion times, which means that entry into the Mode or other specified condition in the Applicability is not allowed and the notes would be superfluous.

LCO 3.0.4 allowances related to values and parameters of TS are not typically addressed by LCO 3.0.4(b) risk assessments, and are therefore addressed by a new LCO 3.0.4 (c). LCO 3.0.4 (c) refers to allowances already in the TS and annotated in the individual TS. LCO 3.0.4 (c) also allows for entry into the modes or other specified conditions in the applicability of a TS for no more than the duration of the applicable required actions completion time or until the LCO is met or the unit is not within the Applicability of the TS.

3.0 Technical Evaluation

During the development of the current STS, improvements were made to LCO 3.0.4, such as clarifying its applicability with respect to plant shutdowns, cold shutdown mode and refueling mode. In addition, during the STS development, almost all the LCOs with completion times greater than or equal to 30 days, and many LCOs with completion times greater than or equal to 7 days, were given individual LCO 3.0.4 exceptions. During some conversions to the STS, individual plants provided acceptable justifications for other LCO 3.0.4 exceptions. All of these specific LCO 3.0.4 exceptions allow entry into a mode or other specified condition in the TS applicability while relying on the TS required actions and associated completion times. The proposed change under evaluation would provide standardization and consistency to the use and application of LCO 3.0.4, both internal to and between each of the specifications and STS NUREGs. This proposed change will also ensure consistency through the utilization of appropriate levels of risk assessment of plant configurations for application of LCO 3.0.4. However, nothing in this safety evaluation should be interpreted as encouraging upward mode transition with inoperable equipment. Good practice should dictate that such transitions should normally be initiated only when all required equipment is operable and that mode transition with inoperable equipment should be the exception rather than the rule.

The current LCO 3.0.4(a) allowances are retained in the proposal and do not represent a change in risk from the current situation. The LCO 3.0.4(b) allowances apply to systems and components, and require a risk assessment prior to utilization to ensure an acceptable level of safety is maintained. The LCO 3.0.4(c) allowances apply to parameters and values which have been previously approved by the NRC in a plant's specific TS. The licensee will provide in their TS Bases a discussion and list of each NRC-approved, LCO 3.0.4(c)-specific value and parameter allowance. The bases of LCO 3.0.4 will be revised to explain the new allowances and their utilization.

The staff did a qualitative assessment of the risk impact of the proposed change in LCO 3.0.4(b) allowances by evaluating how the licensee's implementation of the proposed risk-informed approach is expected to meet the requirements of the applicable RGs. The staff referred to the guidance provided in RG 1.174, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis,'' and in RG 1.177, ''An approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications.'' RG 1.177 provides the staff's recommendations on utilizing risk information to assess the impact of proposed changes to nuclear power plant technical specifications on the risk associated with plant operation. Although RG 1.177 does not specifically address the type of generic change in this proposal, the staff considered the approach documented in RG 1.177 in evaluating the risk information provided in support of the proposed changes in LCO 3.0.4.

The staff's evaluation of how the implementation of the proposed risk-informed approach, used to justify LCO 3.0.4(b) allowances, agrees with theobjectives of the guidance outlined in RG 1.177 is discussed in Section 3.1. Oversight of the risk-informed approach associated with the LCO 3.0.4(b) allowances is discussed in Sections 3.2.

3.1 Evaluation of Risk Management

Both the temporary and cumulative risk of the proposed change are adequately limited. The temporary risk is limited by the exclusion of higher-risk systems and components, and completion time limits contained in technical specifications (Section 3.1.1). The cumulative risk is limited by the temporary risk limitations and by the expected low frequency of the proposed mode changes with inoperable equipment (Section 3.1.2). Adequate NRC oversight of the licensee's ability to use the LCO 3.0.4(b) provisions under appropriate circumstances, *i.e.*, to identify risk-significant configurations when entering a higher mode or condition in the applicability of an LCO (Section 3.1.3) is provided by NRC inspection of the licensee's

implementation of 10 CFR 50.65(a)(4) as applied to the proposed change.

3.1.1 Temporary Risk Increases

RG 1.177 proposes the incremental conditional core damage probability (ICCDP) and the incremental conditional large early release probability (ICLERP) as appropriate measures of the increase in probability of core damage and large early release, respectively, during the period of implementation of a proposed TS change. In addition, RG 1.177 stresses the need to preclude potentially high risk configurations introduced by the proposed change. The ICCDP associated with any specified plant condition, such as the condition introduced by entering a higher mode with plant equipment inoperable, is expressed by the following equation:

$$\text{ICCDP} = \Delta R\ d = \left(R_1 - R_0\right) d \qquad (1)$$

Where:

ΔR = the conditional risk increase, in terms of core damage frequency (CDF), caused by the specified condition

d = the duration of the specified plant condition

R_1 = the plant CDF with the specified condition permanently present

R_0 = the plant CDF without the specified condition

The same expression can be used for ICLERP by substituting the measure of risk, *i.e.*, large early release frequency (LERF) for CDF. The magnitude of the ICCDP and ICLERP values associated with plant conditions applicable to LCO 3.0.4(b) allowances can be managed by controlling the conditional risk increase, Δ R (in terms of both CDF and LERF) and the duration, d, of such conditions. The following sections discuss how the key elements of the proposed risk-informed approach, used to justify LCO 3.0.4(b) allowances, are expected to limit Δ R and d and, thus, prevent any significant temporary risk increases.

Identification of Risk-Important TS Systems and Components

A major element that limits the risk of the proposed mode change flexibility is the exclusion of certain systems and associated LCOs for the mode change allowance. Technical specifications allow operation in Mode 1 (power operation) with specified levels of inoperability for specified times. This provides a benchmark of currently acceptable risk against which to measure any incremental risk inherent in the proposed LCO 3.0.4(b). If a system inoperability accrues risk at a higher rate in one or more of the transition modes than it would in Mode 1, then an upward transition into that mode should not be allowed without demonstration of a high degree of experience and sophistication in risk management. However, the risk management process evaluated in Section 3.1.3 is adequate if higher-risk systems/components are excluded from the scope of LCO 3.0.4(b).

The importance of most TS systems in mitigating accidents increases as power increases. However, some TS systems are relatively more important during lower power and shutdown operations, because:

- Certain events are peculiar to modes of plant operation other than power operation,
- Certain events are more probable at modes of plant operation other than power operation,
- Some modes of plant operation have less mitigation system capability than power operation.

The risk information submitted in support of the proposed changes to LCO 3.0.4 and SR 3.0.4 includes qualitative risk assessments performed by each owners group to identify higher risk systems and components at the various modes of operation, including transitions between modes, as the plant moves upward from the refueling mode of operation toward power operation. The owners groups' generic qualitative risk assessments are included as attachments to TSTF–359, Revision 8. Each of the owners groups' generic qualitative risk assessments discuss the technical approach used and the systems/components subsequently determined to be of higher risk significance; the systems/components not to be granted the LCO 3.0.4 allowances for the various modes are listed. The owners groups generic qualitative risk assessments are:

- BWR owners' group Risk-Informed Technical Specification Committee, ''Technical Justification to Support Risk-Informed Improvements to Technical Specification Mode Restraints for BWR Plants,'' General Electric Company GE–NE A13–00464 (Rev[2])
- ''B&W owners group Qualitative Risk Assessment for Increased Flexibility in MODE Restraints,'' Framatome Technologies BAW–2383
- Combustion Engineering owners group (CEOG) Task 1181, ''Qualitative Risk Assessment for Relaxation of Mode Entry Restraints,'' CE Nuclear Power LLC, CE NPSD–1207 (Rev[0])
- ''WOG Qualitative Risk Assessment Supporting Increased Flexibility in MODE Restraints.''

Following interactions with the staff, all owners groups used the same systematic approach in their qualitative risk assessments to identify the higher-risk systems in the STS, consisting of the following steps:

- Identification of plant conditions (*i.e.*, plant parameters and availability of key mitigation systems) associated with changes in plant operating modes while returning to power
- Identification of key activities that have the potential to impact risk and which are in progress during transitions between modes while the plant is returning to power
- Identification of applicable accident initiating events for each mode or other specified condition in the applicability
- Identification of the higher-risk systems and components by combining the information in the first three steps (qualitative risk assessment)

The risk assessments properly used the results and insights from previous deterministic and probabilistic studies to systematically search for plant conditions in which certain key plant components are more important in mitigating accidents than during operation at power (Mode 1). This search was systematic, taking the following factors into account for the various stages of returning the plant to power:

- The status of accident mitigation and normally operating systems
- The status of key plant parameters such as reactor coolant system pressure
- The key activities that are in progress during transitions between modes which have the potential to impact risk (*e.g.*, the transfer from auxiliary to main feedwater at some PWR plants when Mode 1 is entered)
- The applicable accident initiating events for each mode of plant operation
- Design and operational differences among plants or groups of plants

The following systems and components were identified by each of the four owners groups as higher-risk systems and components, when the plant is entering a new mode.

System	BWR type	Entering mode
Boiling Water Reactor Owners Group (BWROG) Plants		
High Pressure Coolant Injection (HPCI) System	BWR 3 & 4	2, 1.
High Pressure Core Spray (HPCS)	BWR 5 & 6	2, 1.
Reactor Core Isolation Cooling (RCIC) System	BWR 3, 4, 5 & 6	2, 1.
Isolation Condenser	BWR 2	2, 1.
Diesel Generators (including other Emergency/Shutdown AC Power Supplies).	All	All.
Hardened Wetwell Vent System	BWR 2, 3 & 4 with Mark I Containment	3, 2, 1.
Residual Heat Removal System	All	4.

System	Entering mode
Babcock & Wilcox Owners Group (B&WOG) Plants	
Emergency Diesel Generators (EDG) & Hydro-Electric Units for Oconee	5, 4, 3, 2, 1.
Emergency Feedwater (EFW) System	1.
Decay Heat Removal (DHR) System	5, 4.
Combustion Engineering Owners Group (CEOG) Plants	
Emergency Diesel Generators (EDGs)	5, 4, 3, 2, 1.
Auxiliary Feedwater/Emergency Feedwater (AFW/EFW) System	4, 3, 2, 1.
High Pressure Safety Injection (HPSI) System	4, 3 (below 1700 psia).
LTOP/PORVs (when used for Low Temperature Overpressure Protection (LTOP))	5, 4 (below set temperature)
Shutdown Cooling System (Low Pressure Safety Injection (LPSI) pumps)	5.
Westinghouse Owners Group (WOG) Plants	
Emergency Diesel Generators (EDGs)	5, 4, 3, 2, 1.
Auxiliary Feedwater (AFW) System (for plants depending on AFW for startup)	4, 3, 2, 1.
High Head Safety Injection System	4.
Cold Overpressure Protection System	5, 4.
Residual Heat Removal (RHR) System	5.

If a licensee identifies a higher-risk system for only some of the modes of applicability, the TS for that system would be modified by a note that reads, for example, ''LCO 3.0.4(b) is not applicable when entering MODE 1 from MODE 2.'' Systems identified as higher risk for Modes 5 and 6 for PWRs, and Modes 4 and 5 for BWRs, are also excluded from transitioning up to the mode of higher risk, and as previously discussed, notes for those transitions are superfluous. In addition, mode transitions for Modes 5 and 6 for PWRs, and Modes 4 and 5 for BWRs, will be addressed by administrative controls.

In summary, the staff's review of the owners groups qualitative risk assessments finds that they are of adequate quality to support the application (*i.e.*, they identify the higher-risk systems and components) associated with entering higher modes of plant operation with equipment inoperable while returning to power. [Plant Specific changes will be described here.]

Limited Time in TS Required Actions

Any temporary risk increase will be limited by, among other factors, duration constraints imposed by the TS CTs of the inoperable systems. For the systems and components which are not higher risk, any temporary risk increase associated with the proposed allowance will be smaller than what is considered acceptable when the same systems and components are inoperable at power. This is due to the fact that CTs associated with the majority of TS systems and components were developed for power operation and pose a smaller plant risk for action statement entries initiated or occurring at lower modes of operation as compared to power operation.

The LCO 3.0.4(b) allowance will be used only when the licensee determines that there is a high likelihood that the LCO will be satisfied following the mode change. This will minimize the likelihood of additional temporary risk increases associated with the need to exit a mode due to failure to restore the unavailable equipment within the CT. In most cases, licensees will enter into a higher mode with the intent to move up to Mode 1 (power operation). As discussed in Section 3.2, the revised reactor oversight process monitors unplanned power changes as a performance indicator. The reactor oversight process thus discourages licensees from entering a mode or other specified condition in the applicability of an LCO, and moving up in power, when there is a likelihood that the mode would have to be subsequently exited due to failure to restore the unavailable equipment within the CT. Another disincentive for licensees to enter a higher mode when an LCO is not met is related to reporting requirements. 10 CFR 50.72 and 50.73 make it clear that a report is required when a nuclear plant shutdown or mode change is required by TS. The NRC's oversight program will provide the framework for inspectors and other staff to follow the history at a specific plant of entering higher modes while an LCO is not met, and use such information in assessing the licensee's actions and performance.

3.1.2 Cumulative Risk Increases

The cumulative risk impact of the change to allow the plant to enter a higher mode of operation with one or more safety-related components unavailable (as proposed here), is measured by the average yearly risk increase associated with the change. In general, this cumulative risk increase is assessed in terms of both CDF and LERF (*i.e.,* ΔCDF and ΔLERF, respectively). The increase in CDF due to the proposed change is expressed by the following equation, which integrates the

risk impact from all expected specified conditions (*i.e.,* all expected plant conditions caused by mode changes with various TS systems and components unavailable).

$$\Delta CDF = \sum (\Delta CDF_i) = \sum ICCDP_i \ f_i \qquad (2)$$

Where:

ΔCDF_i = the CDF increase due to specified condition i

$ICCDP_i$ = the ICCDP associated with specified condition i

f_i = the average yearly frequency of occurrence of specified condition i

A similar expression can be used for ΔLERF by substituting the measure of risk, *i.e.,* LERF for CDF. The magnitude of the ΔCDF and ΔLERF values associated with plant conditions applicable to LCO 3.0.4(b) allowances can be managed by controlling the temporary risk increases, in terms of both CDF and LERF (*i.e.,* ICCDP and ICLERP), and the frequency (f), of each of such conditions. In addition to the points made in the previous section regarding temporary risk increases, the following points put into perspective how the key elements of the proposed risk-informed approach, used to justify an LCO 3.0.4(b) allowance, are expected to prevent significant cumulative risk increases by limiting the frequency of its use:

- The frequency of risk significant conditions will be limited by not providing the LCO 3.0.4(b) allowances to the higher risk systems and components.
- The frequency of risk significant conditions will be limited by the requirement to assess the likelihood that the LCO will be satisfied following the mode change.
- The frequency of risk significant conditions is limited by the fact that such conditions can occur only when the plant is returning to power following shutdown, *i.e.,* during a small fraction of time per year (data over the past five years indicate that the plants are averaging 2.1 startups per year).

The addition of the proposed LCO 3.0.4(b) allowances to the plant maintenance activities is not expected to change the plant's average (cumulative) risk significantly.

3.1.3 Risk Assessment and Risk Management of Mode Changes

With all safety systems and components operable, a plant can transition up in mode to power operation. With one or more system(s) or component(s) inoperable, this change permits a plant to transition up in mode to power operation if the inoperable system(s) or component(s) are not in the pre-analyzed higher risk category, a 10 CFR 50.65(a)(4) based risk assessment is performed prior to the mode transition, and the requisite risk management actions are taken. The proposed TS Bases state, ''When an LCO is not met, LCO 3.0.4 also allows entering MODES or other specified conditions in the Applicability following assessment of the risk impact and determination that the impact can be managed. The risk assessment may use quantitative, qualitative, or blended approaches, and the risk assessment will be conducted using the plant program, procedures, and criteria in place to implement 10 CFR 50.65(a)(4), which requires that risk impacts of maintenance activities to be assessed and managed.'' It should be noted that, the risk assessment, for the purposes of LCO 3.0.4(b), must take into account all inoperable TS equipment regardless whether the equipment is included in the licensee's normal 10 CFR 50.65(a)(4) risk assessment scope. The risk assessments will be conducted using the procedures and guidance endorsed by Regulatory Guide 1.182, ''Assessing and Managing Risk Before Maintenance Activities at Nuclear Power Plants.'' The results of the risk assessment shall be considered in determining the acceptability of entering the MODE or other specified condition in the Applicability, and any corresponding risk management actions. * * * A risk assessment and establishment of risk management actions, as appropriate, are required for determination of acceptable risk for entering MODES or other specified conditions in the Applicability when an LCO is not met. Elements of acceptable risk assessment and risk management actions are included in Section 11 of NUMARC 93–01 ''Assessment of Risk Resulting from Performance of Maintenance Activities,'' as endorsed by RG 1.182, which addresses general guidance for conduct of the risk assessment, gives quantitative and qualitative guidelines for establishing risk management actions, and provides example risk management actions. These risk management actions include actions to plan and conduct other activities in a manner that controls overall risk, actions to increase risk awareness by shift and management personnel, actions to reduce the duration of the conditions, actions to minimize the magnitude of risk increases (establishment of backup success paths or compensatory measures), and determination that the proposed MODE change is acceptable.

The guidance references state that a licensee's risk assessment process should be sufficiently robust and comprehensive to assess risk associated with maintenance activities during power operation, low power and shutdown conditions (all modes of operation), including changes in plant conditions. NUMARC 93–01 states that the risk assessment should include consideration of: the degree of redundancy available for performance of the safety function(s) served by the out-of-service equipment; the duration of the out-of-service condition; component and system dependencies that are affected; the risk impact of performing the maintenance during shutdown versus at power; and, the impact of mode transition risk. For power operation, key plant safety functions are those that ensure the integrity of the reactor coolant pressure boundary, ensure the capability to shut down and maintain the reactor in safe shutdown condition, and ensure the capability to prevent or mitigate the consequences of accidents that could result in potentially significant offsite exposures.

While the inoperabilities permitted by the completion times of technical specification required actions take into consideration the safety significance and redundancy of the system or components within the scope of an LCO, the completion times generally do not address or consider concurrent system or component inoperabilities in multiple LCOs. Therefore, the performance of the 10 CFR 50.65(a)(4) risk assessment which looks at the entire plant configuration is essential (and required) prior to changing operational mode. The 10 CFR 50.65(a)(4) based risk assessment will be used to confirm (or reject) the appropriateness of transitioning up in mode given the actual status of plant safety equipment.

The risk impact on the plant condition of invoking an LCO 3.0.4(b) allowance will be assessed and managed through the program established to

implement 10 CFR 50.65(a)(4). This program is consistent with RG 1.177 and RG 1.174 in its approach. The implementation guidance for paragraph (a)(4) of the Maintenance Rule addresses controlling temporary risk increases resulting from maintenance activities. This guidance, consistent with guidance in RG 1.177, establishes action thresholds based on qualitative and quantitative considerations and risk management actions. Significant temporary risk increases following an LCO 3.0.4(b) allowance are unlikely to occur unless:

- High-risk configurations are allowed (*e.g.,* certain combinations of multiple component outages), or
- Risk management of plant operation activities is inadequate.

The requirements associated with the proposed change are established to ensure that such conditions will not occur.

The thresholds of the cumulative (aggregate) risk impacts, assessed pursuant to 10 CFR 50.65(a)(4) and the associated implementation guidance, are based on the permanent change guidelines in NRC RG 1.174. Therefore, licensees will manage the risk exercising LCO 3.0.4 in conjunction with the risk from other concurrent plant activities to ensure that any increase, in terms of core damage frequency (CDF) and large early release frequency (LERF) will be small and consistent with the Commission's Safety Goal Policy Statement.

3.2 Oversight

The reactor oversight process (ROP) provides a means for assessing the licensee's performance in the application of the proposed mode change flexibility. The adequacy of the licensee's assessment and management of maintenance-related risk is addressed by existing inspection programs and guidance for 50.65(a)(4). Although the current versions of that guidance do not specifically address application of the licensee's (a)(4) program to support risk-informed technical specifications, it is expected that in most cases, risk assessment and management associated with risk-informed technical specifications would be required by (a)(4) anyway because maintenance activities will be involved.

Adoption of the proposed change will make failure to assess and manage the risk of an upward mode change with inoperable equipment covered by technical specifications, prior to commencing such a mode change, a violation of technical specifications. Further, as explained above in general, under most foreseeable circumstances, such a change in configuration would also require a risk assessment under 10 CFR 50.65(a)(4). Inoperable systems or components will necessitate maintenance to restore them to operability, and hence a 10 CFR 50.65(a)(4) risk assessment would be performed prior to the performance of those maintenance actions (except for immediate plant stabilization and restoration actions if necessary). Further, before altering the plant's configuration, including plant configuration changes associated with mode changes, the licensee must update the existing (a)(4) risk assessment to reflect those changes.

The Federal Register Notice issuing a revision to the maintenance rule, 10 CFR 50.65, (**Federal Register**, Vol 64 No 137, Monday, July 19, 1999, pg 38553), along with NRC Inspection Procedure 71111.13, and Section 11, dated February 22, 2000, ''Assessment of Risk Resulting from Performance of Maintenance Activities,'' of NUMARC 93–01, all indicate that to determine the safety impact of a change in plant conditions during maintenance, a risk assessment must be performed before changing plant conditions. The bases for the proposed TS change mandate that the risk assessment and management of upward mode changes will be conducted under the licensee's program and process for meeting 10 CFR 50.65(a)(4). Oversight of licensee performance in assessing and managing the risk of plant maintenance activities is conducted principally by inspection in accordance with Reactor Oversight Program Baseline Inspection Procedure (IP) 71111.13, ''Maintenance Risk Assessment and Emergent Work Control.'' Supplemental IP 62709, ''Configuration Risk Assessment and Risk Management Process,'' is utilized to evaluate the licensee's process, when necessary.

The ROP is described in overview in NUREG–1649, Rev 3, ''Reactor Oversight Process,'' and in detail in the NRC Inspection Manual. Inspection Procedure 71111.13 requires verification of performance of risk assessments when they are required by 10 CFR 50.65(a)(4) and in accordance with licensee procedures. The procedure also requires verification of the adequacy of those risk assessments and verification of effective implementation of licensee-prescribed risk management actions. The rule itself requires such assessment and management of risk prior to maintenance activities, including preventive maintenance, surveillance and testing, (and promptly for emergent work) during all modes of plant operation. The guidance documents for both industry implementation of (a)(4) and NRC oversight of that implementation indicate that changes in plant configuration (which would include mode changes) in support of maintenance activities must be taken into account in the risk assessment and management process. Revisions to NRC inspection guidance and licensee implementation procedures will be needed to address oversight of risk assessment and management required by TS in support of mode changes that are not already required under the circumstances by (a)(4). This consideration provides performance-based regulatory oversight of the use of the proposed flexibility, and a disincentive to use the flexibility without the requisite care in planning.

In addition, the staff is in the process of developing detailed significance determination process (SDP) guidance for use in assessing inspection findings related to 10 CFR 50.65(a)(4). This guidance was issued in draft for comment and is anticipated to become final during 2003. The ROP considers inspection findings and performance indicators in evaluating licensee ability to operate safely. The SDP is used to determine the significance of inspection findings related to licensee assessment and management of the risk associated with performing maintenance activities under all plant operating or shutdown conditions. Unplanned reactor scrams and unplanned power changes are two of the Reactor Safety Performance Indicators that the ROP utilizes to assess licensee performance and inform the public. The ROP will provide a disincentive to entering into power operation (Mode 1), when there is a significant likelihood that the mode would have to be subsequently exited due to failure to restore the unavailable equipment within the completion time.

3.3 Summary

The industry, through the Nuclear Energy Institute (NEI) Risk Informed Technical Specifications Task Force (RITSTF), has submitted a proposed technical specification (TS) change to allow entry into a higher mode of operation, or other specified condition in the TS applicability, while relying on the TS conditions, and associated required actions and completion times, provided a risk assessment is performed to confirm the acceptability of that action. The proposal revises standard technical specification (STS) LCO 3.0.4 and SR 3.0.4, and their application to the TS. New paragraphs (a), (b), and (c) are proposed for LCO 3.0.4.

The proposed LCO 3.0.4(a) retains the current allowance, permitting the mode

change when the TS required actions allow indefinite operation.

Proposed LCO 3.0.4(b) is the change to allow entry into a higher mode of operation, or other specified condition in the TS applicability, while relying on the TS conditions and associated required actions and completion times, provided a risk assessment is performed to confirm the acceptability of that action for the existing plant configuration. The staff review finds that the process proposed by industry for assessing and managing risk during the implementation of the proposed LCO 3.0.4(b) allowances, meets Commission guidance for technical specification changes. Key elements of this process are listed below.

- A risk assessment shall be performed before any LCO 3.0.4(b) allowance is invoked.
- The risk impact on the plant condition of invoking an LCO 3.0.4(b) allowance will be assessed and managed through the program established to implement 10 CFR 50.65(a)(4) and the associated guidance in RG 1.182. Allowing entry into a higher mode or condition in the applicability of an LCO after an 10 CFR 50.65(a)(4) based risk assessment and appropriate risk management actions are taken for the existing plant configuration will ensure that plant safety is maintained.
- The LCO 3.0.4(b) allowance will be used only when the licensee determines that there is a high likelihood that the LCO will be satisfied within the required action's completion time.
- TS systems and components which may be of higher risk during mode changes have been identified generically by each owner's group for each plant operational mode or condition. Licensees will identify such plant-specific systems and components in the individual plant TS. The proposed LCO 3.0.4(b) allowance does not apply to these systems and components for the mode or condition in the applicability of an LCO at which they are of higher risk.
- Plants adopting LCO 3.0.4(b) will ensure that plant procedures in place to implement 10 CFR 50.65(a)(4) address the situation where entering a mode or other specified condition in the applicability is contemplated with plant equipment inoperable. Such plant procedures typically follow the guidance in NUMARC 93–01, Section 11, as revised in February 2000 and endorsed by NRC RG 1.182.

The NRC's reactor oversight process provides the framework for inspectors and other staff to oversee the implementation of 10 CFR 50.65(a)(4) requirements at a specific plant and assess the licensee's actions and performance.

The LCO 3.0.4(b) allowance does not apply to values and parameters of the technical specifications that have their own respective LCOs (*e.g.*, Reactor Coolant System Specific Activity), but instead those values and parameters are addressed by LCO 3.0.4(c). The TS values and parameters for which mode transition allowances apply, will have a note that states LCO 3.0.4(c) is applicable.

The objective of the proposed change is to provide additional operational flexibility without compromising plant safety.

4.0 State Consultation

In accordance with the Commission's regulations, the [ ] State official was notified of the proposed issuance of the amendment. The State official had [(1) no comments or (2) the following comments—with subsequent disposition by the staff].

5.0 Environmental Consideration

The amendments change a requirement with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR Part 20 and change surveillance requirements. [For licensees adding a bases control program: The amendment also changes record keeping, reporting, or administrative procedures or requirements.] The NRC staff has determined that the amendments involve no significant increase in the amounts and no significant change in the types of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that the amendments involve no significant hazards considerations, and there has been no public comment on the finding [insert FR number]. Accordingly, the amendments meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9) [and (c)(10)]. Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendments.

6.0 Conclusion

The Commission has concluded, on the basis of the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

Proposed No Significant Hazards Consideration Determination

Description of Amendment Request: A change is proposed to the standard technical specifications (STS)(NUREGs 1430 through 1434) and plant specific technical specifications (TS), to allow entry into a mode or other specified condition in the applicability of a TS, while in a condition statement and the associated required actions of the TS, provided the licensee performs a risk assessment and manages risk consistent with the program in place for complying with the requirements of 10 CFR 50.65(a)(4). LCO 3.0.4 exceptions in individual TS would be eliminated, and SR 3.0.4 revised to reflect the LCO 3.0.4 allowance.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. Being in a TS condition and the associated required actions is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on required actions as allowed by proposed LCO 3.0.4, are no different than the consequences of an accident while entering and relying on the required actions while starting in a condition of applicability of the TS. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Entering into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. The TS allow operation of the plant without the full complement of equipment through the conditions for not meeting the TS Limiting Conditions for Operation (LCO). The risk associated with this allowance is managed by the imposition of required actions that must be performed within the prescribed completion times. The net effect of being in a TS condition on the margin of safety is not considered significant. The proposed change does not alter the required actions or completion times of the TS. The proposed change allows TS conditions to be entered, and the associated required actions and completion times to be used in new circumstances. This use is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The change also eliminates current allowances for utilizing required actions and completion times in similar circumstances, without assessing and managing risk. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The following example of an application was prepared by the NRC staff to facilitate use of the consolidated line item improvement process (CLIIP). The model provides the expected level of detail and content for an application to revise technical specifications regarding mode change limitations (and adoption of a technical specification bases control program)* using CLIIP. Licensees remain responsible for ensuring that their actual application fulfills their administrative requirements as well as Nuclear Regulatory Commission Regulations.

U.S. Nuclear Regulatory Commission,
Document Control Desk, Washington, D.C. 20555.
Subject: Plant Name
Docket No. 50–
Application for technical specification change regarding mode change limitations (and adoption of a technical specifications bases control program, and STS SR 3.0.1 and associated bases)* using the consolidated line item improvement process

Gentleman: In accordance with the provisions of 10 CFR 50.90 [LICENSEE] is submitting a request for an amendment to the technical specifications (TS) for [PLANT NAME, UNIT NOS.].

The proposed amendment would modify TS requirements for mode change limitations in LCO 3.0.4 and SR 3.0.4, (and, in conjunction with the proposed change, TS requirements for a bases control program consistent with TS Bases Control Program described in Section 5.5 of the applicable vendor's Standard Technical Specifications, and STS SR 3.0.1 and associated bases.)

Attachment 1 provides a description of the proposed change (including a table of affected TS with a brief descriptor of the change), the requested confirmation of applicability, and plant-specific verifications. Attachment 2 provides the existing TS pages marked up to show the proposed change. Attachment 3 provides revised (clean) TS pages. Attachment 4 provides a summary of the regulatory commitments made in this submittal. Attachment 5 provides the existing TS Bases pages marked up to show the proposed change.

[LICENSEE] requests approval of the proposed License Amendment by [DATE], with the amendment being implemented [BY DATE OR WITHIN X DAYS].

In accordance with 10 CFR 50.91, a copy of this application, with attachments, is being provided to the designated [STATE] Official.

* If not already in the facility Technical Specifications

I declare under penalty of perjury under the laws of the United Stats of America that I am authorized by [LICENSEE] to make this request and that the foregoing s true and correct. (Note that request may be notarized in lieu of using this oath or affirmation statement).

If you should have any questions regarding this submittal, please contact [NAME, TELEPHONE NUMBER]

Sincerely,

[Name, Title]

Attachments:
1. Description and Assessment
2. Proposed Technical Specification Changes
3. Revised Technical Specification Pages
4. If applicable: Regulatory Commitments
5. Proposed Technical Specification Bases Changes

cc:
NRC Project Manager
NRC Regional Office
NRC resident Inspector
State Contact

Attachment 1—Description and Assessment

1.0 Description

The proposed amendment would modify technical specifications (TS) requirements for mode change limitations in LCO 3.0.4 and SR 3.0.4.[5]

The changes are consistent with Nuclear Regulatory Commission (NRC) approved Industry/Technical Specification Task Force (TSTF) STS change TSTF–359 Revision 8, as modified by the notice in the **Federal Register** published on [DATE]. That Federal Register notice announced the availability of this TS improvement through the consolidated line item improvement process (CLIIP).

2.0 Assessment

2.1 Applicability of Published Safety Evaluation

[LICENSEE] has reviewed the safety evaluation dated [DATE] as part of the CLIIP. This review included a review of the NRC staff's evaluation, as well as the supporting information provided to support TSTF–359 Revision 8. [LICENSEE] has concluded that the justifications presented in the TSTF proposal and the safety evaluation prepared by the NRC staff are applicable to [PLANT, UNIT NOS.] and justify this amendment for the incorporation of the changes to the [PLANT] TS.

2.2 Optional Changes and Variations

[LICENSEE] is not proposing any variations or deviations from the TS changes described in the modified TSTF–359 Revision 8 and the NRC staff's model safety evaluation dated [DATE].

[5] [In conjunction with the proposed change, technical specifications (TS) requirements for a bases control program, consistent with the TS Bases Control Program described in Section 5.5 of the applicable vendor's standard TS (STS), shall be incorporated into the licensee's TS, if not already in the TS. Similarly, the STS requirements of SR 3.0.1 and associated bases shall be adopted by units that do not already contain them.]

3.0 Regulatory Analysis

3.1 No Significant Hazards Consideration Determination

[LICENSEE] has reviewed the proposed no significant hazards consideration determination (NSHCD) published in the **Federal Register** as part of the CLIIP. [LICENSEE] has concluded that the proposed NSHCD presented in the Federal Register notice is applicable to [PLANT] and is hereby incorporated by reference to satisfy the requirements of 10 CFR 50.91(a).

3.2 Verification and Commitments

As discussed in the notice of availability published in the **Federal Register** on [DATE] for this TS improvement, plant-specific verifications were performed as follows:

The licenses has established TS Bases for [LCO 3.0.4 and SR 3.0.4] which state that use of the TS mode change limitation flexibility established by [LCO 3.0.4 and SR 3.0.4] is not to be interpreted as endorsing the failure to exercise the good practice of restoring systems or components to operable status before entering an associated mode or other specified condition in the TS Applicability.

The modification also includes changes to the bases for [LCO 3.0.4 and SR 3.0.4] that provide details on how to implement the new requirements. The bases changes provide guidance for changing Modes or other specified conditions in the Applicability when an LCO is not met. The bases changes describe in detail how: [LCO 3.0.4.a] allows entry into a MODE or other specified condition in the Applicability with the LCO not met when the associated ACTIONS to be entered permit continued operation in the MODE or other specified condition in the Applicability for an unlimited period of time; [LCO 3.0.4.b] allows entry into a MODE or other specified condition in the Applicability with the LCO not met after performance of a risk assessment addressing inoperable systems and components, consideration of the results, determination of the acceptability of entering the MODE or other specified condition in the Applicability, and establishment of risk management actions, if appropriate; and [LCO 3.0.4.c] allows entry into a MODE or other specified condition in the Applicability with the LCO not met based on a Note in the Specification, which is typically applied to Specifications which describe values and parameters (*e.g.,* [Containment Air Temperature, Containment Pressure, MCPR, Moderator Temperature Coefficient]), though it may be applied to other Specifications based on NRC plant-specific approval. The bases also state that any risk impact should be managed through the program in place to implement 10 CFR 50.65(a)(4) and its implementation guidance, NRC Regulatory Guide 1.182. ''Assessing and Managing Risks Before Maintenance Activities at Nuclear Power Plants,'' and that the results of the risk assessment shall be considered in determining the acceptability of entering the MODE or other specified condition in the Applicability, and any corresponding risk management actions. In addition, the bases state that upon entry into a Mode or other specified condition in the Applicability with the LCO not met, LCO 3.0.1 and LCO 3.0.2 require entry in to the applicable Conditions and Required Actions for no more than the duration of the applicable Completion Time or until the LCO is met or the unit is not within the Applicability of the TS. The bases also state that SR 3.0.4 does not restrict changing MODES or other specified conditions of the Applicability when a Surveillance has not been performed within the specified Frequency, provided the requirement to declare the LCO not met has been delayed in accordance with SR 3.0.3. Finally, the licensee is expected to have a bases control program consistent with Section 5.5 of the STS, and the equivalent of STS SR 3.0.1 and associated bases.

4.0 Environmental Evaluation

[LICENSEE] has reviewed the environmental evaluation included in the model safety evaluation dated [DATE] as part of the CLIIP. [LICENSEE] has concluded that the staff's findings presented in that evaluation are applicable to [PLANT] and the evaluation is hereby incorporated by reference for this application.

Attachment 2—Proposed Technical Specification Changes (Mark-Up)

Attachment 3—Proposed Technical Specification Pages

Attachment 4—List of Regulatory Commitments

The following table identifies those actions committed to by [LICENSEE] in this document. Any other statements in this submittal are provided for information purposes and are not considered to be regulatory commitments. Please direct questions regarding these commitments to [CONTACT NAME].

Regulatory commitments	Due date/event
[LICENSEE] will establish the Technical Specification Bases for TS 3.0.3 as adopted with the applicable license amendment.	[Complete, implemented with amendment OR within X days of implementation of amendment]

Attachment 5—Proposed Changes to Technical Specification Bases Pages

[FR Doc. 03–8203 Filed 4–3–03; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for comments.

SUMMARY: Under the provision of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that Agency is preparing an information collection request for OMB review and approval and to request public review and comment on the submission.

At OPIC's request, OMB is reviewing this information collection for emergency processing for 90 days, under OMB control number 3420–0015.

Comments are being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received within 30 calendar days of this notice.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency submitting officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: Bruce

Campbell, Record Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202–336–8563.

Summary Form Under Review

Type of Request: Revised form.
Title: Application for Financing.
Form Number: OPIC 115.
Frequency of Use: Once per investor per project.
Type of Respondents: Business or other institution (except farms); individuals.
Standard Industrial Classification Codes: All.
Description of Affected Public: U.S. companies or citizens investing overseas.
Reporting Hours: 3.5 hours per project.
Number of Responses: 300 per year.
Federal Cost: $15,750.
Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act. of 1961, as amended.
Abstract (Needs and Uses): The application is the principal document used by OPIC to determine the investor's and the project's eligibility for debt financing, assess the environmental impact and developmental effects of the project, measure the economic effects for the U.S. and the host country economy, and collect information for underwriting analysis.

Dated: March 12, 2003.

Eli Landy,

Senior Counsel and FOIA Director.

[FR Doc. 03–8224 Filed 4–3–03; 8:45 am]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47596; File No. SR–CSE–2003–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Cincinnati Stock Exchange, Inc., To Extend its Liquidity Provider Fee and Rebate Pilot Program

March 28, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on March 27, 2003, the Cincinnati Stock Exchange, Inc. (''CSE'' 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 Exchange. The Exchange has filed this proposal pursuant to section 19(b)(3)(A) of the Act[3] and rule 19b–4(f)(6)[4] thereunder, 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

The Exchange proposes to extend its pilot program for the Liquidity Provider Fee and Rebate (''Program'') through September 30, 2003. The Program, as originally proposed in SR–CSE–2002–16,[5] is set to expire on March 31, 2003. The CSE proposes no substantive changes to the Program, other than extending its operation through September 30, 2003. The text of the proposed rule change is available at the CSE 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, 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 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 CSE proposes to extend the Program through September 30, 2003. Under the Program, the Exchange amended CSE rule 11.10A(g)(1) by adding subparagraph (B) to charge the liquidity taker, *i.e.,* the party executing against a previously displayed quote/order, $0.004 per share. The Exchange then passes on to the liquidity provider, *i.e.,* the party providing the displayed quote/order, $0.003 per share, with the Exchange retaining $0.001 per share.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act[6] in general, and furthers the objectives of section 6(b)(5)[7] in particular, in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, generally, in that it protects investors and the public interest. The CSE believes that the proposed rule change is also consistent with section 6(b)(4) of the Act,[8] in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CSE members by crediting members on a pro rata basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received in connection with the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[9] and rule 19b–4(f)(6)[10] thereunder. 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.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] 15 U.S.C. 78s(b)(3)(A).
[4] 17 CFR 240.19b–4(f)(6).
[5] Securities Exchange Act Release No. 46848 (November 19, 2002), 67 FR 70793 (November 26, 2002).
[6] 15 U.S.C. 78f(b).
[7] 15 U.S.C. 78f(b)(5).
[8] 15 U.S.C. 78f(b)(4).
[9] 15 U.S.C. 78s(b)(3)(A).
[10] 17 CFR 240.19b–4(f)(6).

investors and the public interest. Acceleration of the operative date will allow the pilot to continue without interruption. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[11]

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 the principal office of the Exchange. All submissions should refer to file number SR–CSE–2003–03 and should be submitted by April 25, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8183 Filed 4–3–03; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 4.500 (4½) percent for the April–June quarter of FY 2003.

LeAnn M. Oliver,

Deputy Associate Administrator for Financial Assistance.

[FR Doc. 03–8243 Filed 4–3–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Roundtable; Region VI Regulatory Fairness Board

The Small Business Administration Region VI Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Roundtable on Tuesday, April 22, 2003, at 8:30 a.m. at the State Chamber at 330 NE., 10th Street, Oklahoma City, OK 73104, to provide small business owners and representatives of trade associations with an opportunity to share information concerning the federal regulatory enforcement and compliance environment.

Anyone wishing to attend or to make a presentation must contact Darla Booker in writing or by fax, in order to be put on the agenda. Darla Booker, U.S. Small Business Administration, Oklahoma District Office, 210 Park Avenue, Suite 1300, Oklahoma City, OK 73102, phone (405) 231–5521 Ext. 243, fax (405) 231–4876, e-mail: *Darla.Booker@sba.gov.*

For more information, *see* our Web site at *http://www.sba.gov/ombudsman.*

Dated: March 31, 2003

Michael L. Barrera,

National Ombudsman.

[FR Doc. 03–8241 Filed 4–3–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Region VI Regulatory Fairness Board

The Small Business Administration Region VI Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Hearing on Thursday, April 24, 2003, at 8:30 a.m. at the Southern Methodist University's Cox School of Business, Fincher Building Gallery, 6212 Bishop Blvd., Dallas, Texas 75205, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by Federal agencies.

Anyone wishing to attend or to make a presentation must contact Glenda Schufford in writing or by fax, in order to be put on the agenda. Glenda Schufford, U.S. Small Business Administration, Dallas/Fort Worth District Office, 4300 Amon Carter Boulevard, Suite 114, Fort Worth, TX 76155, phone (817) 684–5500 Ext. 5526, fax (817) 684–5543, e-mail *Glenda.Schufford@sba.gov.*

For more information, *see* our Web site at *http://www.sba.gov/ombudsman.*

Dated: March 31, 2003.

Michael L. Barrera,

National Ombudsman.

[FR Doc. 03–8242 Filed 4–3–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Delegation of Authority 255]

Delegation by the Deputy Secretary of State to the Assistant Secretary for Educational and Cultural Affairs of All Authorities Normally Vested in the Under Secretary for Public Diplomacy and Public Affairs

By virtue of the authority vested in me by the laws of the United States, including the Mutual Educational and Cultural Exchange Act of 1961, the United States Information and Educational Exchange Act of 1948, and the State Department Basic Authorities Act of 1956, and pursuant to Delegation of Authority No. 245 (April 23, 2001), I hereby delegate to the Assistant Secretary for Educational and Cultural Affairs, to the extent authorized by law, all authorities vested in the Under Secretary for Public Diplomacy and Public Affairs, including all authorities vested in the Secretary that have been delegated to that Under Secretary by Delegation of Authority No. 234 (October 1, 1999), or that may be delegated or re-delegated to that Under Secretary.

Any authorities covered by this delegation may also be exercised by the Secretary and the Deputy Secretary of State.

Any act, executive order, regulation or procedure subject to, or affected by, this delegation shall be deemed to be such act, executive order, regulation or procedure as amended from time to time.

This delegation shall enter into effect on March 29, 2003, and shall expire upon the appointment and entry upon duty of a new Under Secretary for Public Diplomacy and Public Affairs.

Any re-delegation of authority by the Under Secretary for Public Diplomacy

[11] For purposes only of accelerating the operative date of the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

and Public Affairs to the Assistant Secretary for Educational and Cultural Affairs, pursuant to Delegation of Authority No. 234, shall remain in effect.

This delegation shall be published in the **Federal Register**.

Dated: March 25, 2003.

Richard L. Armitage,

Deputy Secretary of State, Department of State.

[FR Doc. 03–8249 Filed 4–3–03; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2003–14836]

Information 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 Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before June 3, 2003.

FOR FURTHER INFORMATION CONTACT: James Zok, Maritime Administration (MAR–500), 400 Seventh St., SW., Washington, DC 20590. Telephone: 202–366–0364, FAX: 202–366–9580, or e-mail: *jim.zok@marad.dot.gov*.

Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Customer Service Survey.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0528.

Form Numbers: MA–1016, MA–1017, and MA–1021.

Expiration Date of Approval: Three years from date of approval.

Summary of Collection of Information. Executive Order 12862 requires agencies to survey customers to determine the kind and quality of services they want and the level of satisfaction with existing services. This collection provides the instruments used to collect the information regarding MARAD programs and services.

Need and Use of the Information: Responses to the Customer Service Questionnaire (Form MA–1016) are needed to obtain prompt customer feedback on the quality of specific services/products provided to the customer by MARAD. Responses to the Program Performance Survey (Form MA–1017) are needed to obtain customers' views on MARAD's major programs and activities with which the customers were involved during the preceding year. Responses to the Conference/Exhibit Survey (Form MA–1021) will be used to obtain prompt responses from attendees at MARAD-sponsored conferences, exhibits and other maritime industry events.

Description of Respondents: Individuals receiving goods and services from MARAD.

Annual Responses: 6,650 responses.

Annual Burden: 256 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit*. Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov*.

By Order of the Maritime Administrator,

Dated: April 1, 2003.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–8250 Filed 4–3–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub No. 622X)]

CSX Transportation, Inc.—Abandonment Exemption—in Pike County, OH

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon an approximately 4.14 mile line of railroad at Teays Industrial Track between milepost CES–0.00 and milepost CES–4.14 in Pike County, OH. The line traverses United States Postal Zip Codes 45661, 45613 and 45690.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employees adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protect affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 6, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 14, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 24, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to CSX's representative: Natalie S. Rosenberg, CSX Transportation, Inc., 500 Water Street, J150, Jacksonville, FL 32202.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by April 11, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by April 4, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: March 28, 2003.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–8229 Filed 4–3–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 24, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 5, 2003 to be assured of consideration.

Departmental Offices/Federal Consulting Group

OMB Number: New.

Form Number: None.

Type of Review: New collection.

Title: American Customer Satisfaction Index Survey.

Description: The objectives of surveying customers of Federal Agencies as part of the American Customer Satisfaction Index are: (1) To make the agencies part of the national measure of customer satisfaction; (2) to benchmark against other agencies and companies; and (3) to provide information for improving satisfaction.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 46,000.

Estimated Burden Hours Per Respondent: 17 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 7,799 hours.

Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 03–8161 Filed 4–3–03; 8:45 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 25, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 5, 2003, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0064.

Form Number: IRS Form 4029.

Type of Review: Extension.

Title: Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits.

Description: Form 4029 is used by members of recognized religious groups to apply for exemption from Social Security and Medicare taxes under IRC sections 1402(g) and 3127. The information is used to approve or deny exemption from social security and Medicare taxes.

Respondents: Individual or household.

Estimated Number of Respondents/Recordkeepers: 3,754.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	6 min.
Learning about the law or the form.	11 min.
Preparing the form	11 min.
Copying, assembling, and sending the form to the SSA.	34 min.

Frequency of Response: Other (one time).

Estimated Total Reporting/Recordkeeping Burden: 4,017 hours.

OMB Number: 1545–0132.

Form Number: IRS Form 1120X.

Type of Review: Extension.

Title: Amended U.S. Corporation Income Tax Return.

Description: Domestic corporations use Form 1120X to correct a previously filed Form 1120 or 1120A. The data is used to determine if the correct tax liability has been reported.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 16,699.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	13 hr., 9 min.
Learning about the law or the form.	1 hr., 14 min.
Preparing the form	3 hr., 22 min.
Copying, assembling, and sending the form to the IRS.	32 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 305,425 hours.

OMB Number: 1545–0202.

Form Number: IRS Forms 5310 and 6088.

Type of Review: Revision.

Title: IRS Form 5310: Application for Determination for Terminating Plan; and IRS Form 6088: Distributable Benefits from Employee Pension Benefit Plan.

Description: Employers who have qualified deferred compensation plans can take an income tax deduction for contributions to their plans. IRS uses the data on Forms 5310 and 6088 to determine whether a plan still qualifies and whether there is any discrimination in benefits.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 30,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 5310	Form 6088
Recordkeeping	64 hr., 19 min.	6 hr., .27 min.
Learning about the law or the form.	21, 35 min.	1hr., 12 min.
Preparing, Copying, assembling, and sending the form to the IRS.	25 hr., 59 min.	1 hr., 21 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 1,813,650 hours.

OMB Number: 1545–0387.

Form Number: IRS Form 4419.

Type of Review: Extension.

Title: Application for Filing Information Returns Magnetically/Electronically.

Description: Under section 6011(e)(2)(a) of the Internal Revenue Code, any person, including corporations, partnerships, individuals, estates and trusts, who is required to file 250 or more information returns must file such returns magnetically/electronically. Payers required to file on magnetic media or electronically must complete Form 4419 to receive authorization to file.

Respondents: State, local or tribal government, business or other for-profit, not-for-profit institutions, Federal government.

Estimated Number of Respondents: 15,000.

Estimated Burden Hours Per Respondent: 26 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 6,500 hours.

OMB Number: 1545–0957.

Form Number: IRS Form 8508.

Type of Review: Revision.

Title: Request for Waiver From Filing Information Returns Magnetically (Forms W–2, W–2G, 1042–S, 1098, 1099 Series, 5498–MSA, and 8027).

Description: Certain filers of information returns are required by law to file on magnetic media. In some instances, waivers from this requirement are necessary and justified. Form 8508 is submitted by the filer and provides information on which IRS will base its waiver determination.

Respondents: Business or other for-profit, not-for-profit institutions, farms, Federal government, state, local or tribal government.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 750 hours.

OMB Number: 1545–1225.

Form Number: IRS Form 5310-A.

Type of Review: Revision.

Title: Notice of Plan Merger or Consolidation, Spinoff, or Transfer of Plan Assets or Liabilities; Notice of Qualified Separate Lines of Business.

Description: Plan administrators are required to notify IRS of any plan mergers, consolidations, spinoffs, or transfer of plan assets or liabilities to another plan. Employers are required to notify IRS of separate lines of business for their deferred compensation plans. Form 5310-A is used to make these notifications.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 15,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Recordkeeping	Learning about the law or the form	Preparing, copying, assembling,and sending the form to the IRS
Form 5310-A, Part I	2 hr., 9 min	1 hr., 3 min	2 hr., 20 min.
Form 5310-A, Part II	3 hr., 21 min	35 min.	40 min.
Form 5310-A, Part III	4 hr., 32 min	35 min.	42 min.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 158,800 hours.

OMB Number: 1545–1347.

Regulation Project Number: FI–1–94 and FI–36–92 Final.

Type of Review: Extension.

Title: Arbitrage Restrictions on Tax-Exempt Bonds.

Description: The Code limits the ability of state and local government issuers of tax-exempt bonds to earn and/or keep arbitrage profits earned with bond proceeds. This regulation requires recordkeeping of certain interest rate hedges so that the hedges are taken into account in determining those profits.

Respondents: State, local or tribal government.

Estimated Number of Respondents/Recordkeepers: 3,100.

Estimated Burden Hours Per Respondent/Recordkeeper: 14 hours, 34 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 42,050 hours.

OMB Number: 1545–1510.

Revenue Procedure Number: Revenue Procedure 96–60.

Type of Review: Extension.

Title: Procedure for Filing Forms W–2 in Certain Acquisitions.

Description: Information is required by the Internal Revenue Service to assist predecessor and successor employers in complying with the reporting requirements under Code sections 6051 and 6011 for Forms W–2 and 941.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 553,500.

Estimated Burden Hours Per Respondent: 12 minutes.

Estimated Total Reporting Burden: 110,700 hours.

OMB Number: 1545–1528.

Revenue Procedure Number: Revenue Procedure 97–15.

Type of Review: Extension.

Title: Section 103—Remedial Payment Closing Agreement Program.

Description: This information is required by the Internal Revenue Service to verify compliance with sections 57, 103, 141, 142, 144, 145 and 147 of the Internal Revenue Code of 1986, as applicable (including any corresponding provision, if any, of the Internal Revenue Code of 1954). This information will be used by the Service

to enter into a closing agreement with the issuer of certain state or local bonds and to establish the closing agreement amount.

Respondents: Not-for-profit institutions, State, local or tribal government.

Estimated Number of Respondents/ Recordkeepers: 50.

Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour, 30 minutes.

Estimated Total Reporting/ Recordkeeping Burden: 75 hours.

OMB Number: 1545–1667.

Revenue Procedure Number: Revenue Procedure 99–50.

Type of Review: Extension.

Title: Combined Information Reporting.

Description: The revenue procedure permits combined information reporting by a successor ''business entity'' (*i.e.*, a corporation, partnership, or sole proprietorship) in certain situations following a merger or an acquisition. The successor must file a statement with the Internal Revenue Service indicating what forms are being filed on a combined basis.

Respondents: Business or other for-profit, not-for-profit institutions, farms.

Estimated Number of Respondents: 6,000.

Estimated Burden Hours Per Respondent: 5 minutes.

Estimated Total Reporting Burden: 500 hours.

OMB Number: 1545–1669.

Notice Number: Notice 2000–3.

Type of Review: Extension.

Title: Guidance on Cash or Deferred Arrangements.

Description: This notice provides guidance to employers maintaining, or who are contemplating establishing, cash or deferred arrangements (CODAs) for their employees. It permits some degree of flexibility in using the safe harbor methods, described in sections 401(k)(12) and 401(m)(11) of the Code, to satisfy the nondiscrimination tests normally applicable to CODAs. As indicated in section III, Q&As 1 and 2, of the notice to take advantage of this flexibility, employers must amend their CODAs accordingly and provide employees written notices of the benefits available to them under the CODA.

Respondents: Business or other for-profit, not-for-profit institutions.

Estimated Number of Respondents: 6,000.

Estimated Burden Hours Per Respondent: 1 hour, 20 minutes.

Estimated Total Reporting Burden: 8,000 hours.

OMB Number: 1545–1671.

Regulation Project Number: REG–209709–94 Final.

Type of Review: Extension.

Title: Amortization of Intangible Property.

Description: The information is required by the IRS to aid it in administering the law and to implement the election provided by section 197(f)(9)(B) of the Internal Revenue Code. The information will be used to verify that a taxpayer is properly reporting its amortization and income taxes.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 500.

Estimated Burden Hours Per Respondent: 3 hours.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1,500 hours.

Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW.,Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 03–8162 Filed 4–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 27, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 5, 2003, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0260.

Form Number: IRS Form 706–CE.

Type of Review: Revision.

Title: Certificate of Payment of Foreign Death Tax.

Description: Form 706–CE is used by the executors of estates to certify that foreign death taxes have been paid so that the estate may claim the foreign death tax credit allowed by IRS section 2014. The information is used by IRS to verify that the proper tax credit has been claimed.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 2,250.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	45 min.
Learning about the law or the form.	4 min.
Preparing and sending the form	25 min.
Copying, assembling, and sending the form to the IRS.	27 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 3,870 hours.

OMB Number: 1545–1516.

Form Number: IRS Form 8832.

Type of Review: Extension.

Title: Entity Classification Election.

Description: An eligible entity that chooses not be classified under the default rules or that wishes to change its current classification must file Form 8832 to elect a classification.

Respondents: Business or other for-profit, farms.

Estimated Number of Respondents/ Recordkeepers: 5,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	1 hr., 49 min.
Learning about the law or the form.	2 hr., 7 min.
Preparing and sending the form to the IRS.	23 min.

Frequency of Response: On occasion, other (for year of sale of home).

Estimated Total Reporting/ Recordkeeping Burden: 21,650 hours.

Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW.,Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 03–8163 Filed 4–3–03; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Friday,
April 4, 2003

Part II

Deparment of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Establishment of Three Additional Manatee Protection Areas in Florida; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AJ06

Endangered and Threatened Wildlife and Plants; Establishment of Three Additional Manatee Protection Areas in Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of supplemental information.

SUMMARY: We, the Fish and Wildlife Service (Service), propose to establish three additional manatee protection areas in Florida. We are proposing this action under the Endangered Species Act of 1973, as amended (ESA), and the Marine Mammal Protection Act of 1972, as amended (MMPA), to further recovery of the Florida manatee (*Trichechus manatus latirostris*) by reducing the number of takings. We are proposing to designate areas in Lee, Duval, Clay, St. Johns, and Volusia Counties as manatee refuges in which certain waterborne activities would be regulated. Specifically, watercraft would be required to operate at idle, slow speed, 40 kilometers per hour (25 mph), or 48 kilometers per hour (30 mph) in areas described in the proposed rule. We also announce the availability of a draft environmental assessment for this action.

DATES: We will consider comments on both the proposed rule and the draft environmental assessment that are received by June 3, 2003. We will hold public hearings on Tuesday, May 13, in Ft. Myers, FL; Wednesday, May 14, in Daytona Beach, FL; and Thursday, May 15, in Jacksonville, FL. See additional information on the public comment process in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Formal public hearings will be held from 6:30 p.m. to 9 p.m. at the following locations:

Ft. Myers, FL, on Tuesday, May 13, at the Harborside Convention Hall, 1375 Monroe St.; Daytona Beach, FL, on Wednesday, May 14, at the Ocean Center, 101 N. Atlantic Ave.; Jacksonville, FL, on Thursday, May 15, at The University Center, University of North Florida campus, 4567 St. Johns Bluff Rd. South.

If you wish to comment, you may submit your comments by any one of several methods:

1. You may submit written comments and information by mail to the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, Attn: Proposed Manatee Refuges, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216.

2. You may hand-deliver written comments to our Jacksonville Field Office, at the above address, or fax your comments to 904/232–2404.

3. You may send comments by electronic mail (e-mail) to *manatee@fws.gov.* For directions on how to submit electronic comment files, see the ''Public Comments Solicited'' section.

We request that you identify whether you are commenting on the proposed rule or draft environmental assessment. Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours from 8 a.m. to 4:30 p.m., at the above address. You may obtain copies of the draft environmental assessment from the above address or by calling 904/232–2580, or from our Web site at *http://northflorida.fws.gov.*

FOR FURTHER INFORMATION CONTACT: David Hankla, Peter Benjamin, or Jim Valade (see **ADDRESSES** section), telephone 904/232–2580; or visit our Web site at *http://northflorida.fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

The West Indian manatee is federally listed as an endangered species under the ESA (16 U.S.C. 1531 *et seq.*) (32 FR 4001) and the species is further protected as a depleted stock under the MMPA (16 U.S.C. 1361–1407). Florida manatees, a subspecies of the West Indian manatee (Domning and Hayek, 1986), live in freshwater, brackish, and marine habitats in coastal and inland waterways of the southeastern United States. The majority of the population can be found in Florida waters throughout the year, and nearly all manatees use the waters of peninsular Florida during the winter months. The manatee is a cold-intolerant species and requires warm water temperatures generally above 20° Celsius (68° Fahrenheit) to survive during periods of cold weather. During the winter months, most manatees rely on warm water from industrial discharges and natural springs for warmth. In warmer months, they expand their range and occasionally are seen as far north as Rhode Island on the Atlantic Coast and as far west as Texas on the Gulf Coast.

Status of the Florida Manatee

Long-term studies, as described below, suggest that there are four relatively distinct regional populations of manatees in Florida—(a) the Northwest Region, along the Gulf of Mexico from Escambia County east and south to Hernando County; (b) the Upper St. Johns River Region, consisting of Putnam County from Palatka south to Lake and Seminole counties; (c) the Atlantic Region, consisting of counties along the Atlantic coast from Nassau County south to Miami-Dade County and that portion of Monroe County adjacent to the Florida Bay and the Florida Keys; and counties along the lower portion of the St. Johns River north of Palatka, including Putnam, St Johns, Clay and Duval counties; and (d) the Southwest Region, consisting of counties along the Gulf of Mexico from Pasco County south to Whitewater Bay in Monroe County.

Despite significant efforts dating back to the late 1970s and early 1980s, scientists have been unable to develop a useful means of estimating or monitoring trends in the size of the overall manatee population in the southeastern United States (O'Shea, 1988; O'Shea *et al.,* 1992; Lefebvre *et al.,* 1995). Even though many manatees aggregate at warm-water refuges in winter and most, if not all, such refuges are known, direct counting methods (*i.e.,* by aerial and ground surveys) are unable to account for uncertainty in the number of animals that may be away from these refuges at any given time, the number of animals not seen because of turbid water, and other factors. The use of mark-resighting techniques to estimate manatee population size based on known animals in the manatee photo-identification database has also been impractical, as the proportion of unmarked manatees cannot be estimated.

The only data on population size include un-calibrated indices based on maximum counts of animals at winter refuges made within one or two days of each other. Based on such information in the late 1980s, the total number of manatees throughout Florida was originally thought to include at least 1,200 animals (Service, 2001). Because aerial and ground counts at winter refuges are highly variable depending on the weather, water clarity, manatee behavior, and other factors (Packard *et al.,* 1985; Lefebvre *et al.,* 1995), interpretation of these data to assess short-term trends is difficult (Packard and Mulholland, 1983; Garrott *et al.,* 1994).

Beginning in 1991, the State of Florida initiated a statewide, synoptic, aerial survey program to count manatees in potential winter habitat during periods of severe cold weather

(Ackerman, 1995). These surveys are much more comprehensive than those used to estimate a minimum population during the 1980s. The highest statewide, minimum count from these surveys was 3,276 manatees in January 2001; the highest count on the east coast of Florida included 1,814 animals (January 2003) and the highest on the west coast included 1,756 (January 2001).

Due to the problems mentioned above, we do not know what proportion of the total manatee population is counted in these surveys. These uncorrected counts do not provide a basis for assessing population trends, although trend analyses of temperature-adjusted aerial survey counts may provide insight to general patterns of population growth in some regions (Garrott *et al.,* 1994, 1995; Craig *et al.,* 1997; Eberhardt *et al.,* 1999).

It is possible, however, to monitor the number of manatees using the Blue Spring (Volusia County) and Crystal River (Citrus County) warm-water refuges. At Blue Spring (in the Upper St. Johns River Region), with its unique combination of clear water and confined spring area, it has been possible to count the number of resident animals by identifying individual manatees from scar patterns. The data indicate that this group of animals has increased steadily since the early 1970s when it was first studied. During the 1970s the number of manatees using the spring increased from 11 to 25 (Bengtson, 1981). In the mid-1980s about 50 manatees used the spring (Service, 2001), and by the winter of 1999–2000, the number had increased to 147 (Hartley, 2001).

In the Northwest Region, the clear, shallow waters of Kings Bay (Citrus County) have made it possible to monitor the number of manatees using this warm-water refuge at the head of Crystal River. Large aggregations of manatees apparently did not exist there until recent times (Service, 2001). The first careful counts were made in the late 1960s. Since then, manatee numbers have increased significantly. From 1967 to 1968, Hartman (1979) counted 38 animals in Kings Bay. By 1981–1982, the maximum winter count had increased to 114 manatees (Powell and Rathbun, 1984), and in November 2000, the maximum count was 301 (Service, 2003).

Both births and immigration of animals from other areas have contributed to the increases in manatee numbers at Crystal River and Blue Spring. Animals may be further attracted to these areas because of local manatee protection areas. Three manatee sanctuaries (areas in which waterborne activities are prohibited) in Kings Bay were established in 1980; an additional three were added in 1994, and a seventh in 1998. The increases in counts at Blue Spring and Crystal River are accompanied by estimates of adult survival and population growth that are higher than those determined for the Atlantic coast (Eberhardt and O'Shea, 1995; Langtimm *et al.,* 1998; Eberhardt *et al.,* 1999).

While aircraft synoptic surveys provide a ''best estimate'' of the minimum Florida manatee population size, there are no confidence intervals (derived through reliable, statistically based, population-estimation techniques) for these estimates. With the exception of a few places where manatees may aggregate in clear, shallow water, not all manatees can be seen from aircraft because of water turbidity, depth, surface conditions, variable times spent submerged, and other considerations. Thus, results obtained during typical manatee synoptic surveys yield unadjusted partial counts. While these results are of value in providing information on where manatees occur, likely relative abundance in various areas, and seasonal shifts in manatee abundance, they do not provide good population estimates, nor can they reliably measure trends in the manatee population. Consequently, the Florida Manatee Recovery Plan (Service, 2001) concludes that ''despite considerable effort in the early 1980s, scientists have been unable to develop a useful means of estimating or monitoring trends in size of the overall manatee populations in the southeastern United States.''

Population models employ mathematical relationships based on survival and reproduction rates to estimate population growth and trends in growth. A deterministic model (a model in which there are no random events) that uses classical mathematical approaches and various computational procedures with data on reproduction and survival of living, identifiable manatees suggests a maximum population growth rate of about 7 percent per year, excluding emigration or immigration (Eberhardt and O'Shea, 1995). This maximum was based on studies conducted between the late 1970s and early 1990s in the well-protected winter aggregation area at Crystal River and did not require estimation of the population size. The analysis showed that the chief factor affecting the potential for population growth is survival of adults.

Estimated adult survival in the Atlantic Region (a larger region with less protection) has suggested slower or no population growth between the late 1970s and early 1990s. This modeling shows the value of using survival and reproduction data obtained from photo-identification studies of living manatees to compute population growth rates with confidence intervals, providing information that can be used to infer long-term trends in the absence of reliable population size estimates. Collection of similar data has been initiated only recently in that area of Florida from Tampa Bay to the Caloosahatchee River (beginning in the mid-1990s) and none is available for many of the remaining areas used by manatees in southwestern Florida (Southwest Region).

A population viability analysis (PVA), in which random events, such as red tide and extremely cold winters, are incorporated into a model, was carried out for manatees based on age-specific mortality rates estimated from the age distribution of manatees found dead throughout Florida from 1979 through 1992 (Marmontel *et al.,* 1997). This method of estimating survival relied on certain assumptions that were not fully testable; despite this, the results again pointed out the importance of adult survival to population persistence. Given a population size that reflected a 1992 minimum population estimate, the PVA showed that if adult mortality as estimated for the study period were reduced by a modest amount (for example, from 11 percent down to 9 percent), the Florida manatee population would likely remain viable for many years. However, the PVA also showed that slight increases in adult mortality would result in extinction of manatees within the next 1,000 years.

The above review demonstrates that using statewide population size ''estimates'' of any kind is scientifically weak for estimating population trends in manatees. The weight of scientific evidence suggests that the potential for population increases over the last two decades is strong for two protected aggregation areas. New population analyses, based on more recent (since 1992) information, are not yet available in the peer-reviewed literature.

In 2001, the Manatee Population Status Working Group (MPSWG) provided a statement summarizing what they believed to be the status of the Florida manatee at that time (Wildlife Trust, 2001). The MPSWG stated that, for the Northwest and Upper St. Johns River regions, available evidence indicated that there had been a steady increase in animals over the last 25 years. The statement was less optimistic for the Atlantic Region due to an adult survival rate that was lower than the rate necessary to sustain population

growth. The MPSWG believed that this region had likely been growing slowly in the 1980s, but then may have leveled off or even possibly declined. They considered the status of the Atlantic Region to be ''too close to call.'' Such finding was consistent with high levels of human-related and, in some years, cold-related deaths in this region. Regarding the Southwest Region, the MPSWG acknowledged that further data collection and analysis would be necessary to provide an assessment of the manatee's status in this region. Preliminary estimates of adult survival available to the MPSWG at that time indicated that the Southwest Region was similar to the Atlantic Region and ''substantially lower than [the adult survival estimates] for the Northwest and Upper St. Johns Regions.'' The Southwest Region was cited as having had high levels of watercraft-related deaths and injuries and natural mortality events (*i.e.,* red tide and severe cold).

Recent information suggests that the overall manatee population has grown since the species was listed in 1967 (50 CFR 17.11). Based on data provided at the April 2002 Manatee Population Ecology and Management Workshop, we believe that the Northwest and Upper St. Johns River regions and are approaching demographic benchmarks established in the Florida Manatee Recovery Plan (Service, 2001) for reclassification from endangered to threatened status. We also believe that the Atlantic Region is close to meeting the downlisting benchmark for adult survival, at a minimum, and is close to meeting or exceeding other demographic criteria. We are less optimistic, however, regarding the Southwest Region. Although data are still insufficient or lacking to compare the Southwest Region's status to the downlisting/delisting criteria, preliminary data for adult survival indicate that this Region is below the benchmarks established in the recovery plan.

Although we are optimistic about the potential for recovery in three out of the four regions, it is important to clarify that in order to downlist or delist the manatee, pursuant to the ESA, all four regions must simultaneously meet the appropriate criteria as described in the Florida Manatee Recovery Plan (Service, 2001). Additionally, either action would necessarily be based on a status assessment for the species throughout its range (including the United States and Caribbean) and would consider the factors, as described in section 4(a)(1) of the ESA, that determine whether any species is categorized as endangered or threatened.

In order for us to determine that an endangered species has recovered to a point that it warrants removal from the List of Endangered and Threatened Wildlife and Plants, the species must have improved in status to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the ESA. That is, threats to the species must be reduced or eliminated such that the species no longer fits the definitions of threatened or endangered. While suggestions of increasing population size are very encouraging, there has been no confirmation that significant threats to the species, including human-related mortality, injury, and harassment, and habitat alteration, have been reduced or eliminated to the extent that the Florida manatee may be reclassified from endangered to threatened status. Pursuant to our mission, we continue to assess this information with the goal of meeting our manatee recovery objectives.

Threats to the Species

Human activities, and particularly waterborne activities, are resulting in the take of manatees. Take, as defined by the ESA, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. Harm means an act which kills or injures wildlife (50 CFR 17.3). Such an act may include significant habitat modification or degradation that kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass includes intentional or negligent acts or omissions that create the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

The MMPA sets a general moratorium, with certain exceptions, on the take and importation of marine mammals and marine mammal products (section 101(a)) and makes it unlawful for any person to take, possess, transport, purchase, sell, export, or offer to purchase, sell, or export, any marine mammal or marine mammal product unless authorized. Take, as defined by section 3(13) of the MMPA means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. Harassment is defined under the MMPA as any act of pursuit, torment, or annoyance which—(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Human use of the waters of the southeastern United States has increased dramatically as a result of residential growth and increased visitation. This phenomenon is particularly evident in the State of Florida. The human population of Florida has grown by 246 percent since 1970, from 6.8 million to 16.7 million residents (U.S. Census Bureau, 2003), and is expected to exceed 18 million by 2010, and 20 million by the year 2020. According to a report by the Florida Office of Economic and Demographic Research (2000), it is expected that, by the year 2010, 13.7 million people will reside in the 35 coastal counties of Florida. In a parallel fashion to residential growth, visitation to Florida has increased dramatically. It is expected that Florida will have 83 million visitors annually by the year 2020, up from 48.7 million visitors in 1998. In concert with this increase of human population growth and visitation is the increase in the number of watercraft that travel Florida waterways. In 2002, 961,719 vessels were registered in the State of Florida (Division of Highway Safety and Motor Vehicles, 2003). This represents an increase of 59 percent since 1993. The Florida Department of Community Affairs estimates that, in addition to boats belonging to Florida residents, between 300,000 and 400,000 boats registered in other States use Florida waters each year.

Increases in the human population and the concomitant increase in human activities in manatee habitat compound the effect of such activities on manatees. Human activities in manatee habitat include direct and indirect effects. Direct impacts include injuries and deaths from watercraft collisions, deaths from water control structure operations, lethal and sublethal entanglements with recreational and commercial fishing gear, and alterations of behavior due to harassment. Indirect effects include habitat alteration and destruction, which include such activities as the creation of artificial warm water refuges, decreases in the quantity and quality of warm water in natural spring areas, changes in water quality in various parts of the State, the introduction of marine debris, and other, more general disturbances.

Manatee mortality has continued to climb steadily. Average annual total mortality in the 1990s (227.9) was

nearly twice that of the 1980s (118.2). In 2002, 305 manatee deaths were documented in Florida. Total deaths over the past 5 years are almost three times greater than they were in the first half of the 1980s. Although a large part of this increase may be due to an increase in manatee abundance, rapid growth in human activities and development may also be significant factors. Over the past 5 years, human-related manatee mortality has accounted for 33 percent of all manatee deaths, with watercraft-related deaths accounting for 28 percent of the total. These rates are about 5 to 7 percent higher than the early 1980s, when about 28 percent of all deaths were human-related and 21 percent were due to watercraft.

The continuing increase in the number of recovered dead manatees throughout Florida has been interpreted as evidence of increasing mortality rates (Ackerman *et al.,* 1995). Between 1976 and 1999, the number of carcasses collected in Florida increased at a rate of 5.8 percent per year, and deaths caused by watercraft strikes increased by 7.2 percent per year (Service, 2002). Because the manatee has a low reproductive rate, a decrease in adult survivorship due to watercraft collisions could contribute to a long-term population decline (O'Shea *et al.,* 1985). It is believed that a 1 percent change in adult survival likely results in a corresponding change in the rate of population growth or decline (Marmontel *et al.,* 1997).

Collisions with watercraft are the largest cause of human-related manatee deaths. Data collected during manatee carcass salvage operations in Florida indicate that a total of 1,145 manatees (from a total carcass count of 4,545) are confirmed victims of collisions with watercraft (1978 to 2002). This number may underestimate the actual number of watercraft-related mortalities, since many of the mortalities listed as ''undetermined causes'' show evidence of collisions with vessels. Collisions with watercraft comprise approximately 25 percent of all manatee mortalities since 1978. Approximately 75 percent of all watercraft-related manatee mortality has taken place in 11 Florida counties (Brevard, Lee, Collier, Duval, Volusia, Broward, Palm Beach, Charlotte, Hillsborough, Citrus, and Sarasota) (FWCC: Florida Marine Research Institute (FMRI) Manatee Mortality Database, 2003). The last 5 years have been record years for the number of watercraft-related mortalities.

The second largest cause of human-related manatee mortality is entrapment in water control structures and navigation locks (FWCC: FMRI Manatee Mortality Database, 2003). Manatees may be crushed in gates and locks or may be trapped in openings where flows prevent them from surfacing to breathe. Locks and gates were responsible for 164 manatee deaths between 1978 and 2002, or approximately 4 percent of all deaths during this period. While there are no well-defined patterns characterizing these mortalities, it is believed that periods of low rainfall increase the likelihood of manatees being killed in these structures. These periods require more frequent, large-scale movements of water, which require more frequent gate openings and closings in areas that attract manatees searching for fresh water. We have been working, through an interagency task force, with various Federal and State agencies to retrofit these structures with reversing mechanisms that prevent manatee crushings.

Manatees are also affected by other human-related activities. Impacts resulting from these activities include deaths caused by entrapment in pipes and culverts; entanglement in ropes, lines, and nets; ingestion of fishing gear or debris; vandalism; and poaching. These activities have accounted for 124 manatee deaths since 1978, an average of more than 4 deaths per year. As with watercraft-related mortalities, these deaths also appear to be increasing, with 40 of these deaths occurring between 1998 and 2002 (an average of 8 deaths per year over the last 5 years).

Manatee Protection Areas

To minimize the number of injuries and deaths associated with watercraft activities, we and the State of Florida have designated manatee protection areas at sites throughout coastal Florida where conflicts between boats and manatees have been well documented and where manatees are known to frequently occur. These areas include posted signs to inform the boating public about restrictions and prohibitions. We propose to enhance existing protection areas by establishing three additional manatee refuges in five Florida counties.

Federal authority to establish protection areas for the Florida manatee is provided by the ESA and the MMPA, and is codified in 50 CFR, part 17, subpart J. We have discretion, by regulation, to establish manatee protection areas whenever there is substantial evidence showing such establishment is necessary to prevent the taking of one or more manatees (that is, to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct). In accordance with 50 CFR 17.106, areas may be established on an emergency basis when such takings are imminent.

We may establish two types of manatee protection areas—manatee refuges and manatee sanctuaries. A manatee refuge, as defined in 50 CFR 17.102, is an area in which we have determined that certain waterborne activities would result in the taking of one or more manatees, or that certain waterborne activities must be restricted to prevent the taking of one or more manatees, including but not limited to, a taking by harassment. A manatee sanctuary is an area in which we have determined that any waterborne activity would result in the taking of one or more manatees, including but not limited to, a taking by harassment. A waterborne activity is defined as including, but not limited to, swimming, diving (including skin and scuba diving), snorkeling, water skiing, surfing, fishing, the use of water vehicles, and dredge and fill activities.

Relationship to Manatee Lawsuit

On January 13, 2000, several organizations and individuals filed suit against the Service and the U.S. Army Corps of Engineers alleging violations of the ESA, the MMPA, the National Environmental Policy Act, and the Administrative Procedure Act. Four groups representing development and boating interests intervened. Following extensive negotiations, the suit was resolved by a Settlement Agreement dated January 5, 2001. On October 24, 2001, the plaintiffs filed a Formal Notice of Controversy alleging that the Service had violated provisions of the Settlement Agreement. On April 17, 2002, the plaintiffs filed an Expedited Motion to enforce the Settlement Agreement, and on July 9, 2002, the Court found that the Service had not fulfilled its settlement requirements to designate refuges and sanctuaries throughout peninsular Florida. On August 1, 2002, and November 7, 2002, the Court ordered the Federal defendants to show cause why they should not be held in contempt for violating the Court's orders of January 5, 2002, January 17, 2002, and August 1, 2002.

To resolve these controversies, the plaintiffs and Federal defendants entered into a Stipulated Order wherein the Service agreed to submit to the **Federal Register** for publication a proposed rule for the designation of additional manatee protection areas. The areas in this notice represent those areas that the Service has determined, based on the current, best available data,

should be considered for designation as manatee refuges.

Site Selection Process and Criteria

In order to establish a site as a manatee protection area, we must determine that there is substantial evidence showing such establishment is necessary to prevent the take of one or more manatees. In documenting historic manatee use and harm and harassment, we relied on the best available information (although some data are admittedly sparse), including aerial survey and mortality data and additional information from FMRI and the U.S. Geological Survey's Sirenia Project, manatee experts, as well as the public, and our best professional judgment.

Definitions

The following terms are used in 50 CFR 17.108. We present them here to aid in understanding this proposed rule.

Idle speed means the minimum speed needed to maintain watercraft steerage.

Planing means riding on or near the water's surface as a result of the hydrodynamic forces on a watercraft's hull, sponsons (projections from the side of a ship), foils, or other surfaces. A watercraft is considered on plane when it is being operated at or above the speed necessary to keep the vessel planing.

Slow speed means the speed at which a watercraft proceeds when it is fully off plane and completely settled in the water. Watercraft must not be operated at a speed that creates an excessive wake. Due to the different speeds at which watercraft of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to slow speed. A watercraft is *not* proceeding at slow speed if it is—(1) on a plane, (2) in the process of coming up on or coming off of plane, or (3) creating an excessive wake. A watercraft is proceeding at slow speed if it is fully off plane and completely settled in the water, not plowing or creating an excessive wake.

Slow speed (channel exempt) designates a larger area where slow speed is required, through which a maintained, marked channel is exempt from the slow speed requirement.

Slow speed (channel included) means that the slow-speed designation applies to the entire marked area, including within the designated channel.

Wake means all changes in the vertical height of the water's surface caused by the passage of a watercraft, including a vessel's bow wave, stern wave, and propeller wash, or a combination of these.

Areas Proposed for Designation as Manatee Refuges

Caloosahatchee River—San Carlos Bay Manatee Refuge

We are proposing to establish a manatee refuge in the Caloosahatchee River and San Carlos Bay in Lee County (in the Southwest Region) for the purpose of regulating vessel speeds, from the Seaboard Coastline Railroad trestle, downstream to Channel Marker ''93,'' and from Channel Marker ''99'' to the Sanibel Causeway. Except as provided in 50 CFR 17.105, watercraft will be required to proceed as follows:

a. from the Seaboard Coastline Railroad trestle at Beautiful Island, downstream to a point 152 meters (500 feet) east of the Edison Bridge, a distance of approximately 7.2 km (4.5 miles), slow speed in the marked navigation channel from November 15 to March 31 and not more than 40 kilometers (km) per hour (25 miles per hour (mph)) in the channel from April 1 to November 14;

b. from a point 152 meters (500 feet) east of the Edison Bridge downstream to a point 152 meters (500 feet) west of the Caloosahatchee Bridge, approximately 1.1 km (0.7 miles) in length, slow speed year-round, shoreline-to-shoreline including the marked navigation channel;

c. from a point 152 meters (500 feet) west of the Caloosahatchee Bridge downstream to a point 152 meters (500 feet) northeast of the Cape Coral Bridge, a distance of approximately 10.9 km (6.8 miles), year-round, slow speed shoreline buffers extending out to a distance of approximately 91 meters (300 feet) from the marked navigation channel. (In any location where the distance from the shoreline to within approximately 91 meters (300 feet) of the near side of the channel is less than 0.4 km (0.25 mile), the slow speed buffer will extend to the edge of the marked navigation channel.) Vessel speeds between these buffers (including the marked navigation channel) are limited to not more than 40 km per hour (25 mph) throughout the year;

d. from a point 152 meters (500 feet) northeast of the Cape Coral Bridge downstream to a point 152 meters (500) feet southwest of the Cape Coral Bridge, a distance of approximately 0.3 km (0.2 mile), slow speed, channel included, year-round;

e. from a point 152 meters (500 feet) southwest of the Cape Coral Bridge to Channel Marker ''72,'' a distance of approximately 1.9 km (or 1.2 miles), slow speed year-round, shoreline buffers extending out to a distance of approximately 91 meters (300 feet) from the marked navigation channel. (In any location where the distance from the shoreline to within approximately 91 meters (300 feet) of the near side of the channel is less than ¼ mile, the slow speed buffer will extend to the edge of the marked navigation channel.) Vessel speeds between these buffers (including the marked navigation channel) are limited to not more than 40 km per hour (25 mph);

f. from Channel Marker ''72'' to Channel Marker ''82'' (in the vicinity of Redfish Point), for a distance of approximately 3.1 km (1.9 miles) in length, slow speed year-round shoreline-to-shoreline, including the marked navigation channel;

g. from Channel Marker ''82'' to Channel Marker ''93,'' a distance of approximately 3.9 km (2.4 miles), in length, slow speed year-round, shoreline buffers extending out to a distance of approximately 91 meters (300 feet) from the marked navigation channel. (In any location where the distance from the shoreline to within approximately 91 meters (300 feet) of the near side of the channel is less than 0.4 km (0.25 mile), the slow speed buffer will extend to the edge of the marked navigation channel.) Vessel speeds between these buffers, including the marked navigation channel, are limited to not more than 40 km per hour (25 mph);

h. from Channel Marker ''99'' to the Sanibel Causeway, slow speed year-round in San Carlos Bay within the following limits: a northern boundary described by the southern edge of the marked navigation channel, a line approximately 2.9 km (1.8 miles) in length; a southern boundary described by the Sanibel Causeway (approximately 1.9 km or 1.2 miles in length); a western boundary described by a line that connects the western end of the eastern most Sanibel Causeway island and extending northwest to the western shoreline of Merwin Key (approximately 3.1 km or 1.9 miles in length); the eastern boundary includes the western limit of the State-designated manatee protection area (68C–22.005) near Punta Rassa (approximately 2.9 km or 1.8 miles in length). Speeds are unrestricted in the channel and bay waters to the west of this area.

Manatee presence has been documented in this area through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program (Florida Fish and Wildlife Conservation Commission (FWCC, 2000). Per these studies, it is apparent the Caloosahatchee River is used throughout its length throughout the year by manatees. Primary winter-use

areas include the Florida Power and Light Company's Fort Myers Power Plant and Matlacha Pass, upstream and downstream (respectively) of the proposed refuge. The power plant is a major winter refuge for manatees. On January 6, 2001, 434 manatees were observed wintering in this region (FWCC: FMRI Aerial Survey Database, 2003).

In warmer months, manatees use the river as a travel corridor between upstream fresh water, foraging, and resting sites and downstream foraging areas. Manatees use the canal systems in Fort Myers and Cape Coral (between the Edison Bridge upstream and Shell Point) to rest and drink fresh water (Weigle, *et al.,* 2002). Manatees travel west of Shell Point to feed in the seagrass beds in San Carlos Bay and adjacent waterways.

An analysis of the telemetry data indicates that manatees appear to travel along shallow areas relatively close to shore and cross the river in narrow areas near Redfish Point and Shell Point. The Redfish and Shellfish Point sections of the river represent specific areas where manatees and boats overlap during their travels (Weigle *et al.,* 2002). The funneling of high speed watercraft and manatees through these narrow areas increases the likelihood of manatee-watercraft collisions in this area. Four watercraft-related manatee mortalities occurred in this area since January 2001 (FWCC: FMRI Manatee Mortality Database, 2003). Given this history, we designated Shell Island (the area around Shell Point) as a manatee refuge on November 8, 2002 (67 FR 68450).

The number of registered vessels in Lee County has increased by 25 percent over the past 5 years (from 36,255 vessels in 1998 to 45,413 in 2002) (FWCC, 2002). According to the FWCC's recent study of manatee mortality, manatee habitat, and boating activity in the Caloosahatchee River (FWCC, 2002), vessel traffic increases as the day progresses and doubles on the weekends compared to weekdays. The highest volumes of traffic were recorded in the spring and lowest volume in the winter. Highest vessel traffic densities occurred at Shell Point where the Caloosahatchee River and San Carlos Bay converge. Many of the boats in the lower Caloosahatchee River originate from the Cape Coral canal system and head toward the Gulf of Mexico.

Presently, there are State-designated, manatee speed zones throughout most of Lee County. Seasonal speed zones were established in the Caloosahatchee and Orange rivers around the Fort Myers power plant in 1979 (68C–22.005 FAC). Additional speed zones were established in the Caloosahatchee River downstream of the power plant in November 1989 (68C–22.005 FAC). Speed zones were established countywide in November 1999 (68C–22.005 FAC). The majority of these zones include shoreline buffers that provide protection in nearshore areas frequented by manatees. All zones were to be posted with the appropriate signage by July 2001 (68C–22.004 and 68C–22.005 FAC). Compliance with speed zones in the Caloosahatchee averaged only 57 percent (FWCC, 2002).

According to FWCC: FMRI's manatee mortality database, 764 manatee carcasses were recorded in Lee County from 1974 to 2002 (FWCC: FMRI Manatee Mortality Database, 2003). Of this total, 163 manatee deaths were watercraft-related (21 percent of the total number of deaths in Lee County). Over the past 13 years, the County's rate of increase in watercraft-related manatee mortality is higher than the rates of increase in watercraft-related mortality in southwest Florida and in watercraft-related deaths statewide. Areas east of the Edison Bridge and west of Shell Point are areas with recent increases in watercraft-related mortality; eight watercraft-related deaths have occurred east of the railroad trestle and seven have occurred in San Carlos Bay since 2000, including two watercraft-related deaths in San Carlos Bay since July 2001, when State speed zones were marked (FWCC: FMRI Manatee Mortality Database, 2003).

We believe the measures in this proposed regulation will improve manatee protection and are necessary to prevent the take of at least one manatee by harassment, injury, and/or mortality by extending coverage to currently unprotected areas used by manatees. The increased width of the shoreline buffers downstream of the Caloosahatchee Bridge will provide a greater margin of safety for manatees in this important manatee area.

Lower St. Johns River Manatee Refuge

We are proposing to establish a manatee refuge for the purpose of regulating waterborne vessel speeds in portions of the St. Johns River (in the Atlantic Region) and adjacent waters in Duval, Clay, and St. Johns Counties from Reddie Point upstream to the mouth of Peter's Branch (including Doctors Lake) in Clay County on the western shore, and to the southern shore of the mouth of Julington Creek in St. Johns County on the eastern shore. Except as provided in 50 CFR 17.105, watercraft will be required to proceed as follows:

a. From Reddie Point upstream to the Main Street Bridge, a distance of approximately 11.6 km (or 7.2 miles), slow speed, year-round, outside the navigation channel and not more than 40 km per hour (25 mph) in the channel (from Channel Marker ''81'' to the Main Street Bridge, the channel is defined as the line of sight extending west from Channel Markers ''81'' and ''82'' to the center span of the Main Street Bridge);

b. From the Main Street Bridge to the Fuller Warren Bridge, a distance of approximately 1.6 km (or 1.0 miles) slow speed, channel included, year-round;

c. Upstream of the Fuller Warren Bridge, a 305-meter (1,000-foot), slow speed, year-round, shoreline buffer to the south bank of the mouth of Peter's Branch in Clay County along the western shore (approximately 31.1 km or 19.3 miles); and in Doctors Lake in Clay County, slow speed, year-round, along a 274-meter (900-foot) shoreline buffer (approximately 20.8 km or 12.9 miles); and a 305-meter (1,000-foot), slow speed, year-round, shoreline buffer to the south bank of the mouth of Julington Creek in St. Johns County along the eastern shore (approximately 32.5 km or 20.2 miles) to a line north of a western extension of the Nature's Hammock Road North.

Manatee presence has been documented in this area through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program. Manatees occur throughout the proposed manatee protection area; the extent of use varies by habitat type and time of year (White *et al.,* 2002). Telemetry and aerial survey data indicate that peak numbers occur between March and June with heaviest use along the St. Johns River shorelines upstream of the Fuller Warren Bridge and along the southeast shoreline of Doctors Lake. The latter appears to correlate with the highest quality feeding habitat. Recent studies demonstrate little use during the December through February period (White *et al.,* 2002). While there were warm water discharges (*i.e.,* power plant and industrial effluents) located within the area of the proposed refuge, these man-made attractants no longer exist.

Vessel speeds are currently restricted throughout the proposed manatee protection area. In 1989, boating restricted areas were adopted by Duval County and established by the State of Florida for portions of the St. Johns River. These include a bank-to-bank, slow-speed zone between the Florida East Coast Railroad Bridge and the Main Street Bridge and a ''slow down/minimum wake when flashing'' zone

between the Main Street and Hart Bridges, activated during special events at the discretion of the Jacksonville Sheriff's Office (16N–24.016 Duval County Boating Restricted Areas). The first manatee protection areas were adopted in 1989 by Duval County and in 1994 by the State of Florida. These measures included a slow-speed, channel exempt zone from Reddie Point to the Main Street Bridge and a 91-meter (300-foot) shoreline buffer in portions of the St. Johns River upstream of the Fuller Warren Bridge. The manatee protection areas were reconfigured in 2001. Current protection measures consist of shoreline buffers that vary in width from 91 to 274 meters (300 to 900 feet). There are provisions downstream of the Fuller Warren Bridge that include a shoreline buffer of 152 meters (500 feet) or 61 meters (200 feet) from the end of docks, whichever is greater (an expansion of the 1989 91-meter (300-foot) buffer) (68C–22.027 FAC). We believe that the variable shoreline buffers are not adequately posted, which makes these areas hard to enforce and difficult for the boating public to understand and comply with these measures.

Overall, 270 manatee deaths were recorded in Duval County between 1974 and 2002 (FWCC: FMRI Manatee Mortality Database, 2003). Ninety-four of these deaths included deaths caused by watercraft collision. Fifty-one watercraft-related manatee deaths occurred within the proposed manatee protection area. Of these, 24 were recovered between Reddie Point and the Matthews Bridge, 10 were recovered between the Hart and Acosta bridges, 6 were recovered between the Fuller Warren and Buckman bridges, and 11 were recovered upstream of the Buckman Bridge. Most of these deaths have occurred in that portion of the river where manatees and boats are most constricted (FWCC, 2000). From 1994 to 2001, when the area was protected under the initial State rule, manatee deaths averaged two per year between Reddie Point and the Fuller Warren Bridge. In 2002, subsequent to adoption of the current rule, one watercraft-related death was documented in this area; a single watercraft-related death was documented upstream of the Fuller Warren Bridge in 2001.

We believe the proposed measures in this regulation will improve manatee protection and are necessary to prevent the taking of at least one manatee through harassment, injury, and/or mortality by extending coverage to currently unprotected areas used by manatees, by improving the ability of the public to understand and, thus, comply with the vessel operation restrictions, and by improving the ability of law enforcement personnel to enforce the restrictions. The proposed configuration should be less complicated, easier to post, and will reduce reliance on waterway users to judge distances from the shoreline or the ends of docks and piers. The increased width of the shoreline buffers upstream of the Fuller Warren Bridge will also provide a greater margin of safety for manatees between areas of high speed boating activity and highest manatee use. The proposal will not detract from operation of the boater safety zone downstream of the Main Street Bridge during special events.

Halifax and Tomoka Rivers Manatee Refuge

We are proposing to establish a manatee refuge in the Halifax River and associated waterbodies in Volusia County (in the Atlantic Region) for the purpose of regulating vessel speeds, from the Volusia/Flagler county line to New Smyrna Beach. Except as provided in 50 CFR 17.105, watercraft will be required to proceed as follows:

a. From the Volusia County/Flagler County line at Halifax Creek south to Channel Marker ''9'', a distance of approximately 11.3 km (7.0 miles) in length, slow speed, year-round outside the marked channel with not more than 40 km per hour (25 mph) in the channel;

b. From Channel Marker ''9'' to a point 152 meters (500 feet) north of the Granada Bridge (State Road 40) (including the Tomoka Basin), a distance of approximately 5.0 km (3.1 miles) in length, slow speed, year-round, 305-meter (1,000-foot) minimum buffers along shorelines with not more than 40 km per hour (25 mph) in areas between the buffers (and including the marked navigation channel);

c. In the Tomoka River, all waters upstream of the U.S. 1 bridge, a distance of approximately 7.2 km (4.5 miles) in length, slow speed, year-round, shoreline to shoreline; from the U.S. 1 bridge downstream to Latitude 29°19′00″, a distance of approximately 2.1 km (1.3 miles) in length, idle speed, year-round, shoreline to shoreline; from Latitude 29°19′00″ downstream to the confluence of Strickland Creek and the Tomoka River, and including Strickland, Thompson, and Dodson creeks, a combined distance of approximately 9.7 km (6 miles) in length, slow speed, year-round, shoreline to shoreline; from the confluence of Strickland Creek and the Tomoka River downstream to the mouth of the Tomoka River, a distance of approximately 1.4 km (0.9 miles) in length, idle speed, year-round, shoreline to shoreline;

d. From 152 meters (500 feet) north to 305 meters (1,000 feet) south of the Granada Bridge (State Road 40), a distance of approximately 0.5 km (0.3 miles) in length, slow speed, year-round, channel included;

e. From a point 305 meters (1,000 feet) south of the Granada Bridge (State Road 40) to a point 152 meters (500 feet) north of the Seabreeze Bridge, a distance of approximately 6.4 km (4.0 miles) in length, slow speed, year-round, 305-meter (1,000-foot) minimum buffers along shorelines with not more than 40 km per hour (25 mph) in areas between the buffers, and including the marked navigation channel;

f. From 152 meters (500 feet) north of the Seabreeze Bridge, to Channel Marker ''40,'' a distance of approximately 3.7 km (2.3 miles) in length, slow speed, year-round, channel included;

g. From Channel Marker ''40'' to a point 152 meters (500 feet) north of the Dunlawton Bridge, a distance of approximately 14.5 km (9 miles) in length, slow speed, year-round, 305-meter (1,000-foot) minimum buffers along shorelines with not more than 40 km per hour (25 mph) in areas between the buffers, and including the marked navigation channel;

h. From 152 meters (500 feet) north to 152 meters (500 feet) south of the Dunlawton Bridge, a distance of approximately 0.3 km (0.2 miles) in length, slow speed, year-round, channel included;

i. From 152 meters (500 feet) south of the Dunlawton Bridge to Ponce Inlet, a distance of approximately 10.5 km (6.5 miles) in length, slow speed, year-round outside of marked channels with not more than 40 km per hour (25 mph) in the channel; in Wilbur Bay, a distance of approximately 2.7 km (1.7 miles) in length, slow speed, year-round, shoreline to shoreline; along the western shore of the Halifax River, a distance of approximately 3.1 km (1.95 miles), slow speed, year-round, with not more than 40 km per hour (25 mph) in the marked channels; in Rose Bay, a distance of approximately 2.7 km (1.7 miles), slow speed, year-round, with not more than 40 km per hour (25 mph) in the marked channels; in all waters of Mill Creek, Tenmile Creek, and Dead End Creek, a combined distance of approximately 5.1 km (3.2 miles) in length, slow speed, year-round, shoreline to shoreline; in Turnbull Bay, a distance of approximately 3.9 km (2.4 miles), slow speed, year-round, with not more than 40 km per hour (25 mph) in the marked channels; in Spruce Creek, for a distance of approximately 5.6 km (3.5

miles), shoreline to shoreline, April 1 to August 31, slow speed, and from September 1 through March 31, not more than 40 km per hour (25 mph);

j. In waters north of Ponce Inlet, between Live Oak Point and Channel Marker ''2,'' a distance of approximately 2.9 km (1.8 miles), slow speed, year-round, shoreline to shoreline; in waters adjacent to Ponce Inlet, slow speed, year-round outside of the marked navigation channel and other marked access channels, with not more than 40 km per hour (25 mph) in the marked channels; in waters within Ponce Inlet, speeds are restricted to not more than 48 km per hour (30 mph);

k. In the Intracoastal Waterway from Redland Canal to the A1A Bridge (New Smyrna Beach), for a distance of approximately 5.3 km (3.3 miles) in length, slow speed, year-round, channel included.

Manatee presence has been documented in this area through aerial surveys, photo-identification studies, telemetry studies, and a carcass salvage program (FWCC, 2000). In general, manatees primarily use the Halifax River as a travel corridor (Deutsch, 1998, 2000); manatees use the downtown Daytona Beach area marinas as a source of drinking water and may calve here. The Tomoka River system is a known calving area, as evidenced by observations of calving manatees (McNerney, 1982) and aerial observations of significant numbers of cow and calf pairs (FWCC, 2000). Other activities observed throughout these systems include playing and/or engaging in sexual activity, feeding, and resting. Manatees are known to occur in these areas throughout the year (Deutsch, 1998, 2000), although they are more abundant during the warmer months of the year (FWCC, 2000).

Two hundred and eight manatee deaths occurred in Volusia County between 1974 and 2002 (FWCC: FMRI Manatee Mortality Database, 2003). This number includes 60 watercraft-related deaths. Of these, 30 watercraft-related deaths occurred in coastal Volusia County, (including 6 deaths in the Tomoka River system and 16 in the Halifax River). Twenty of these deaths have occurred over the past 10 years and seven of these over the past 2 years. Three of the watercraft-related deaths occurred in the Tomoka River in 2001. Carcass recovery sites for manatees known to have died as a result of watercraft collision include the lower Tomoka River and tributaries, the Halifax River in downtown Daytona Beach, areas to the south of Channel Marker ''40'' and the Dunlawton Bridge, and areas to the south of Ponce Inlet. Watercraft-related deaths occur between the months of March and October, with most occurring in May, June, and July.

The existing, State-designated manatee protection areas in coastal Volusia County were adopted by the State of Florida in 1994 (68C–22.012 FAC). These measures include slow and idle speed restrictions in the Tomoka River and associated waterbodies (except for in those areas upstream and downstream of Alligator Island), 91-meter (300-foot) shoreline buffers along most of the Halifax River (with maximum speeds varying between 40 and 48 km per hour (25 and 30 mph) outside of the buffers), slow speeds in the downtown Daytona Beach area (except for a watersports area to the south of Seabreeze Bridge), and a complex of varying restrictions between the Dunlawton Bridge and New Smyrna Beach. The existing State measures include 10 different types of restrictions that are used to restrict 30 discrete areas within the area of the proposed refuge. Fifteen watercraft-related manatee deaths were documented within the area of the proposed refuge since the protection areas were first adopted. Seven of these deaths occurred in 2001, and no watercraft-related deaths were known to have occurred in 2002.

We believe the proposed measures in this regulation will improve manatee protection and will prevent the take of at least one manatee through harassment, injury, and/or mortality by extending coverage to currently unprotected areas used by manatees, and by improving the ability of the public to understand and thus, comply, with protection measures through simplification of restrictions. The increased width of the shoreline buffers along the Halifax River will provide a greater margin of safety for manatees.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

1. The reasons why any of these areas should or should not be designated as manatee refuges, including data in support of these reasons;

2. Current or planned activities in the subject areas and their possible effects on manatees;

3. Any foreseeable economic or other impacts resulting from the proposed designations;

4. Potential adverse effects to the manatee associated with designating manatee protection areas for the species; and

5. Any actions that could be considered in lieu of, or in conjunction with, the proposed designations that would provide comparable or improved manatee protection.

Comments submitted electronically should be embedded in the body of the e-mail message itself or attached as a text-file (ASCII), and should not use special characters and encryption. Please also include ''Attn: RIN 1018–AJ06,'' your full name, and return address in your e-mail message. Comments submitted to *manatee@fws.gov* will receive an automated response confirming receipt of your message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Jacksonville Field Office (*see* **ADDRESSES** section).

Our practice is to make all comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold also from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such a review is to ensure that our decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the comment period, on the specific assumptions and conclusions regarding the proposed designation of these manatee protection areas.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking and will refine this proposal if and when appropriate. Accordingly, the final decision may differ from this proposal.

Public Hearings

We have scheduled three formal public hearings to receive oral comments on the proposed Federal manatee protection areas. Each hearing will run from 6:30 p.m. to 9 p.m. These hearings will afford the general public and interested parties an opportunity to hear information and make formal comments.

Formal public hearings will be held at the following locations:

Tuesday, May 13, in Ft. Myers, FL, at the Harborside Convention Hall, 1375 Monroe St.

Wednesday, May 14, in Daytona Beach, FL, at the Ocean Center, 101 N. Atlantic Ave.

Thursday, May 15, in Jacksonville, FL, at The University Center, University of North Florida campus, 4567 St. Johns Bluff Rd. South.

Persons needing reasonable accommodations in order to attend and participate in the public hearing should contact Chuck Underwood of the Jacksonville Field Office at 904/232–2580, extension 109, or via e-mail to *chuck_underwood@fws.gov,* as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing.

Written comments submitted during the comment period receive equal consideration with those comments presented at a public hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain unnecessary technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to the following address: *Execsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. The Office of Management and Budget makes the final determination under Executive Order 12866.

a. This proposed rule will not have an annual economic impact of over $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit analysis is not required. It is not expected that any significant economic impacts would result from the establishment of three manatee refuges (approximately 185 river km (115 river miles)) in five counties in the State of Florida.

The purpose of this rule would be to establish three manatee protection areas in Florida. The three areas are located in the Caloosahatchee River in Lee County, the St. Johns River in Duval, Clay and St. Johns Counties, and the Halifax River and Tomoka River in Volusia County. We are proposing to reduce the level of take of manatees by controlling certain human activity in these three areas. For the three manatee refuges, the areas would be year-round slow speed with certain site-specific exceptions, including 40 km per hour (25 mph) in most channels. Affected waterborne activities would include transiting, cruising, water skiing, fishing, and the use of all water vehicles. This rule could result in impacts on recreational boaters, commercial charter boats, and commercial fishermen, primarily in the form of restrictions on boat speeds in specific areas. We could experience increased administrative costs due to this proposed rule. In addition, the rule would be expected to produce economic benefits for some parties as a result of increased manatee protection and decreased boat speeds in the manatee refuge areas.

Regulatory impact analysis requires the comparison of expected costs and benefits of the proposed rule against a ''baseline,'' which typically reflects the regulatory requirements in existence prior to the rulemaking. For purposes of this analysis, the baseline assumes that we take no additional regulatory actions to protect the manatee. In fact, even with no further activity by us, an extensive system of State-designated manatee protection areas is already in place in each of the proposed manatee refuges. Thus, the proposed rule will have only an incremental effect. As discussed below, the net economic impact is not expected to be significant, but cannot be monetized given available information.

The economic impacts of this rule would be due to the changes in speed zone restrictions in the proposed manatee refuge areas. These speed zone changes are summarized below.

In Lee County, in the Caloosahatchee River area, the designation of the proposed Caloosahatchee-San Carlos Bay Manatee Refuge would result in the following changes:

- The portion of the channel upstream of the Edison Bridge (to Beautiful Island) would change from a 40 km per hour (25 mph) limit to seasonal slow speed (*i.e.,* 6.4 to 12.9 km per hour (4 to 8 mph) depending on hull design) from November 15 to March 31.
- The portion of the channel 152 meters (500 feet) east and west of the Edison/ Caloosahatchee Bridge complex would change from 40 km per hour (25 mph) to slow speed year-round.
- Between the Edison/Caloosahatchee Bridge complex and Cape Coral Bridge, shoreline buffers would change from slow speed within 0.4 km (0.25 mile) of shore to variable width, approximating within 91 meters (300 feet) of the marked navigation channel at varying locations. This change eliminates two unprotected shoreline areas along the north shore at and below the Edison/ Caloosahatchee Bridge complex.
- The shore to shore, channel-included buffer, 152 meters (500 feet) east and west of Cape Coral Bridge would change from 40 km per hour (25 mph) year-round to slow speed year-round.
- Between the Cape Coral Bridge and the Shell Island Manatee Refuge, the slow speed, shoreline buffer, year-round would change from 0.4 km (0.25 mile) in width to a variable width, generally approximating within 91 meters (300 feet) of the marked navigation channel at varying locations. The channel is included in portions of this area, between channel markers ''72'' and ''82.''
- The area to the west of the Shell Island Manatee Refuge, south of the Intracoastal Waterway, north of the Sanibel Causeway, to a line extending southwest from the southern tip of Merwin Key, would change from unregulated to slow speed year-round.

Speed zones have been in existence in the Caloosahatchee River since 1979. Since 1989, almost all of the near shore waters of the Caloosahatchee have been under a slow speed restriction year-round. The proposed Caloosahatchee River Manatee Refuge would affect approximately 35.4 km (22 river miles) overall. For the most part, the proposed regulation would widen existing slow speed areas by varying widths, dependent upon various factors. The greatest width of the affected area is approximately 2.4 km (1.5 miles), along the western shore north of Fourmile Point.

In Duval, Clay, and St. Johns Counties, in the St. Johns River and tributaries (including Doctor's Lake), the proposed designation of the Lower St. Johns River Manatee Refuge would result in the following changes from the current speed restrictions:

• In the downtown Jacksonville area, between Reddie Point and the Main Street Bridge, slow speed zones would be extended out to the channel from 91 to 274 meter (300- to 900-foot) shoreline buffers. The channel would be changed from unrestricted speed to a 40 km per hour (25 mph) limit.

• Between the Main Street Bridge and the Fuller Warren Bridge, slow speed shoreline buffers would change from variable width, slow speed (currently variable width along the western and northern shore and 183 meters (600 feet) on the eastern shore) to bank to bank, channel included, slow speed.

• South of the Fuller Warren Bridge to the southern bank of the mouth of Julington Creek (St. Johns County) on the eastern shore and to the mouth of Peter's Creek (Clay County) along the western shore, slow speed shoreline buffers would change from variable width (152 meters (500 feet) from shore or 61 meters (200 feet) from the end of docks) to 305 meters (1,000 feet), minimum. Boat speed remains unregulated outside of the buffer.

• In Doctors Lake and Inlet, slow speed shoreline buffers would be extended from variable width (152 meter (500 feet) minimum or 61 meters (200 feet) beyond docks), to a 274 meter (900-foot) minimum buffer along both shorelines.

Overall, the proposed St. Johns River Manatee Refuge would affect approximately 66 km (41 miles) of the St. Johns River and adjacent waters. In areas upstream of the Fuller Warren Bridge, newly protected areas would include extending existing slow speed areas out an additional 91 to 152 meters (300 to 500 feet). Downstream of the Fuller Warren Bridge, shoreline buffers would be extended from their variable widths to the channel. The greatest width of the shoreline buffer in this area is approximately 1.6 km (1 mile).

In Volusia County, for the Halifax and Tomoka Rivers Manatee Refuge including the Halifax River and tributaries (including Halifax Creek and the Tomoka River Complex), the Ponce Inlet area, and Indian River North, the proposed rule would result in the following changes from current speed restrictions:

• The channel in Halifax Creek would change to 40 km per hour (25 mph) from 48 km per hour (30 mph) (40 km per hour (25 mph) at night).

The two reaches of the Tomoka River upstream of U.S. Highway 1, where the speed restriction was 40 km per hour (25 mph) for part or all of the year, would change to a year-round slow speed restriction.

• In the Halifax River from the Tomoka River Basin and the southern extent of Halifax Creek to Seabreeze Bridge, the 91-meter (300-foot) slow speed shoreline buffer would be extended to 305 meters (1,000 feet), and the speed limit would change from 48 km per hour (30 mph) (40 km per hour (25 mph) at night) outside the buffer and marked navigation channel to 40 km per hour (25 mph).

• In the vicinity of the Granada Bridge, the current shore to shore, channel-included buffer, 152 meters (500 feet) north and 305 meters (1,000 feet) south of the SR 40 Bridge (Granada Bridge) would change from a 91-meter (300-foot) slow speed buffer (56 km per hour (35 mph) outside of buffer) to slow speed.

• The area between Seabreeze and Channel Marker ''40'' would change from slow speed channel included (excepting a watersports area south of Seabreeze Bridge) to slow speed channel included (including the watersports area south of Seabreeze Bridge).

• The shoreline buffers in the Halifax River from Channel Marker ''40'' to the Dunlawton Bridge would change from 91 meters (300 feet) to 305 meters (1,000 feet). The speed limit would change from 48 km per hour (30 mph) (40 km per hour (25 mph) at night) outside the buffer and marked navigation channel to 40 km per hour (25 mph).

• The shore to shore, channel-included buffer, 152 meters (500 feet) north and south of the Dunlawton Bridge would change from a 91-meter (300-foot) slow speed buffer 56 km per hour (35 mph outside of buffer) to slow speed. Waters between the Dunlawton Bridge and Ponce Inlet will change from variable zones with 48 km per hour (30 mph) within the channel to slow speed year-round outside the channel, 40 km per hour (25 mph) within the channel.

• The waters within Ponce Inlet and adjacent waterbodies would change from variable zones with 48 km per hour (30 mph) within the channel to year-round, slow speed shoreline to shoreline zones outside of marked channels (except for maintenance of the existing seasonal slow speed zone in the headwaters of Spruce Creek), including 40 km per hour (25 mph) within the marked channels. The existing 48 km per hour (30 mph) limit within Ponce Inlet would remain unchanged.

• The waters within the Indian River North, running north to south along the eastern shore of the river immediately south of Ponce Inlet would change from 48 km per hour (30 mph) to slow speed.

Overall, the Halifax River and Tomoka River Manatee Refuge would affect approximately 85 km (53 miles) of Volusia County's waterways. The majority of the changes would include extending the shoreline buffers within the Halifax River from 91 meters (300) to 305 meters (1,000 feet). Given the confusing nature of the existing State restrictions in this area, the overall impact of the proposed changes would be to make the speed restrictions more consistent and clear.

In addition to speed zone changes, the proposed rule would no longer allow for the speed zone exemption process in place under State regulations. Currently, Florida's Manatee Sanctuary Act allows the State to provide exemptions from speed zone requirements for certain activities, including fishing and events such as high-speed boat races. Under State law, commercial fishermen and professional fishing guides can apply for permits granting exemption from speed zone requirements in certain counties. However, speed zone exemptions have not been authorized in most of the areas affected by the proposed rule. Speed zone exemption permits for commercial fishing and professional fishing guides are not available for affected areas in Duval County, coastal Volusia County, and in the Caloosahatchee River (except along a small portion of San Carlos Bay/Matlacha Pass, at the mouth of the river) (FWCC, 2003g). Exceptions to these proposed Federal speed zones would require a formal rulemaking (including publishing the proposed rule in the **Federal Register**, public review, and comment) prior to the Service making a final decision. Based on available information, there have been very few events permitted in the affected areas in the past 5 years (Service, 2003c; Lee County, 2003). Therefore, the lack of a process for speed zone exemptions is not likely to have much impact.

In order to gauge the economic effect of this proposed rule, both benefits and costs must be considered. Potential economic benefits related to this rule would include increased manatee protection and tourism related to manatee viewing, increased property values, increased boater safety, increased fisheries health, and decreased seawall maintenance costs. Potential economic costs are related to increased administrative activities related to implementing the rule and affected waterborne activities. Economic costs will be measured primarily by the number of recreationists who use alternative sites for their activity or have a reduced quality of the waterborne activity experience at the designated sites. In addition, there may be some impact on commercial fishing because of the need to maintain slower speeds in some areas. While the State of Florida has 19,312 km (12,000 miles) of rivers and 1.21 million hectares (3 million acres) of lakes, this rule would affect less than 185 km (115 river miles). The extension of slower speed zones as proposed in this rule would not be expected to affect enough waterborne activity to create a significant economic impact (*i.e.,* an annual impact of over $100 million).

Economic Benefits

We believe that the designation of the three manatee refuges proposed in this rule would increase the level of manatee protection in these areas. Two studies have examined the public's willingness to pay for protection of the manatee (Bendle and Bell, 1995; Fishkind & Associates, 1993). Based on these contingent valuation studies, it is believed that there is large public support for manatee protection regulations such as this proposed rule.

It is difficult to apply the results of these studies to this proposed rule, because neither study measures an impact similar to that associated with this rulemaking. For example, the Fishkind study was designed to gauge the economic impact of the Florida Manatee Sanctuary Act. First, the estimates of economic benefit are predicated on a different baseline in terms of both the manatee population being protected at that time versus now and the regulatory conditions in existence, such as current manatee protection areas. Second, the Fishkind study is not clear about the type and extent of manatee protection. The study does not clearly state if protection refers simply to the establishment of speed zones, or whether implementation and enforcement are included. Nor does the study clearly state whether residents are providing a willingness to pay for manatee protection for a specific region or for the entire manatee population in the State of Florida. While neither of these studies are specific enough to apply to this proposed rule, they provide an indication that the public holds substantial value for the protection of the manatee.

Another potential economic benefit is increased tourism that could result from an increase in manatee protection. To the extent that some portion of Florida's tourism is due to the existence of the manatee in Florida waters, the protection provided by this rule may result in an economic benefit to the tourism industry. We are not able to make an estimate of this benefit given available information.

Florida waterfront property owners may benefit from manatee protection areas such as the three proposed manatee refuges. Bell and McLean (1997) showed that speed zone enforcement may provide an economic benefit to adjacent landowners. Bell and McLean studied the impact of posted manatee speed zones on the property values of waterfront homes in Fort Lauderdale, Broward County, Florida. The authors found a strong relationship between property values and slow speed zones, and found evidence that slow speed zones may have a positive impact on home sale price. Slow speed zones were found to correlate with as much as a 15 to 20 percent increase in sale price, although this result has not been corroborated by other studies. The authors speculated that speed zones may increase property values by reducing noise and fast traffic, as well as making it easier for boats to enter and leave primary waterways. In each of the three manatee refuge areas there are stretches of river where residential property owners may experience these benefits.

In addition, due to reductions in boat wake associated with speed zones, property owners may experience some economic benefits related to decreased expenditures for maintenance and repair of shoreline stabilization structures (*i.e.,* seawalls along the water's edge). Speed reductions may also result in increased boater safety. Another potential benefit of slower speeds is that fisheries in these areas may be more productive because of less disturbance. These types of benefits cannot be quantified with available information.

Based on previous studies, we believe that this rule would produce some economic benefits. However, given the lack of information available for estimating these benefits, the magnitude of these benefits is unknown.

Economic Costs

The economic impact of the designation of three manatee protection areas would result from the fact that in certain areas, boats will be required to go slower than under current conditions. As discussed above, an extensive system of manatee speed zones promulgated by the State exists in each of the areas covered under this rule. The rule would add to these areas by extending shoreline buffers and reducing speed limits slightly in some channels. Some impacts may be felt by recreationists who would have to use alternative sites for their activity or who would have a reduced quality of the waterborne activity experience at the designated sites because of the proposed rule. For example, the extra time required for anglers to reach fishing grounds could reduce onsite fishing time and could result in lower consumer surplus for the trip. Other impacts of the rule may be felt by commercial charter boat outfits, commercial fishermen, and agencies that perform administrative activities related to implementing the rule.

Affected Recreational Activities

For some boating recreationists, the inconvenience and extra time required to cross additional slow speed areas may reduce the quality of the waterborne activity, or cause them to forgo the activity. This will manifest in a loss of consumer surplus to these recreationists. In addition, to the extent that recreationists forgo recreational activities, this could result in some regional economic impact. In this section, we examine the waterborne activities taking place in each area and the extent to which they may be affected by designation of the proposed manatee refuge. The resulting potential economic impacts are discussed below for each manatee refuge area. These impacts cannot be quantified because the number of recreationists and anglers using the designated sites is not known.

Caloosahatechee River Area: In the proposed Caloosahatchee River Manatee Refuge, affected waterborne activities include transiting, fishing, sailing, waterskiing, and personal watercraft use. The number of registered recreational vessels in Lee County in 2002 was 45,413 (Division of Highway Safety and Motor Vehicles, 2003). Based on aerial surveys and boat traffic surveys conducted in 1997 and 1998, the highest number of vessels observed on the Caloosahatchee River sites on a given day was 477 vessels. Based on

aerial, boat traffic, and boater compliance surveys of the Caloosahatchee River, over 60 percent of vessels observed were small powerboats, while less than seven percent were personal watercraft (*e.g.,* jet skis) (Gorzelany, 1998). Waterskiing and personal watercraft use in the Caloosahatchee primarily occurs between the Caloosahatchee and Cape Coral Bridges (Lee County, 2003). Shell Point and Redfish Point are also popular access areas where personal watercraft use may be affected (FWCC, 2002). The Caloosahatchee River area is also a popular location for recreational guiding for snook and redfish fishing, particularly at night (FWCC, 2003c). The extra time required for anglers to reach fishing grounds could reduce onsite fishing time and could result in lower consumer surplus for the trip. The number of anglers on the Caloosahatchee, and their origins and destinations are currently unknown. One study indicates that approximately 70 percent of the boat traffic on the Caloosahatchee originates from the Cape Coral Canal system (FWCC, 2002). Another boat traffic survey indicated that the majority of boat traffic exits the Caloosahatchee River in the morning and enters the river in the afternoon. The majority of vessels leaving the Caloosahatchee River travel south toward the Sanibel Causeway and Gulf of Mexico. Approximately 94 percent of vessel traffic on the Caloosahatchee was reported as ''traveling,'' while less than one percent was engaged in ''skiing'' based on boater compliance observations at 10 sites along the Caloosahatchee River (Gorzelany, 1998).

Based on these trends, it appears that most recreational waterborne activity on the Caloosahatchee River will be affected by the proposed manatee refuge. While the proposed designation will cause an increase in travel time, it is unlikely that the increase will be great enough to cause a significant economic dislocation. Much of the boat traffic on the Caloosahatchee likely originates from the Cape Coral Canal system (FWCC, 2002), and would experience added travel time of approximately 25 minutes (from Cape Coral Bridge to Sanibel Causeway) for a trip that currently lasts 50 minutes. At most, a boat traveling from Beautiful Island to the Sanibel Causeway will experience added travel time of 40 minutes to 1 and a half hours (depending on time of the year) due to the proposed designation; currently this trip would take approximately 1 and one-quarter hours.

The small percentage of recreational boaters using the river for waterskiing or personal watercraft use will choose either to go to alternative sites such as San Carlos Bay or Pine Island Sound or to forgo the activity. The amount of added travel time to get to an alternative site will depend on the origin of the trip and whether the trip originates from a dock or a ramp. For example, ramp users may choose to trailer their boats to a different location, closer to the alternative site and may experience little added travel time. For dock users, under the proposed rule, travel time on the Caloosahatchee from the Cape Coral Bridge to the Sanibel Causeway could be approximately 1 and one-quarter hours. The amount of added travel time and the expected quality of the experience will likely influence the recreationists' choice of whether to travel to an alternative site or forgo the activity. The number of recreationists who will use alternative sites or forgo recreational activities is unknown, but it is not expected to be a large enough number to result in a significant economic impact.

St. Johns River Area: In the proposed St. Johns River Manatee Refuge, the affected recreational waterborne activities are likely to include cruising, fishing, and waterskiing. Based on a survey of boat ramp users in Duval County, these three activities were the most popular reasons cited as the primary purpose of the trip. Recreational fishing was cited as the primary purpose by 62 percent of those surveyed, while cruising was cited by 19 percent and waterskiing was cited by 7 percent (Jacksonville University, 1999). The total number of recreational vessels registered in Duval, Clay, and St. Johns counties in 2002 is 57,388 (Division of Highway Safety and Motor Vehicles, 2003). The portion of these vessels using the St. Johns River area covered by the proposed designation is unknown. Recreational fishing for bass, redfish, sea trout, croaker, and flounder, as well as shrimping with nets, are popular activities in the near shore waters of the St. Johns River south of the Fuller Warren Bridge. Because the submerged aquatic vegetation near shore provides food, and docks provide protection for the fish, this is where the fishing activity primarily takes place (FWCC, 2003c). Because recreational fishing is likely occurring primarily in existing slow speed areas, the extension of slow speed zones out 152 meters (500 feet) further will not have a significant effect. Recreationists engaging in fishing or cruising are unlikely to experience much impact due to the proposed regulation. The expanded/extended buffers are not expected to increase travel times by any more than about 8 minutes (one way). The proposed designation will cause some inconvenience in travel time, but alternative sites within the proximity of proposed designated areas are available for all waterborne activities. Because the designated areas are part of larger waterbodies where large areas remain unrestricted, the impact of the proposed designation on recreational waterborne activities in the St. Johns River and adjacent waterbodies will be limited. Recreationists engaging in cruising, fishing, and waterskiing may experience some inconvenience by having to go slower or use un-designated areas; however, the extension of slow speed zones is not likely to result in a significant economic impact.

Halifax River and Tomoka River Area: In the proposed Halifax River and Tomoka River Manatee Refuge, affected waterborne activities include fishing, traveling, cruising, waterskiing, and personal watercraft use. Based on a boating activity study that relied on a variety of survey mechanisms, the two most popular activities in the Intracoastal Waterway in Volusia County were recreational fishing and traveling (Volusia County Environmental Management Services, 1996). Recreationists engaging in fishing or traveling are unlikely to experience much impact due to the proposed regulation. Rather, these boaters will be able to utilize the channel for transiting the river or moving to the next fishing ground. The two most popular destinations are the Mosquito Lagoon and the Ponce Inlet area (Volusia County Environmental Management, 2002). Recreationists engaging in fishing or traveling may experience some inconvenience by having to go slower or use marked channels; however, small changes in boater behavior due to the extension of slow speed zones should not result in a significant economic impact.

For the Tomoka River, the primary activity that will be affected by the designation is waterskiing. A ski club uses the river in an area currently designated at 40 km per hour (25 mph). Under the proposed designation, this will be changed to slow speed. The nearest alternative site where these recreationists can water ski is at least 11 to 16 km (7 to 10 miles) away (Volusia County, 2003). It is estimated that the on-the-water travel time for the skiers to reach the nearest alternative site could be up to 2½ hours. The proposed regulation may cause some water skiers to forgo this activity, or may reduce the quality of their experience. The number of skiers that may be affected and the number of trips per year are not

currently known. With additional information on the number of affected individuals, we could estimate the impact of lost or diminished skiing days given the value of a waterskiing day published in the literature. One study by Bergstrom and Cordell (1991) suggested the lost surplus value may be $38/day (2002$) for a day of waterskiing. They applied a multi-community, multi-site travel cost model to estimate demand equations for 37 outdoor recreational activities and trip values, including water skiing. The analysis was based on nationwide data from the Public Area Recreational Visitors Study collected between 1985 and 1987 and several secondary sources.

In the Halifax River, one of the activities that may be affected by the proposed designation is personal watercraft (PWC) use. These activities are primarily taking place in the recreational zones located south of the Seabreeze Bridge and north of the Dunlawton Bridge. PWC likely represent a very small portion of vessels on the Intracoastal Waterway in Volusia County. Based on a boating activity study from 1994 to 1995, less than two percent of observations in the Intracoastal Waterway area were PWCs (based on 12,000 observations during aerial, boat ramp and shoreline, and mailing surveys) (Volusia County Environmental Management Services, 1996). The number of pleasure PWC in Volusia County in 2000 was 2,432, with 204 rental PWC (FWCC, 2000a). The nearest alternative site for using personal watercraft is near the Dunlawton Bridge, where an area remains unrestricted between the channel and the shoreline buffer, or in the Ponce Inlet vicinity, approximately 20 km (12.5 miles) downriver. Under the proposed rule, travel time from the Daytona Beach watersports area (south of Seabreeze Bridge) to the Ponce Inlet area would be approximately one hour. Added travel time to reach alternative sites would depend on the origin of the trip, which is currently unknown. The proposed regulation may cause some personal watercraft users to forgo this activity, or may reduce the quality of their experience. The number of PWC users that may be affected and the number of trips per year are not currently known. To the extent that these recreationists choose to forgo the activity, this could also impact local businesses that rent personal watercraft.

Currently, not enough data are available to estimate the loss in consumer surplus that water skiers in the Tomoka River or PWC users in the Halifax River will experience. While some may use substitute sites, others may forgo the activity. The economic impact associated with these changes on demand for goods and services is not known. However, given the number of recreationists potentially affected, and the fact that alternative sites are available, it is not expected to amount to a significant economic impact.

Affected Commercial Charter Boat Activities

Various types of charter boats use the waterways in the affected counties, primarily for fishing and nature tours. The number of charter boats using the Caloosahatchee, Halifax, and St. Johns Rivers, and their origins and destinations are currently unknown. For nature tours, the extension of slow speed zones is unlikely to cause a significant impact, because they are likely traveling at slow speeds. The extra time required for commercial charter boats to reach fishing grounds could reduce onsite fishing time and could result in fewer trips. The fishing activity is likely occurring at a slow speed and will not be affected. In the Caloosahatchee and St. Johns Rivers, fishing charters may experience some impact from the extension of slow speed zones, depending on their origins and destinations. Added travel time may affect the length of a trip, which could result in fewer trips overall, creating an economic impact. In the Halifax River, it is likely that most fishing charters are heading offshore or to the Mosquito Lagoon, and will experience little impact from the proposed rule (Volusia County, 2003).

Affected Commercial Fishing Activities

Several commercial fisheries may experience some impact due to the proposed regulation. Specifically, the blue crab fishery and, to a lesser extent, mullet fishing, along the Caloosahatchee River; the crab and shrimp industries in the St. Johns River; and the crab and mullet fishing industries in Volusia County may experience some economic impact. To the extent that the proposed regulation establishes additional speed zones in commercial fishing areas, this may increase the time spent on the fishing activity, affecting the efficiency of commercial fishing. While limited data are available to address the size of the commercial fishing industry in the proposed manatee refuges, county-level data generally provide an upper bound estimate of the size of the industry and potential economic impact. This section first provides some background on the blue crab industry in Florida, and then addresses the impact of the proposed rule on the commercial fishing industry for each manatee refuge area.

One industry in particular that may be affected by the proposed rule is the blue crab fishery, which represents a sizeable industry in the State of Florida. Based on a study done for the Florida Fish and Wildlife Commission, Division of Marine Fisheries (Murphy *et al.,* 2001), between 1986 and 2000 the average annual catch statewide was 6.4 million kilograms (14.1 million pounds) (39.7 million crabs). However, year to year fluctuation is significant, including highs of 8.2 million kilograms (18 million pounds) statewide in 1987 and 1996 and a low of 2.5 million kilograms (5.5 million pounds) statewide in 1991. In the last 3 years, blue crab landings have been depressed throughout the East Coast and Gulf of Mexico, though specific reasons for this are unknown at this time (FWCC, 2003d). Landings in 2001 were approximately 3.4 million kilograms (7.4 million pounds) statewide. Based on a 2001 weighted average price of $1.06 per 0.5 kilograms (pound) of crab, this represents just under $8 million (FWCC: FMRI, 2003). Data from 2001 on marine fisheries landings from FWCC: FMRI is preliminary and subject to revision.

Caloosahatchee River Area: Lee County, where the proposed Caloosahatchee River Manatee Refuge is located, had 157 licensed blue crab boat operators in 2001 (FWCC: FMRI, 2003). Crabbing in the Caloosahatchee is likely to be impacted by the extension of slow speed areas because crab boats may have to travel at slower speeds between crab pots, thereby potentially reducing the number of crabs landed on a daily basis. For example, to the extent that crab boat operators frequently change fish pot locations in search of optimal fishing grounds, this activity could be affected by extension of existing slow speed zones (FWCC, 2003a). The extension of slow speed zones will likely cause fishermen to have to travel out to the channel and back rather than travel in direct lines across and throughout the river. The affected crabbing area in the Caloosahatchee River is approximately 27 km (17 miles) long (from the Edison Bridge to Merwin Key in San Carlos Bay) and just under 2.4 km (1.5 miles) wide at its widest point.

In 2001, blue crab landings in Lee County were 175,805 kilograms (387,585 pounds), and the weighted average price was $1.06 per 0.5 kilograms (pound) for blue crab statewide. The entire value of the blue crab fishery in Lee County is estimated to be $411,167 (FWCC: FMRI, 2003). Only a small portion of this value is likely to be affected, as the activity will still occur but with some changes due

to additional speed zones. In addition, this figure includes landings for all of Lee County. The number of crab boats operating and the amount of blue crab landings occurring in areas that would be newly designated speed zones under this proposed rule is unknown. Crabbing likely occurs in parts of Lee County outside of the Caloosahatchee River, including Charlotte Harbor, San Carlos Bay, Estero Bay, etc. (FWCC, 2003e). The county-wide figures provide an upper bound estimate of the economic impact on this fishery; this would assume that the proposed regulation closed down the entire fishery, which is not the case.

In Lee County, commercial mullet fishing is also occurring in the proposed Caloosahatchee River Manatee Refuge area. These fishermen may also be impacted by slower commuting times from boat launch (*e.g.,* dock or ramp) to fishing grounds. However, fishing activity associated with mullet fishing generally includes slow net casting within a relatively small geographic area (FWCC, 2003e). Therefore, speed limits are less likely to affect mullet fishing, relative to the blue crab fishery. In 2001, based on mullet landings in Lee County of 997,903 kilograms (2.2 million pounds), and the weighted average price of $0.66 for mullet statewide, the value of the mullet fishery in Lee County is estimated to be $1.4 million (FWCC: FMRI, 2003). Only a small portion of these values is likely to be affected, as the activity will still occur but with some changes due to additional speed zones. In addition, this figure includes landings for all of Lee County. The amount of mullet fishing occurring in areas that would be newly designated speed zones under this proposed rule is unknown.

St. Johns River Area: In the St. Johns River Manatee Refuge, most of which is in Duval County, current commercial fishing can be divided into activity south and north of the Fuller Warren Bridge. Commercial fishing north (*i.e.,* downstream) of the bridge consists primarily of shrimping, while commercial fishing activity south of the bridge consists primarily of blue crab fishing. Commercial net shrimping is not allowed south of the Fuller Warren Bridge (Jacksonville Port Authority, 2003).

Commercial blue crab fishing occurs both north and south of the Fuller Warren Bridge. Crab fishing is likely to be impacted by the proposed manatee refuge. The extension of the shoreline buffer zone may impact fishing operations because the majority of crabbing activity takes place in the submerged aquatic vegetation, which is located along the immediate shoreline (FWCC, 2003b). Therefore, when crabbers enter and exit these shoreline areas, they will be required to travel slowly (*i.e.,* 6.4 to 12.9 km per hour (4 to 8 mph)) for approximately 152 additional meters (500 feet) (incremental to the existing variable width shoreline buffer). In addition, travel between pots within the buffer will also be slowed, thereby potentially reducing the number of crabs landed on a daily basis. However, once outside the shoreline buffer, boats can travel up to 40 km per hour (25 mph) in areas downstream of the Fuller Warren Bridge, and at unrestricted speeds upstream.

There were 61 commercial licences for blue crab issued in Duval County in 2001 (FWCC: FMRI, 2003). In 2001, based on blue crab landings in Duval County of 506,401 pounds, and the weighted average price of $1.06 per 0.5 kilogram (pound) for blue crab statewide, the value of the blue crab fishery in Duval County is estimated to be $537,213 (FWCC: FMRI, 2003). Only a small portion of this value is likely to be affected, as the activity will still occur but with some changes due to additional speed zones. In addition, this figure includes landings for all of Duval County. The number of crab boats operating and the amount of blue crab landings occurring in areas that would be newly designated speed zones under this proposed rule is unknown. The county-wide figures provide an upper bound estimate of the economic impact on this fishery; this would assume that the proposed regulation closed down the entire fishery, which is not the case.

Commercial shrimping north of the Fuller Warren Bridge in the St. Johns River is likely to receive minimal impact due to the extension of year-round slow speed areas outside of the marked channels. Impacts to this industry are likely to be minimal because shrimp boats tend to trawl at a slow speed. Nonetheless, shrimp boats will still be required to travel at slower speeds between fishing grounds, thereby potentially increasing the time it takes to access fishing areas and reducing shrimp landed on a daily basis (Jacksonville Port Authority, 2003).

The majority of commercial shrimping activity in the St. Johns River occurs between the mouth of Trout River and the Fuller Warren Bridge, which closely approximates the proposed northern limit of the St. Johns Manatee Refuge (Jacksonville Port Authority, 2003). Commercial shrimping activity in Duval County also occurs along the Nassau River, which represents the border between Duval and Nassau County, and, to a lesser extent, along the Intracoastal Waterway (FWCC, 2003f). Shrimp landings in Clay County are negligible, based on the fact that commercial shrimping is not allowed upriver of the Fuller Warren Bridge. Shrimp landings in St. Johns County most likely represent activity along the Intracoastal Waterway and not in the St. Johns River area. While there is some limited commercial bait shrimping activity along this stretch of river, the vast majority of commercial shrimping in this area is related to the harvest of shrimp for food production (FWCC, 2003e). In 2001, based on shrimp landings in Duval County of 997,903 kilograms (2.2 million pounds), and the weighted average price of $2.33 for shrimp statewide, the value of the shrimp fishery in Duval County is estimated to be about $5.2 million (FWCC: FMRI, 2003). Less than one percent of commercial shrimp landings in 2001 in Duval County are related to bait shrimp (FWCC: FMRI, 2003); therefore, these figures represent only food shrimp harvest. Only a small portion of this value is likely to be affected, as the activity will still occur but with some changes due to additional speed zones. In addition, this figure includes landings for all of Duval County. The number of shrimp boats operating and the amount of shrimp landings occurring in areas that would be newly designated speed zones under this proposed rule is unknown. The county-wide figures provide an upper bound estimate of the economic impact on this fishery; this would assume that the proposed regulation closed down the entire fishery, which is not the case.

Halifax River and Tomoka River Area: In Volusia County, the proposed Halifax River and Tomoka River Manatee Refuge includes a variety of waterways, including the Tomoka River, the Tomoka Basin, Halifax Creek, the Halifax River, Ponce de Leon Inlet, and Spruce Creek. In these areas, it is likely that blue crab and mullet fishing activities will be impacted by the proposed expanded speed zones. As discussed above for Lee County, crab boats will have to travel at slower speeds in some locations between crab pots, thereby potentially reducing the number of crabs landed on a daily basis. The speed limits may also slow transit speeds between fishing grounds for both crab and mullet fishing boats. As noted above, mullet fishing activity generally includes slow net casting and, therefore, such activities are unlikely to receive much impact. Note also that along the Halifax River, a channel is available for boats to travel up to 25 mph. The

proposed manatee refuge area along the Halifax River stretches from the Flagler-Volusia County line in Halifax Creek past the Ponce de Leon Inlet to the South Causeway Bridge (New Smyrna Beach), a distance of approximately 43.5 km (27 miles). The waterbody ranges from 0.5 km (0.3 miles) to just over 1.6 km (1 mile) in width. The manatee refuge also includes tributaries and river basins of varying length and width. The number of fishing boats operating and the amount of blue crab and mullet landings occurring in areas that will be newly designated speed zones under this proposed rule is unknown.

There were 128 licensed blue crab operators in Volusia County in 2001. In 2001, based on blue crab landings in Volusia County of 230,577 kilograms (508,337 pounds), and the weighted average price of $1.06 for blue crab statewide, the value of the blue crab fishery in Volusia County is estimated to be $539,266 (FWCC: FMRI, 2003). In 2001, based on mullet landings in Volusia County of 188,675 kilograms (415,958 pounds), and the weighted average price of $0.66 for mullet statewide, the value of the mullet fishery in Volusia County is estimated to be $272,591 (FWCC: FMRI, 2003). Only a small portion of these values is likely to be affected, as the crabbing and fishing activities will still occur but with some changes due to additional speed zones. In addition, crabbing and mullet fishing occur in parts of Volusia County outside of the proposed manatee refuge area, including Mosquito Lagoon, St. Johns River, Lake George, etc. (Ponce Inlet Authority, 2003). The county-wide figures provide an upper bound estimate of the economic impact on these fisheries; this would assume that the proposed regulation closed down the entire fishery, which is not the case.

Given available data, the impact on the commercial fishing industry of extending slow speed zones in portions of the Caloosahatchee, St. Johns, and Halifax Rivers cannot be quantified. The proposed designation will likely affect commercial fishermen by way of added travel time, which may result in an economic impact. However, because the proposed manatee refuge designations will not prohibit any commercial fishing activity, and because there is a channel available for boats to travel up to 40 km per hour (25 mph) in most affected areas, it is unlikely that the proposed rule will result in a significant economic impact on the commercial fishing industry. It is important to note that in 2001, the total annual value of potentially affected fisheries is approximately $8.3 million (2001$); this figure represents the economic impact on commercial fisheries in these counties in the unlikely event that the fisheries would be entirely shut down, which is not the situation associated with this rule.

Agency Administrative Costs

The cost of implementing the rule has been estimated based on historical expenditures by the Service for manatee refuges and sanctuaries established previously. The Service expects to spend approximately $600,000 (2002$) for posting and signing 15 previously designated manatee protection areas. This represents the amount that the Service will pay contractors for creation and installation of manatee signs. While the number and location of signs needed to post the proposed manatee refuges is not known, the cost of manufacturing and posting signs to delineate the manatee refuges proposed in this rule are not expected to exceed the amount being spent to post previously designated manatee protection areas (Service, 2003a). In addition, the Service anticipates that it will spend $1.7 million (2002$) for enforcement of newly designated manatee refuges annually. These costs are overstated because they represent the cost of enforcing 13 new manatee refuges and sanctuaries designated earlier on November 8, 2002, as well as the 3 manatee refuges included in this rule. The costs of enforcement include hiring and training five new law enforcement agents and two special agents, and the associated training, equipment, upkeep and clerical support (Service, 2003b). Finally, there may be some costs for education and outreach to inform the public about these new manatee refuge areas.

While the State of Florida has 19,312 km (12,000 miles) of rivers and 1.21 hectares (3 million acres) of lakes, the proposed rule will affect less than 185 kilometers (115 river miles). The speed restrictions on approximately 185 km (115 miles) proposed as manatee refuges in this rule will cause inconvenience due to added travel time for recreationists and commercial charter boats and fishermen. As a result, the rule will impact the quality of waterborne activity experiences for some recreationists, and may lead some recreationists to forgo the activity. The extension of existing State speed zones for 185 km (115 miles) is not expected to affect waterborne activity to the extent that it would have a significant economic impact. The proposed rule does not prohibit recreationists from participating in any activities. Alternative sites are available for all waterborne activities that may be affected by this rule. The distance that recreationists may have to travel to reach an un-designated area varies. Waterskiers in the Tomoka River will likely experience the greatest inconvenience in terms of added travel time, as travel to the nearest alternative site would take approximately 2½ hours. The regulation will likely impact some portion of the charter boat and commercial fishing industries in these areas as well. The inconvenience of having to go somewhat slower outside of marked channels may result in changes to commercial and recreational behavior, resulting in some regional economic impacts. Given available information, the net economic impact of designating the three manatee refuges is not expected to be significant (*i.e.,* an annual economic impact of over $100 million). While the level of economic benefits that may be attributable to the manatee refuges is unknown, these benefits would cause a reduction in the economic impact of the rule.

b. The precedent to establish manatee protection areas has been established primarily by State and local governments in Florida. We recognize the important role of State and local partners and continue to support and encourage State and local measures to improve manatee protection. We are proposing to designate areas where existing State and local designations are considered minimal protection and where existing designations are confusing and/or unenforceable.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Minimal restriction to existing human uses of the proposed sites would result from this rule, but the restriction is believed to enhance manatee viewing opportunities. No entitlements, grants, user fees, loan programs or the rights and obligations their recipients are expected to occur.

d. This rule will not raise novel legal or policy issues. We have previously established other manatee protection areas.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions) (5 U.S.C. 601 *et seq.*). However, no

regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' *See* 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. This section presents a screening level analysis of the potential effects of the proposed designation of three manatee protection areas on small entities. We certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial/final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

In order to determine whether the rule will have a significant economic effect on a substantial number of small entities, we utilize available information on the industries most likely to be affected by the proposed designation of three manatee refuges. Currently no information is available on the specific number of small entities that are potentially affected. This rule will add travel time to boating recreationists and commercial activities resulting from extension of existing speed zones. Because the only restrictions on recreational activity result from added travel time, and alternative sites are available for all waterborne activities, we believe that the economic effect on small entities resulting from changes in recreational use patterns will not be significant. The economic effects on small business resulting from this rule are likely to be indirect effects related to reduced demand for goods and services if recreationists choose to reduce their level of participation in waterborne activities. Similarly, because the only restrictions on commercial activity result from the inconvenience of added travel time, and boats can continue to travel up to 40 km per hour (25 mph) in marked channels in most areas, we believe that any economic effect on small commercial fishing or charter boat entities will not be significant. Also, the indirect economic impact on small businesses that may result from reduced demand for goods and services from commercial entities is likely to be insignificant. Based on an analysis of public comment, further refinement of the impact on small entities may be possible.

In order to determine whether small entities will be affected significantly, we examined county-level earnings data. We compared personal income data for the counties potentially affected to statewide averages to provide some background information about each county's economic situation. Because specific information about earnings of small entities potentially affected (both the total level and the amount of earnings potentially affected by the rule) is not available, we examined county-level earnings for industries potentially impacted by the proposed designation. We further analyzed county business patterns data to examine the numbers of establishments in the affected counties that have a small number of employees. As stated above, economic impacts are believed to be minor and mostly will not interfere with the existing operation of small businesses in the affected counties.

Selected economic characteristics of the five affected counties are shown in Table 1. As demonstrated in the table, all counties except St. Johns have a lower per capita income than the State average. Growth in total personal income is slower than the statewide average in Duval, Lee, and Volusia counties. St. Johns County greatly exceeds the statewide average in growth in both total and per capita personal income. For all five counties, the services sector represents the industry with the greatest earnings. The proportion of industry earnings attributable to amusement and recreation (a subcategory of the services industry potentially impacted by the rule) was relatively low for each county, ranging from one to five percent of total industry earnings. As a result, a small impact to the recreation sector is unlikely to have a significant effect on county-level income. Similarly, the proportion of industry earnings related to the fishing sector was less than 0.2 percent for each county. Thus, a small impact to the fishing sector is unlikely to adversely affect county-level income.

TABLE 1.—ECONOMIC CHARACTERISTICS OF THE FIVE AFFECTED COUNTIES IN FLORIDA—2000

Counties	Per capita personal income 2000 ($)	10-year annual growth of per capita income [1] (percent)	Total Personal income 2000 (000$)	10-year annual growth of total personal income [1] (percent)	Total earnings by industry—all industries (000$)	Amusement and recreation industry earnings		Fishing industry earnings	
						Thousands of $'s	Percent of total	Thousands of $'s	Percent of total
Clay	25,421	3.8	3,601,576	8.4	1,225,569	18,565	1.5	73	0.01
Duval	27,084	4.1	21,118,751	6.3	19,916,074	194,900	1.0	3,440	0.02
Lee	26,655	3.0	11,833,528	7.0	6,379,956	106,875	1.7	10,619	0.17
St Johns	40,635	7.7	5,057,864	15.9	1,553,900	82,280	5.3	581	0.04
Volusia	22,574	3.6	10,046,808	6.2	4,748,268	128,280	2.7	([2])	NA
State of Florida	27,764	4.0	445,739,968	7.2	282,260,357	5,392,786	1.9	85,609	0.03

[1] Growth rates were calculated from 1990 and 2000 personal income data.
[2] BEA has withheld this information in order to avoid disclosure of confidential information.

Source: Bureau of Economic Analysis (BEA), Regional Economic Information System, Regional Accounts Data, Local Area Personal Income *(http://www.bea.doc.gov/bea/regional/reis/)*

The employment characteristics of the five affected counties are shown in Table 2. The latest available published data for the total number of establishments broken down by industry and county are from 1997. We included the following SIC (Standard Industrial Classification) categories, because they include businesses most likely to be directly affected by the designation of the proposed manatee refuges:

- Fishing, hunting, trapping (SIC 09)
- Water transportation (SIC 44)
- Miscellaneous retail (SIC 59)
- Amusement and recreation services (SIC (79)

• Non-classifiable establishments (NCE)

TABLE 2.—EMPLOYMENT CHARACTERISTICS OF THE FIVE AFFECTED COUNTIES IN FLORIDA—1997

[(includes SIC Codes 09, 44, 59, 79, and NCE [1]]

Counties	Total mid-March employment [2] (all industries)	Mid-March employment [2] (select SIC codes)	Total establishments (all industries)	Select SIC codes (includes SIC codes 09, 44, 59, 79, and NCE) [1]				
				Total establishments	No. of establishments (1–4 employees)	No. of establishments (5–9 employees)	No. of establishments (10–19 employees)	No. of establishments (20+ employees)
Clay	28,106	1,940	2,747	255	158	48	30	19
Duval	361,302	14,459	21,016	1,510	877	330	164	139
Lee	135,300	7,734	11,386	974	602	193	92	87
St Johns	33,173	1,971	3,127	273	177	58	24	14
Volusia	127,948	7,116	10,716	989	643	188	73	85

[1] Descriptions of the SIC codes included in this table as follows: SIC 09—Fishing, hunting, and trapping; SIC 44—Water transportation; SIC 59—Miscellaneous retail service division; SIC 79—Amusement and recreation services; NCE—non-classifiable establishments division.

[2] Table provides the high-end estimate whenever the Census provides a range of mid-March employment figures for select counties and SIC codes.

Source: U.S. Census County Business Patterns (*http://www.census.gov/epcd/cbp/view/cbpview.html*)

As shown in Table 2, the vast majority (over 80 percent) of these business establishments in each of the five affected counties have less than ten employees, with the largest number of establishments employing less than four employees. In addition, in 1997, only four to seven percent of total mid-March employment for industries in the affected counties was in the industries likely to be affected by the proposed rule. Any economic impacts associated with this rule will affect some proportion of these small entities.

Since the proposed designation is for the development of manatee refuges, which only require a reduction in speed, we do not believe the designation would cause significant economic effect on small businesses. For example, because the manatee refuge designations will not prohibit any commercial fishing activity, and because there is a channel available for boats to travel at up to 40 km per hour (25 mph) in most areas, it is unlikely that the rule will result in a significant economic impact on commercial fishing entities. Currently available information does not allow us to quantify the number of small business entities such as charter boats or commercial fishing entities that may incur direct economic impacts due to the inconvenience of added travel times resulting from the rule. An examination of county level information indicates that these economic impacts will not be significant for the affected counties. Based on an analysis of public comment, further refinement of the impact on small entities may be possible. In addition, the inconvenience of slow speed zones may cause some recreationists to change their behavior, which may cause some loss of income to some small businesses. The number of recreationists that will change their behavior, and how their behavior will change is unknown; therefore the impact on potentially affected small business entities cannot be quantified. However, because boaters will experience only minimal added travel time in most affected areas, we believe that this proposed designation will not cause a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5. U.S.C. 804 (2). This proposed rule:

a. Does not have an annual effect on the economy of $100 million or more. As shown above, this rule may cause some inconvenience in the form of added travel time for recreationists and commercial fishing and charter boat businesses because of speed restrictions in manatee refuge areas, but this should not translate into any significant business reductions for the many small businesses in the five affected counties. An unknown portion of the establishments shown in Table 2 could be affected by this rule. Because the only restrictions on recreational activity result from added travel time, and alternative sites are available for all waterborne activities, we believe that the economic impact on small entities resulting from changes in recreational use patterns will not be significant. The economic impacts on small business resulting from this rule are likely to be indirect effects related to reduced demand for goods and services if recreationists choose to reduce their level of participation in waterborne activities. Similarly, because the only restrictions on commercial activity result from the inconvenience of added travel time, and boats can continue to travel up to 40 km per hour (25 mph) in marked channels in most areas, we believe that any economic impact on small commercial fishing or charter boat entities will not be significant. Also, the indirect economic impact on small businesses that may result from reduced demand for goods and services from commercial entities is likely to be insignificant. Based on an analysis of public comment, further refinement of the impact on small entities may be possible.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It is unlikely that there are unforeseen changes in costs or prices for consumers stemming from this rule. The recreational charter boat and commercial fishing industries may be affected by lower speed limits for some areas when traveling to and from fishing grounds. However, because of the availability of 40 km per hour (25 mph) channels in most areas, this impact is likely to be limited.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As stated above, this rule may generate some level of inconvenience to recreationists due to added travel time, but the resulting economic impacts are believed to be minor and will not interfere with the normal operation of businesses in the affected counties. Added travel time to traverse some areas is not expected to be a major factor that will impact business activity.

Energy Supply, Distribution or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule is not a significant regulatory action under Executive Order 12866 and it only requires vessels to proceed at slow or idle speeds in 185 km (115 miles) of waterways in Florida, it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. The designation of manatee refuges imposes no substantial new obligations on State or local governments.

b. This rule will not produce a Federal mandate of $100 million or greater in any year, *i.e.,* it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. The proposed manatee protection areas are located over State- or privately-owned submerged bottoms. Any property owners in the vicinity will have navigational access to and the wherewithal to maintain their property.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. This rule will not have substantial direct effects on the State, in the relationship between the Federal Government and the State, or on the distribution of power and responsibilities among the various levels of government. We coordinated with the State of Florida to the extent possible on the development of this proposed rule.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* The regulation would not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A draft environmental assessment has been prepared and is available for review upon request by writing to the Field Supervisor (*see* **ADDRESSES** section).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175 and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Jacksonville Field Office (*see* **ADDRESSES** section).

Author

The primary author of this document is Jim Valade (*see* **ADDRESSES** section).

Authority

The authority to establish manatee protection areas is provided by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), as amended.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.108 by adding paragraphs (c)(12) through (c)(14) as follows:

§ 17.108 List of designated manatee protection areas.

* * * * *

(c) * * *

(12) *The Caloosahatchee River—San Carlos Bay Manatee Refuge.*

(i) The Caloosahatchee River—San Carlos Bay Manatee Refuge is described as all waters of the Caloosahatchee River and San Carlos Bay downstream of the Seaboard Coastline trestle at Beautiful Island to Channel Marker ''93'' and from Channel Marker ''99'' to the Sanibel Causeway, in Lee County. A map showing the refuge and four maps showing specific areas in the refuge are at paragraph (12)(x) of this section.

(ii) From the Seaboard Coastline Railroad trestle at Beautiful Island, downstream to a point 152 meters (500 feet) east of the Edison Bridge, a distance of approximately 7.2 kilometers (4.5 miles), watercraft are required to proceed at slow speed in the marked navigation channel from November 15 to March 31 and at not more than 40 kilometers per hour (25 miles per hour) in the channel from April 1 to November 14. *See* map of ''Edison Bridge Area'' in paragraph (12)(x) of this section.

(iii) From a point 152 meters (500 feet) east of the Edison Bridge downstream to a point 152 meters (500 feet) west of the Caloosahatchee Bridge, approximately 1.1 kilometers (0.7 mile) in length, shoreline-to-shoreline (including the marked navigation channel), watercraft are required to proceed at slow speed channel included, year-round. *See* map of ''Edison Bridge Area'' in paragraph (12)(x) of this section.

(iv) From a point 152 meters (500 feet) west of the Caloosahatchee Bridge downstream to a point 152 meters (500 feet) northeast of the Cape Coral Bridge, a distance of approximately 10.9 kilometers (6.8 miles), watercraft are required to proceed year-round at slow speed, while traveling within shoreline buffers extending out from the shore to a distance of approximately 91 meters (300 feet) from the marked navigation channel. In any location where the distance from the shoreline to within approximately 91 meters (300 feet) of the near side of the channel is less than

0.4 kilometers (0.25 mile), the slow speed buffer will extend to the edge of the marked navigation channel. Watercraft are required to proceed at not more than 40 kilometers per hour (25 miles per hour) throughout the year between these buffers (including the marked navigation channel). *See* map of ''Cape Coral Bridge Area'' in paragraph (12)(x) of this section.

(v) From a point 152 meters (500 feet) northeast of the Cape Coral Bridge downstream to a point 152 meters (500 feet) southwest of the Cape Coral Bridge, a distance of approximately 0.4 kilometer (0.25 mile), shoreline-to-shoreline (including the marked navigation channel), watercraft are required to proceed at slow speed, channel included, year-round. *See* map of ''Cape Coral Bridge Area'' in paragraph (12)(x) of this section.

(vi) From a point 152 meters (500 feet) southwest of the Cape Coral Bridge to Channel Marker ''72,'' a distance of approximately 1.9 kilometers (1.2 miles), watercraft are required to proceed at slow speed year-round, within shoreline buffers that extend out to a distance of approximately 91 meters (300 feet) from the marked navigation channel. In any location where the distance from the shoreline to within approximately 91 meters (300 feet) of the near side of the channel is less than 0.4 kilometers (0.25 mile), the slow speed buffer will extend to the edge of the marked navigation channel. Watercraft are required to proceed at not more than 40 kilometers per hour (25 miles per hour) when operating in between these buffers. *See* map of ''Redfish Point Area'' in paragraph (12)(x) of this section.

(vii) From Channel Marker ''72'' to Channel Marker ''82'' (in the vicinity of Redfish Point), for a distance of approximately 3.1 kilometers (1.9 miles) in length, shoreline-to-shoreline (including the marked navigation channel), watercraft are required to proceed at slow speed, year-round. *See* map of ''Redfish Point Area'' in paragraph (12)(x) of this section.

(viii) From Channel Marker ''82'' to Channel Marker ''93,'' a distance of approximately 3.9 kilometers (2.4 miles) in length, watercraft are required to proceed at slow speed year-round, when operating within shoreline buffers that extend out to a distance of approximately 91 meters (300 feet) from the marked navigation channel. In any location where the distance from the shoreline to within approximately 91 meters (300 feet) of the near side of the channel is less than 0.4 kilometers (0.25 mile), the slow speed buffer will extend to the edge of the marked navigation channel. Watercraft are required to proceed at not more than 40 kilometers per hour (25 miles per hour) when operating between these buffers. *See* map of ''Redfish Point Area'' in paragraph (12)(x) of this section.

(ix) From Channel Marker ''99'' to the Sanibel Causeway, watercraft are required to proceed at slow speed year-round in San Carlos Bay within the following limits: a northern boundary described by the southern edge of the marked navigation channel, a line approximately 2.9 kilometers (1.8 miles) in length; a southern boundary described by the Sanibel Causeway (approximately 1.9 kilometers (1.2 miles) in length); a western boundary described by a line that connects the western end of the easternmost Sanibel Causeway island and extending northwest to the western shoreline of Merwin Key (approximately 3.1 kilometers (1.9 miles) in length); the eastern boundary includes the western limit of the State-designated manatee protection area (68C–22.005) near Punta Rassa (approximately 2.9 kilometers (1.8 miles) in length). Speeds are unrestricted in the channel and bay waters to the west of this area. *See* map of ''San Carlos Bay'' in paragraph (12)(x) of this section.

(x) Five maps of the Caloosahatchee River—San Carlos Bay Manatee Refuge follow:

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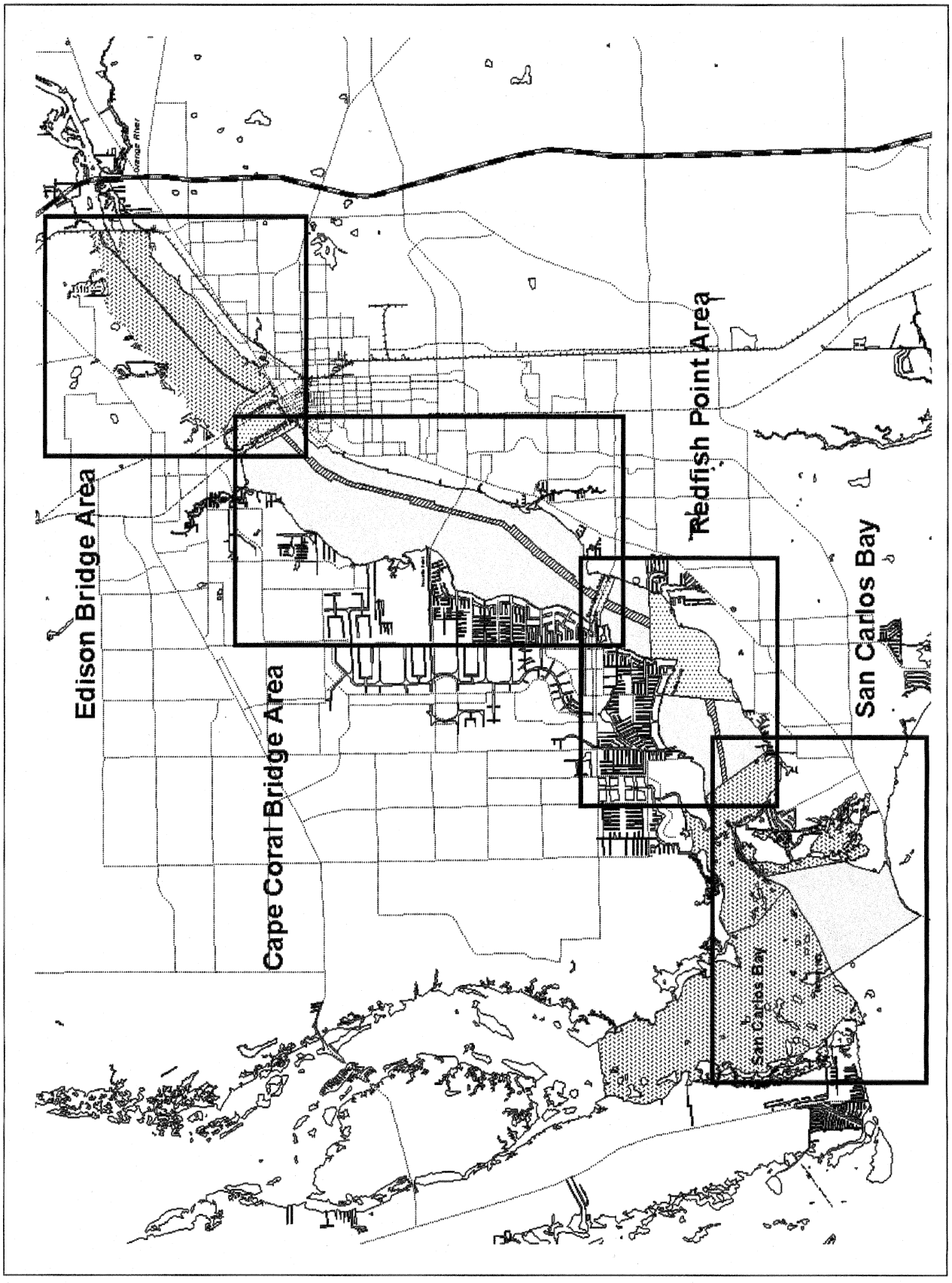
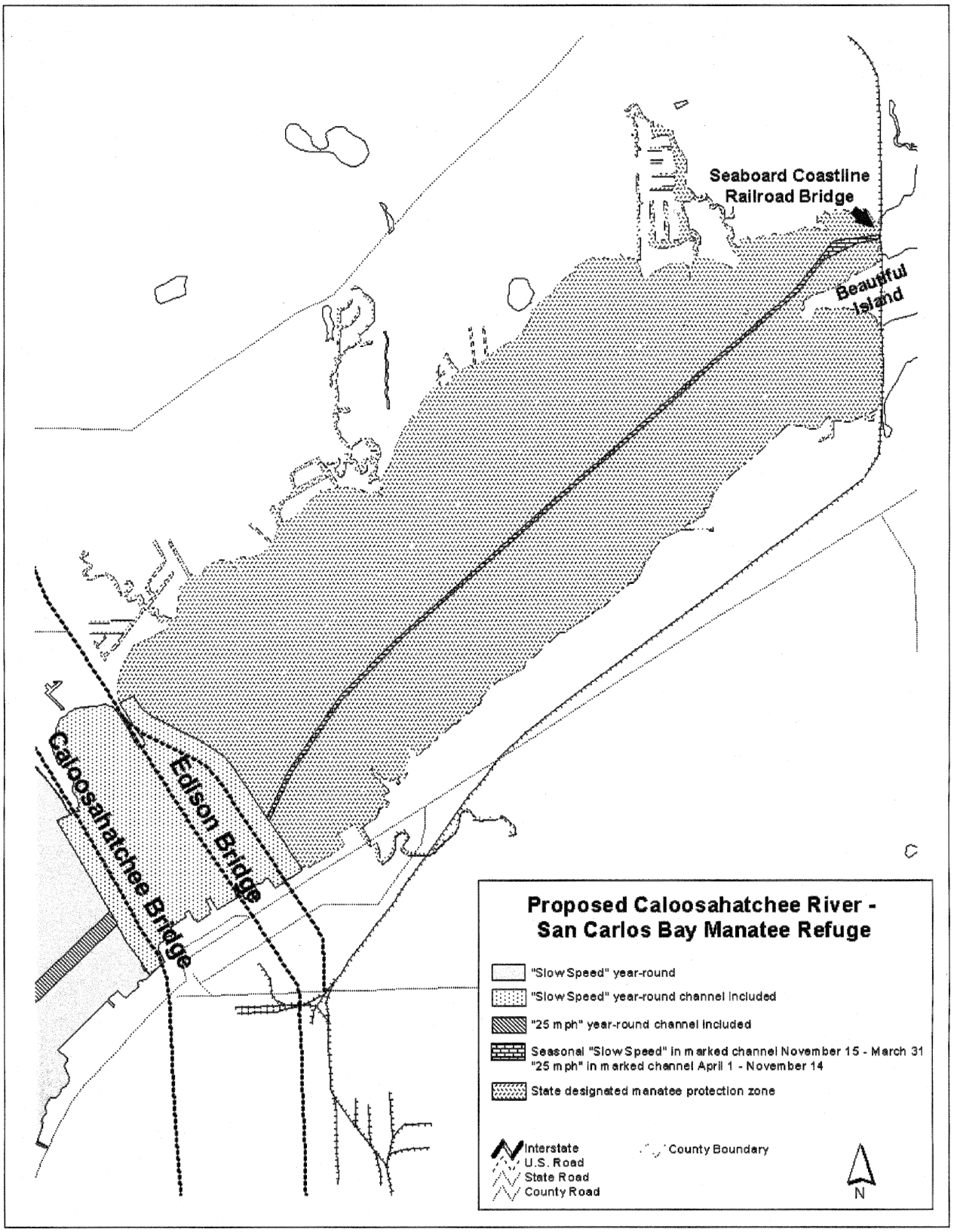
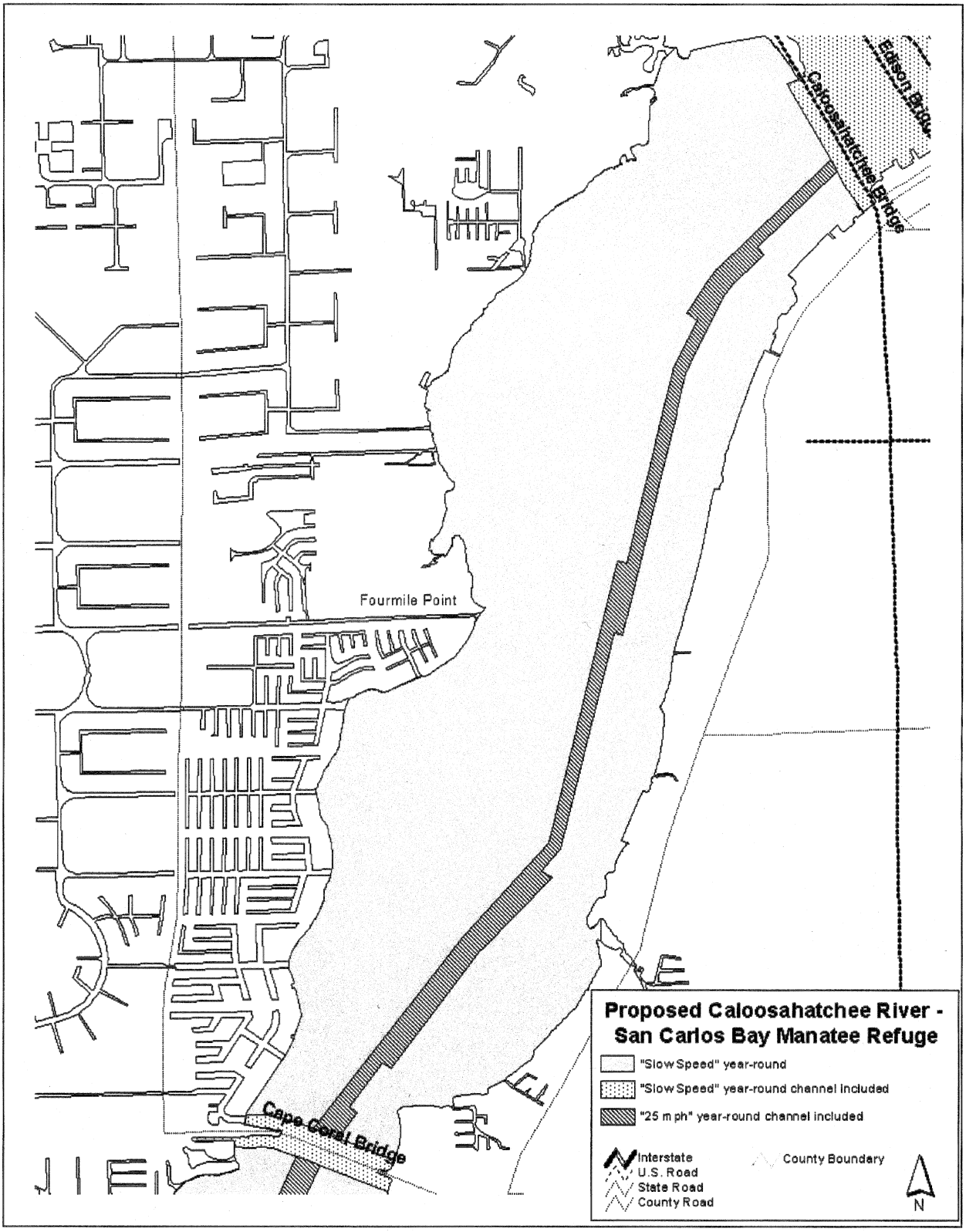


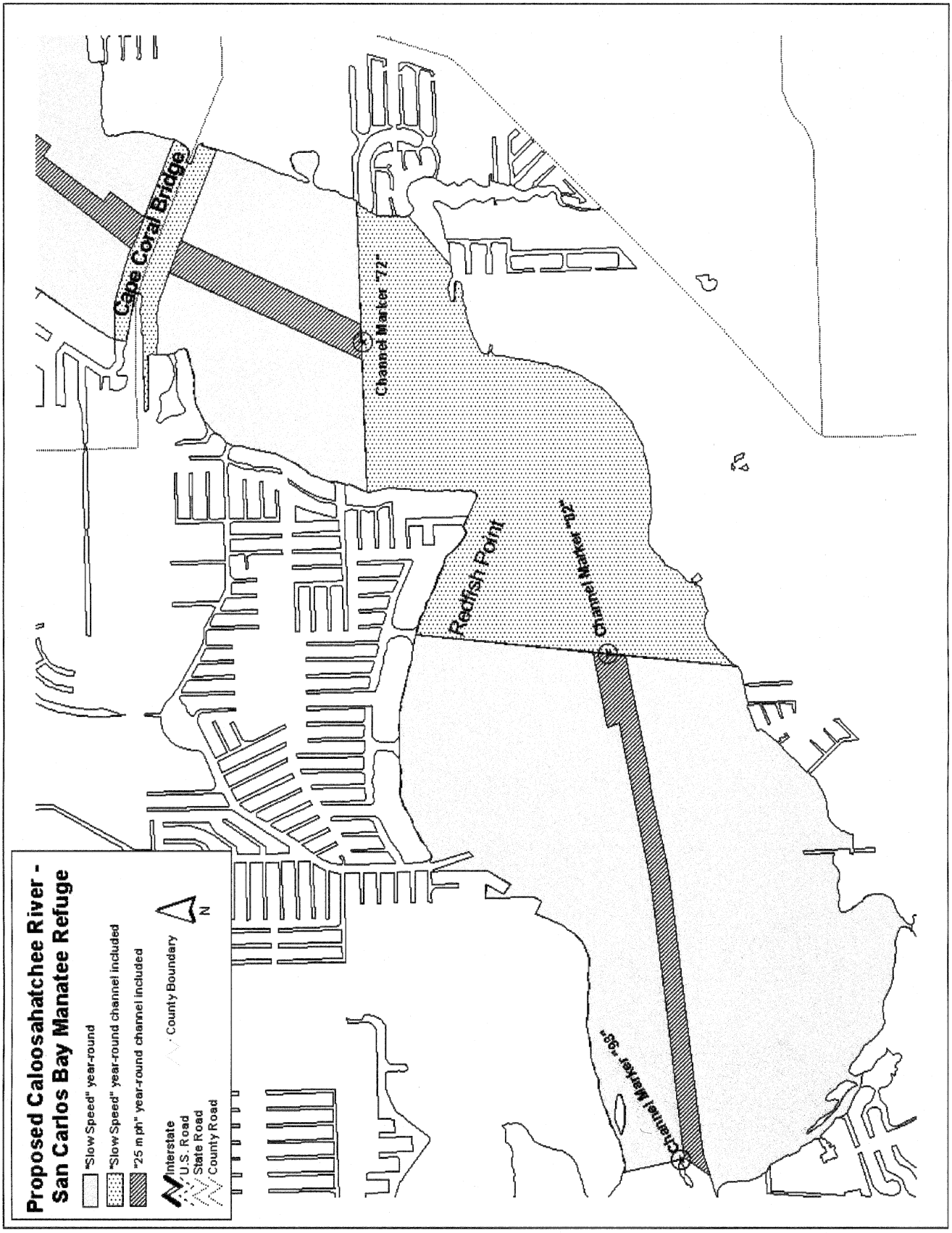
Proposed Caloosahatchee River - San Carlos Bay Manatee Refuge



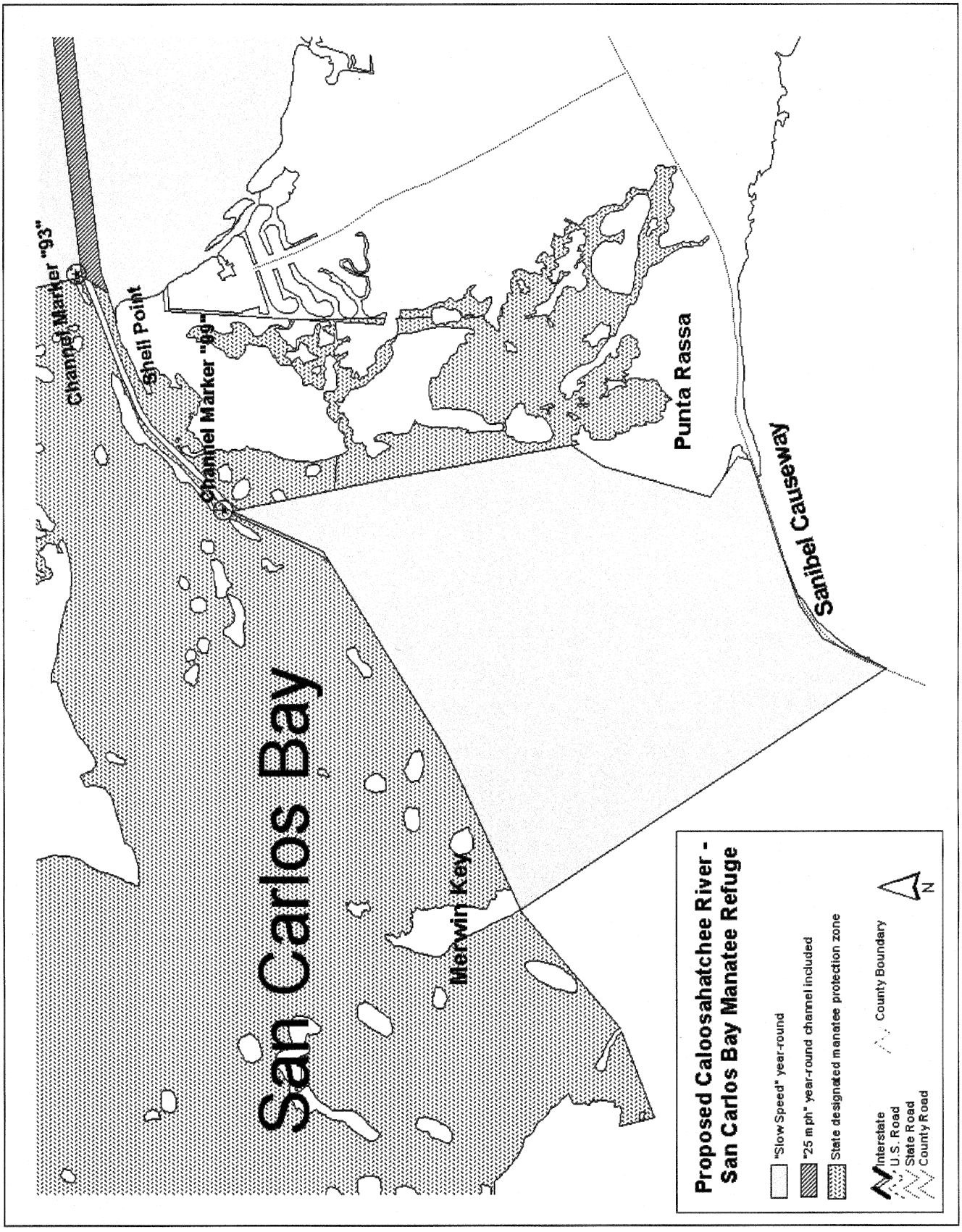
Edison Bridge Area



Cape Coral Bridge Area



Redfish Point Area



(13) *The Lower St. Johns River Manatee Refuge.*

(i) The Lower St. Johns River Manatee Refuge is described as portions of the St. Johns River and adjacent waters in Duval, Clay, and St. Johns Counties

from Reddie Point upstream to the mouth of Peter's Branch, including Doctors Lake, in Clay County on the western shore, and to the southern shore of the mouth of Julington Creek in St. Johns County on the eastern shore. A map showing the refuge and two maps showing specific areas of the refuge are at paragraph (13)(v) of this section.

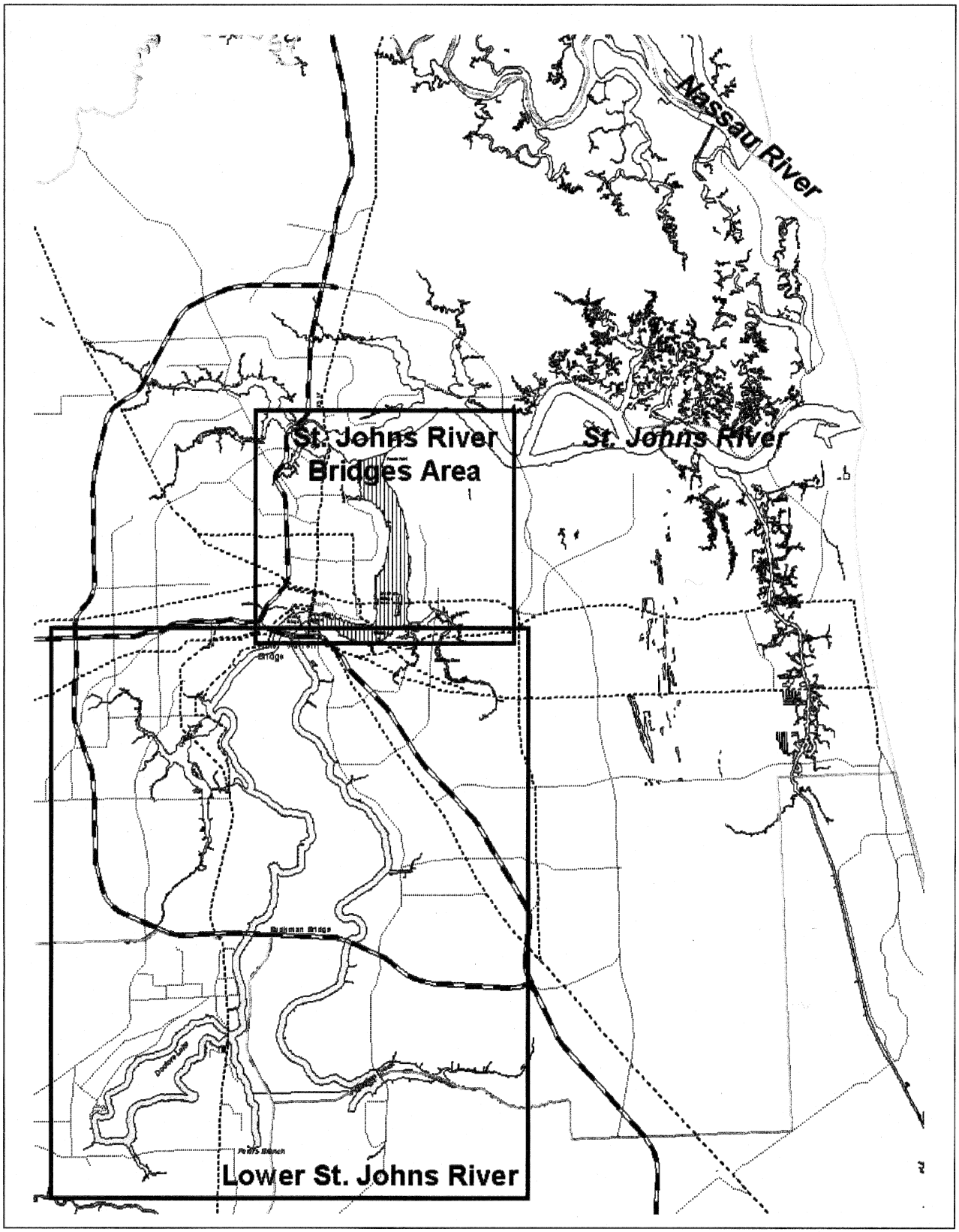
(ii) From Reddie Point upstream to the Main Street Bridge, a distance of approximately 11.6 kilometers (or 7.2 miles), watercraft are required to proceed at slow speed, year-round, outside the marked navigation channel and at speeds of not more than 40 kilometers per hour (25 miles per hour) in the marked channel (from Channel Marker ''81'' to the Main Street Bridge, the channel is defined as the line of sight extending west from Channel Markers ''81'' and ''82'' to the center span of the Main Street Bridge). *See* map of ''St. Johns River Bridges Area'' in paragraph (13)(v) of this section.

(iii) From the Main Street Bridge to the Fuller Warren Bridge, a distance of approximately 1.6 kilometers (1.0 mile), shore-line to shore-line, watercraft are required to proceed at slow speed (channel included), year-round. *See* map of ''St. Johns River Bridges Area'' in paragraph (13)(v) of this section.

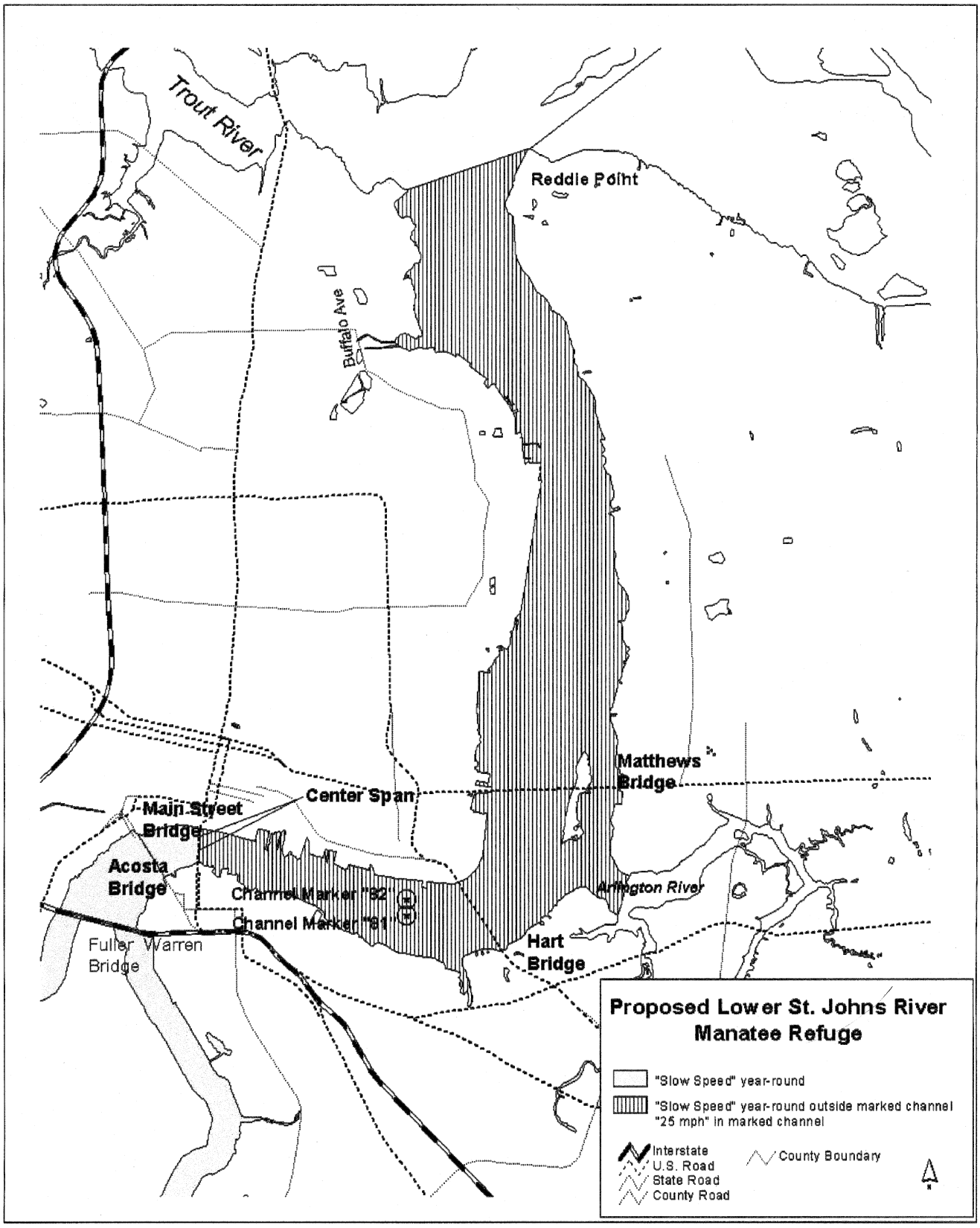
(iv) Upstream of the Fuller Warren Bridge, a 305-meter (1,000-foot), slow speed, year-round, shoreline buffer to the south bank of the mouth of Peter's Branch in Clay County along the western shore (approximately 31.1 kilometers (19.3 miles)); and in Doctors Lake in Clay County, slow speed, year-round, along a 274-meter (900-foot) shoreline buffer (approximately 20.8 kilometers (12.9 miles)); and a 305-meter (1,000-foot), slow speed, year-round, shoreline buffer to the south bank of the mouth of Julington Creek in St. Johns County along the eastern shore (approximately 32.5 kilometers (20.2 miles)) to a line north of a western extension of the Nature's Hammock Road North. Watercraft are required to proceed at slow speed within these buffer areas. *See* map of ''Lower St. Johns River'' in paragraph (13)(v) of this section.

(v) Three maps of the Lower St. Johns River Manatee Refuge follow:

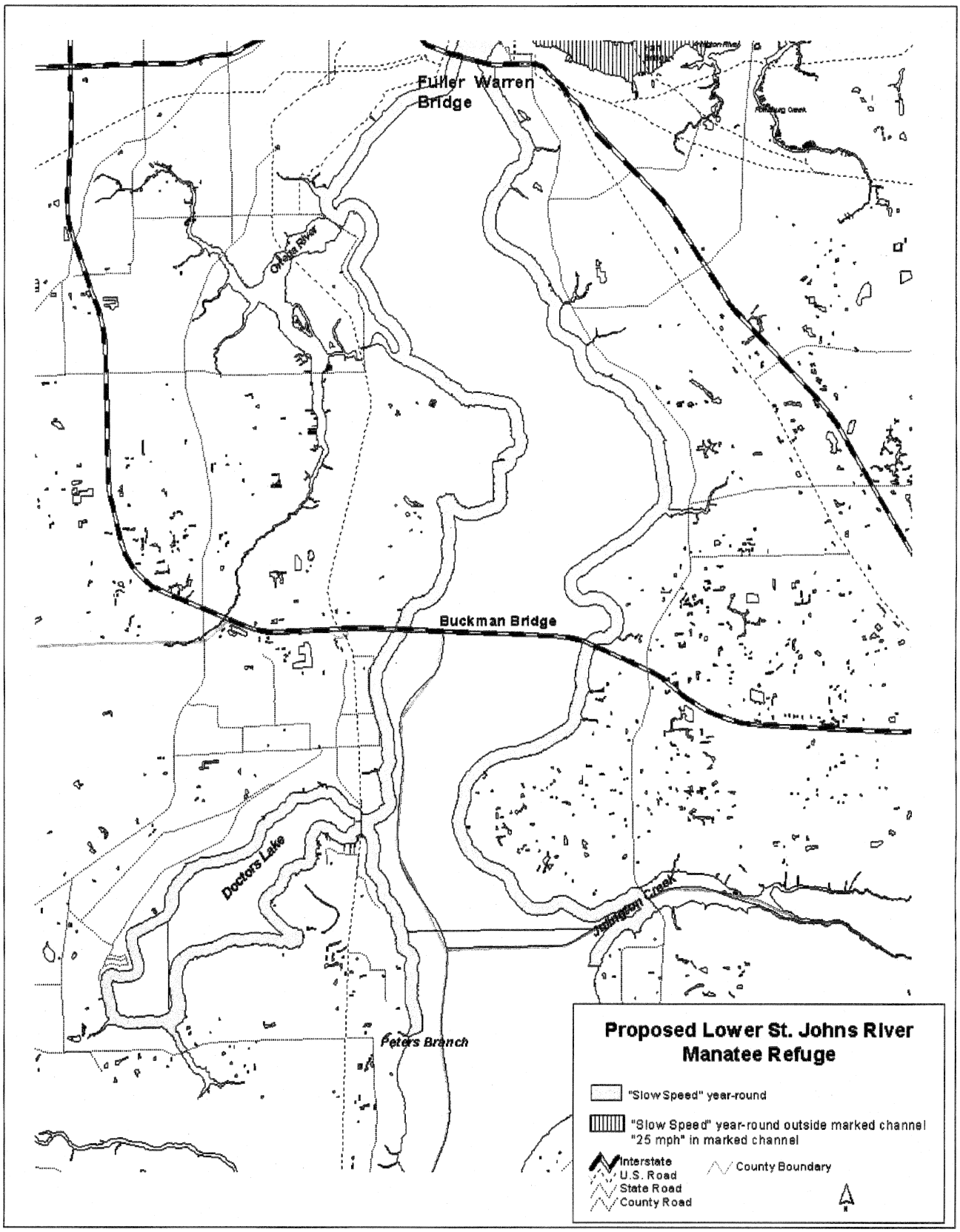
BILLING CODE 4310–55–P



Proposed Lower St. Johns River Manatee Refuge



St. Johns River Bridges Area



Lower St. Johns River

(14) *The Halifax and Tomoka Rivers Manatee Refuge.*

(i) The Halifax and Tomoka Rivers Manatee Refuge is described as the Halifax River and associated waterbodies in Volusia County, from the

Volusia County—Flagler County line to New Smyrna Beach. A map showing the refuge and eight maps showing specific areas in the refuge are at paragraph (14) (xiii) of this section.

(ii) From the Volusia County/Flagler County line at Halifax Creek south to Channel Marker ''9,'' a distance of approximately 11.3 kilometers (7.0 miles) in length, watercraft are required to proceed at slow speed, year-round outside the marked channel and at not more than 40 kilometers per hour (25 miles per hour) in the channel. *See* maps of ''Halifax Creek'' and ''Tomoka River Basin'' in paragraph (14) (xiii) of this section.

(iii) From Channel Marker ''9'' to a point 152 meters (500 feet) north of the Granada Bridge (State Road 40) (including the Tomoka Basin), a distance of approximately 5.0 kilometers (3.1 miles) in length, slow speed, year-round, 305-meter (1,000-foot) minimum buffers along shorelines with not more than 40 kilometers per hour (25 miles per hour) in areas between the buffers (and including the marked navigation channel). Watercraft are required to proceed at slow speed within the buffers and not more than 40 kilometers per hour (25 miles per hour) in areas between the buffers (and including the marked navigation channel). *See* maps of ''Tomoka River Basin'' and ''Tomoka River'' in paragraph (14) (xiii) of this section.

(iv) In the Tomoka River, all waters upstream of the U.S. 1 bridge, a distance of approximately 7.2 kilometers (4.5 miles) in length, slow speed, year-round, shoreline to shoreline; from the U.S. 1 bridge downstream to Latitude 29° 19′ 00″, a distance of approximately 2.1 kilometers (1.3 miles) in length, idle speed, year-round, shoreline to shoreline; from Latitude 29° 19′ 00″ downstream to the confluence of Strickland Creek and the Tomoka River, and including Strickland, Thompson, and Dodson creeks, a combined distance of approximately 9.7 kilometers (6 miles) in length, slow speed, year-round, shoreline to shoreline; from the confluence of Strickland Creek and the Tomoka River downstream to the mouth of the Tomoka River, a distance of approximately 1.4 kilometers (0.9 miles) in length, idle speed, year-round, shoreline to shoreline. Watercraft are required to proceed at idle speed within the described idle speed areas and at slow speed within the described slow speed areas. *See* map of ''Tomoka River'' in paragraph (14) (xiii) of this section.

(v) From 152 meters (500 feet) north to 305 meters (1,000 feet) south of the Granada Bridge (State Road 40), a distance of approximately 0.5 kilometers (0.3 miles) in length, slow speed, year-round, shoreline to shoreline. Watercraft are required to proceed at slow speed when operating within these areas. *See* map of ''Halifax River A'' in paragraph (14) (xiii) of this section.

(vi) From a point 305 meters (1,000 feet) south of the Granada Bridge (State Road 40) to a point 152 meters (500 feet) north of the Seabreeze Bridge, a distance of approximately 6.4 kilometers (4.0 miles) in length, slow speed, year-round, 305-meter (1,000-foot) minimum buffers along shorelines with not more than 40 kilometers per hour (25 miles per hour) in areas between the buffers, and including the marked navigation channel. Watercraft are required to proceed at slow speed within the buffers and not more than 40 kilometers per hour (25 miles per hour) in areas between the buffers (and including the marked navigation channel). *See* map of ''Halifax River A'' in paragraph (14) (xiii) of this section.

(vii) From 152 meters (500 feet) north of the Seabreeze Bridge, to Channel Marker ''40,'' a distance of approximately 3.7 kilometers (2.3 miles) in length, slow speed, channel included, year-round. Watercraft are required to proceed at slow speed when operating within these areas. *See* map of ''Halifax River B'' in paragraph (14) (xiii) of this section.

(viii) From Channel Marker ''40'' to a point 152 meters (500 feet) north of the Dunlawton Bridge, a distance of approximately 14.5 kilometers (9 miles) in length, slow speed, year-round, 305-meter (1,000-foot) minimum buffers along shorelines with not more than 40 kilometers per hour (25 miles per hour) in areas between the buffers, and including the marked navigation channel. Watercraft are required to proceed at slow speed within the buffers and not more than 40 kilometers per hour (25 miles per hour) in areas between the buffers (and including the marked navigation channel). *See* map ''Halifax River B'' in paragraph (14) (xiii) of this section.

(ix) From 152 meters (500 feet) north to 152 meters (500 feet) south of the Dunlawton Bridge, a distance of approximately 0.3 kilometers (0.2 miles) in length, slow speed, channel included, year-round, shoreline to shoreline. Watercraft are required to proceed at slow speed when operating within these areas. *See* map of ''Halifax River B'' in paragraph (14) (xiii) of this section.

(x) From 152 meters (500 feet) south of the Dunlawton Bridge to Ponce Inlet, a distance of approximately 10.5 kilometers (6.5 miles) in length, slow speed, year-round outside of marked channels with not more than 40 kilometers per hour (25 miles per hour) in the channel; in Wilbur Bay, a distance of approximately 2.7 kilometers (1.7 miles) in length, slow speed, year-round, shoreline to shoreline; along the western shore of the Halifax River, a distance of approximately 3.1 kilometers (1.95 miles), slow speed year-round, with not more than 40 kilometers per hour (25 miles per hour) in the marked channels; in Rose Bay, a distance of approximately 2.7 kilometers (1.7 miles), slow speed year-round, with not more than 40 kilometers per hour (25 miles per hour) in the marked channels; in all waters of Mill Creek, Tenmile Creek, and Dead End Creek, a combined distance of approximately 5.1 kilometers (3.2 miles) in length, slow speed, year-round, shoreline to shoreline; in Turnbull Bay, a distance of approximately 3.9 kilometers (2.4 miles), slow speed year-round, with not more than 40 kilometers per hour (25 miles per hour) in the marked channels; in Spruce Creek, for a distance of approximately 5.6 kilometers (3.5 miles), shoreline to shoreline, April 1 to August 31, slow speed, and from September 1 through March 31, not more than 40 kilometers per hour (25 miles per hour). Watercraft are required to proceed at slow speed within the buffers and not more than 40 kilometers per hour (25 miles per hour) in areas between the buffers (including within marked channels). *See* maps of ''Ponce Inlet Area A,'' ''Ponce Inlet Area B,'' and ''Ponce Inlet Area C'' in paragraph (14) (xiii) of this section.

(xi) In waters north of Ponce Inlet, between Live Oak Point and Channel Marker ''2,'' a distance of approximately 2.9 kilometers (1.8 miles), slow speed, channel included, year-round; in waters adjacent to Ponce Inlet, slow speed, year-round outside of the marked navigation channel and other marked access channels, with not more than 40 kilometers per hour (25 miles per hour) in the marked channels. Watercraft are required to proceed at slow speed within the buffers and not more than 40 kilometers per hour (25 miles per hour) in areas between the buffers (including within marked channels). In the waters of Ponce Inlet, watercraft are required to proceed at speeds of not more than 48 kilometers per hour (30 miles per hour). *See* map of ''Ponce Inlet Area B'' in paragraph (14) (xiii) of this section.

(xii) In the Intracoastal Waterway from Redland Canal to the A1A Bridge (New Smyrna Beach, for a distance of approximately 5.3 kilometers (3.3 miles) in length, slow speed, channel included, year-round. Watercraft are required to

proceed at slow speed when operating within this area. *See* map of ''Ponce Inlet Area B'' in paragraph (14) (xiii) of this section.

(xiii) Nine maps of the Halifax and Tomoka Rivers Manatee Refuge follow:

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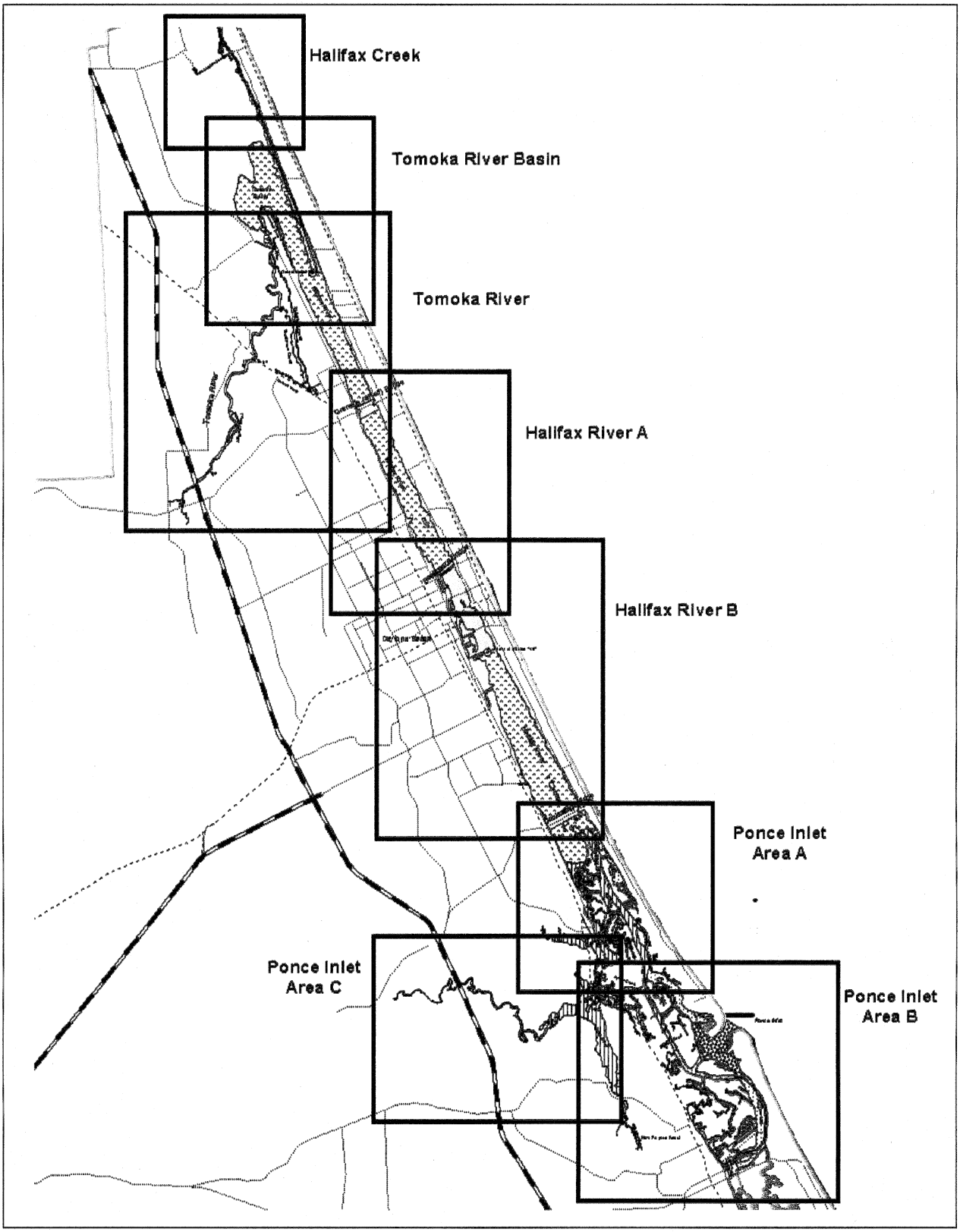
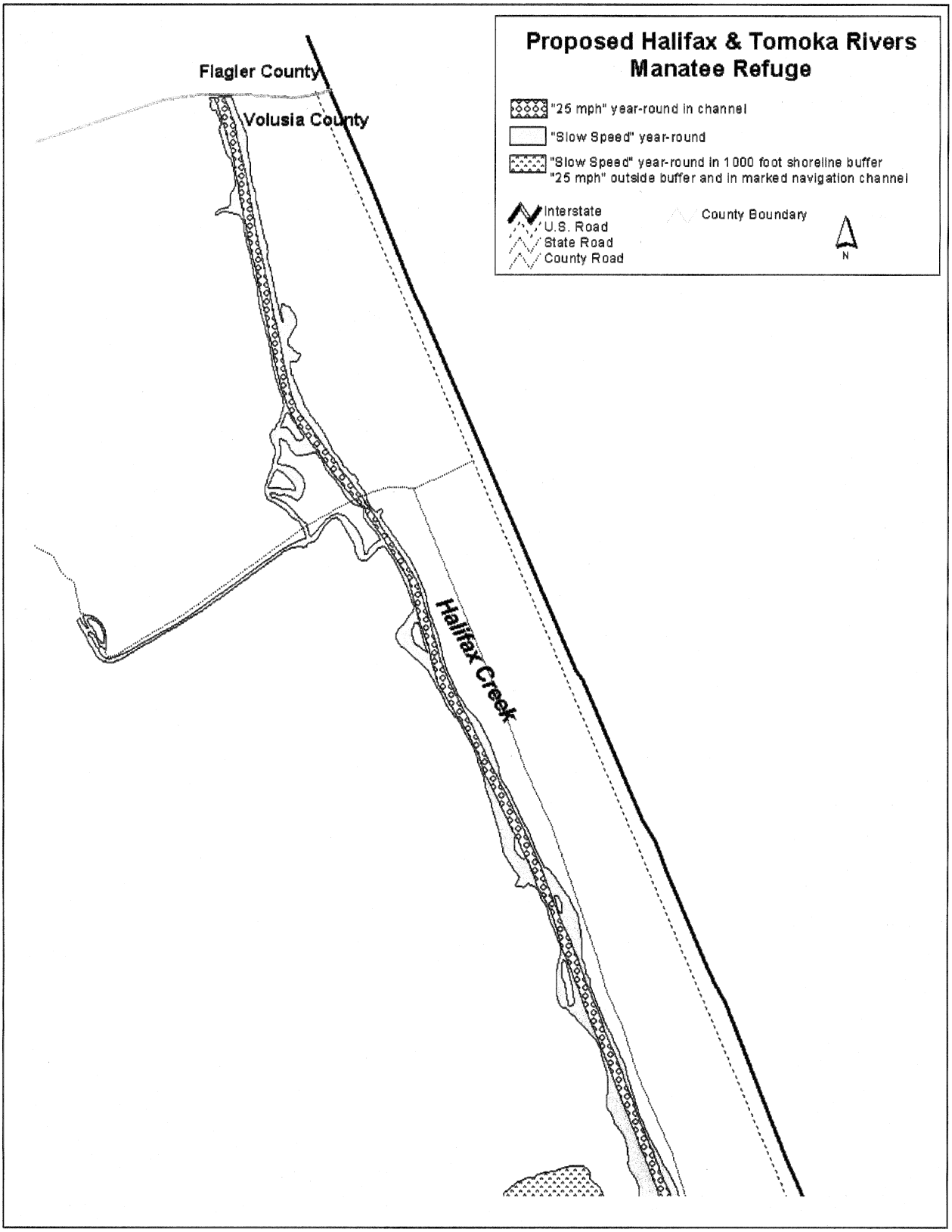
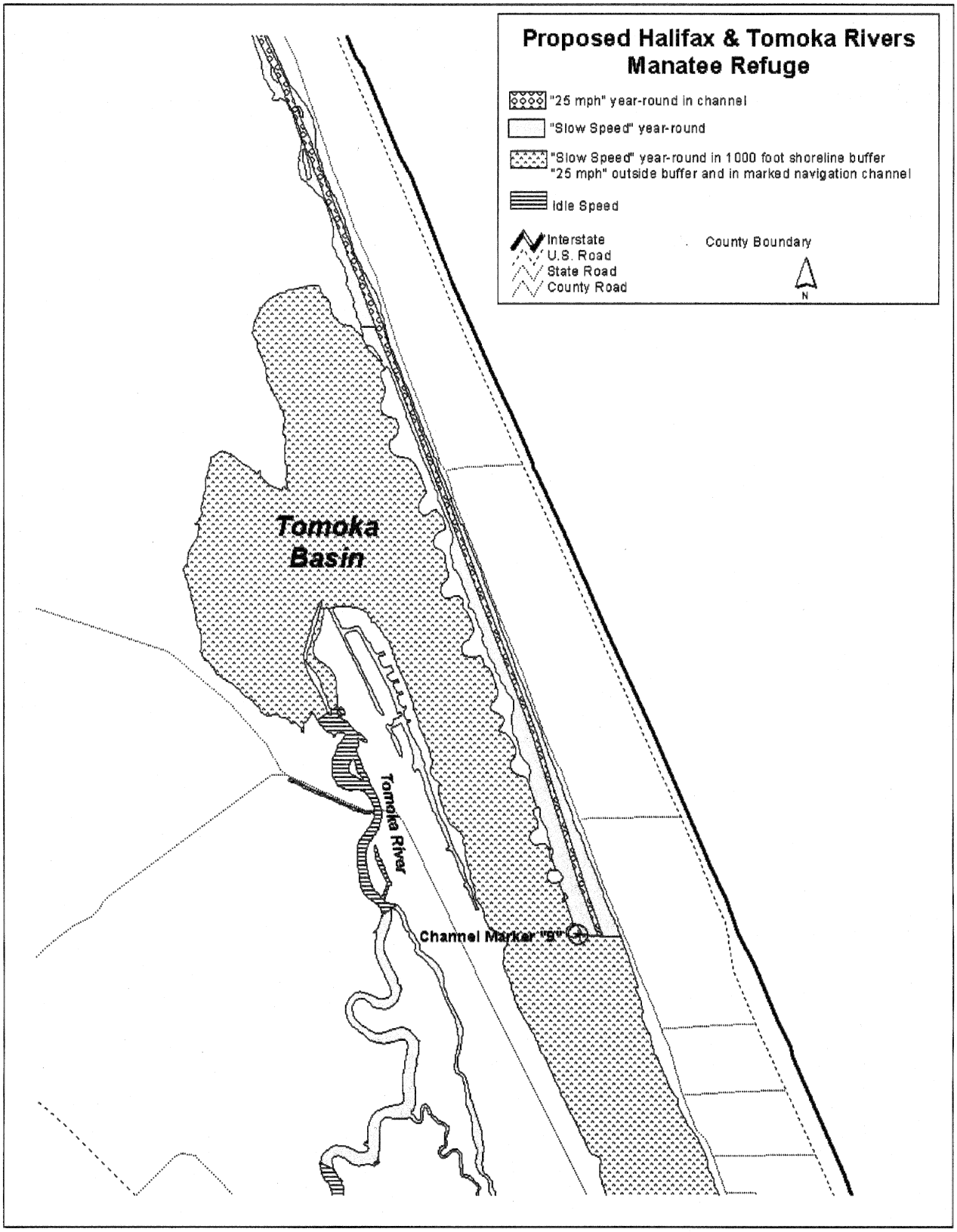


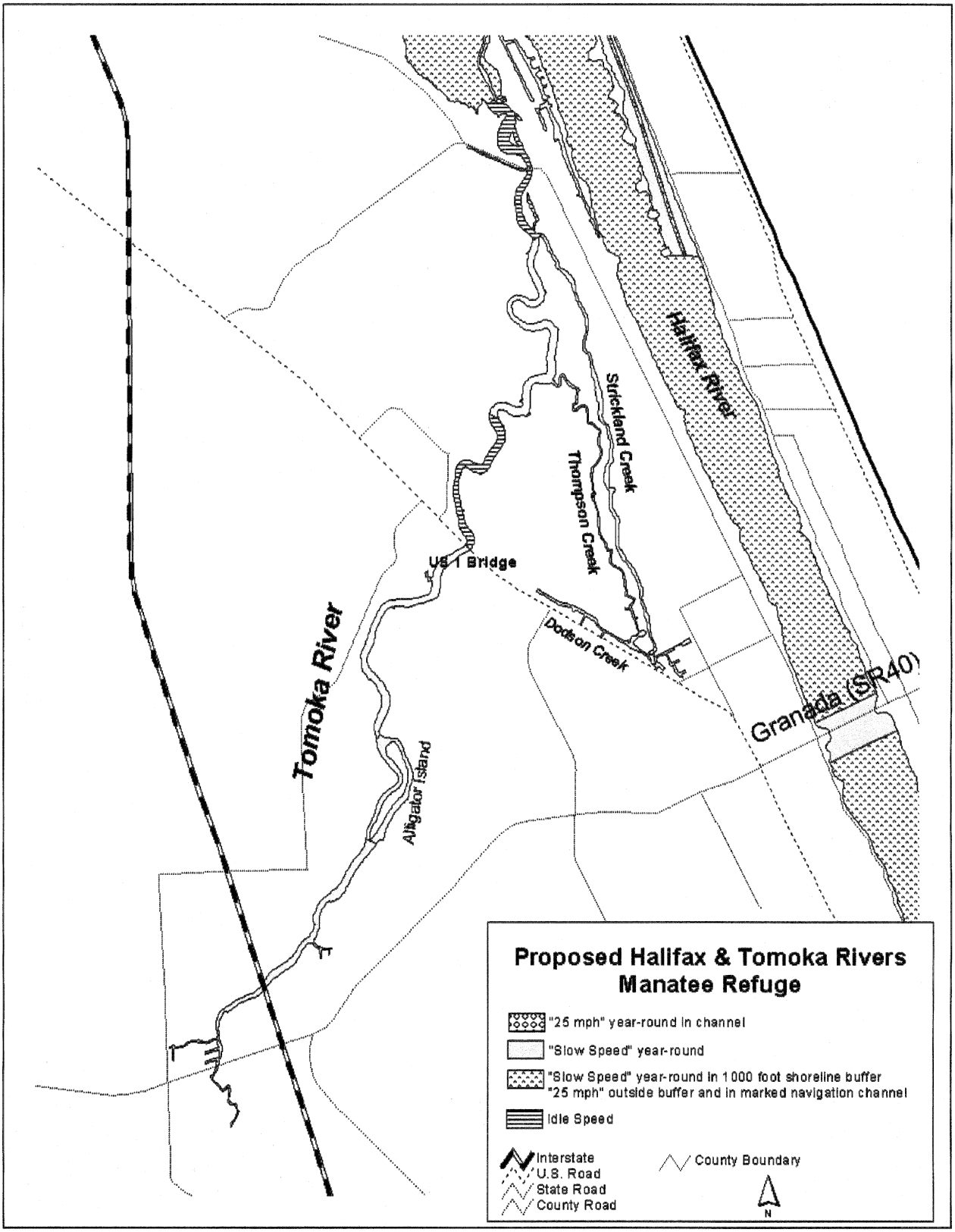
Proposed Halifax & Tomoka Rivers Manatee Refuge



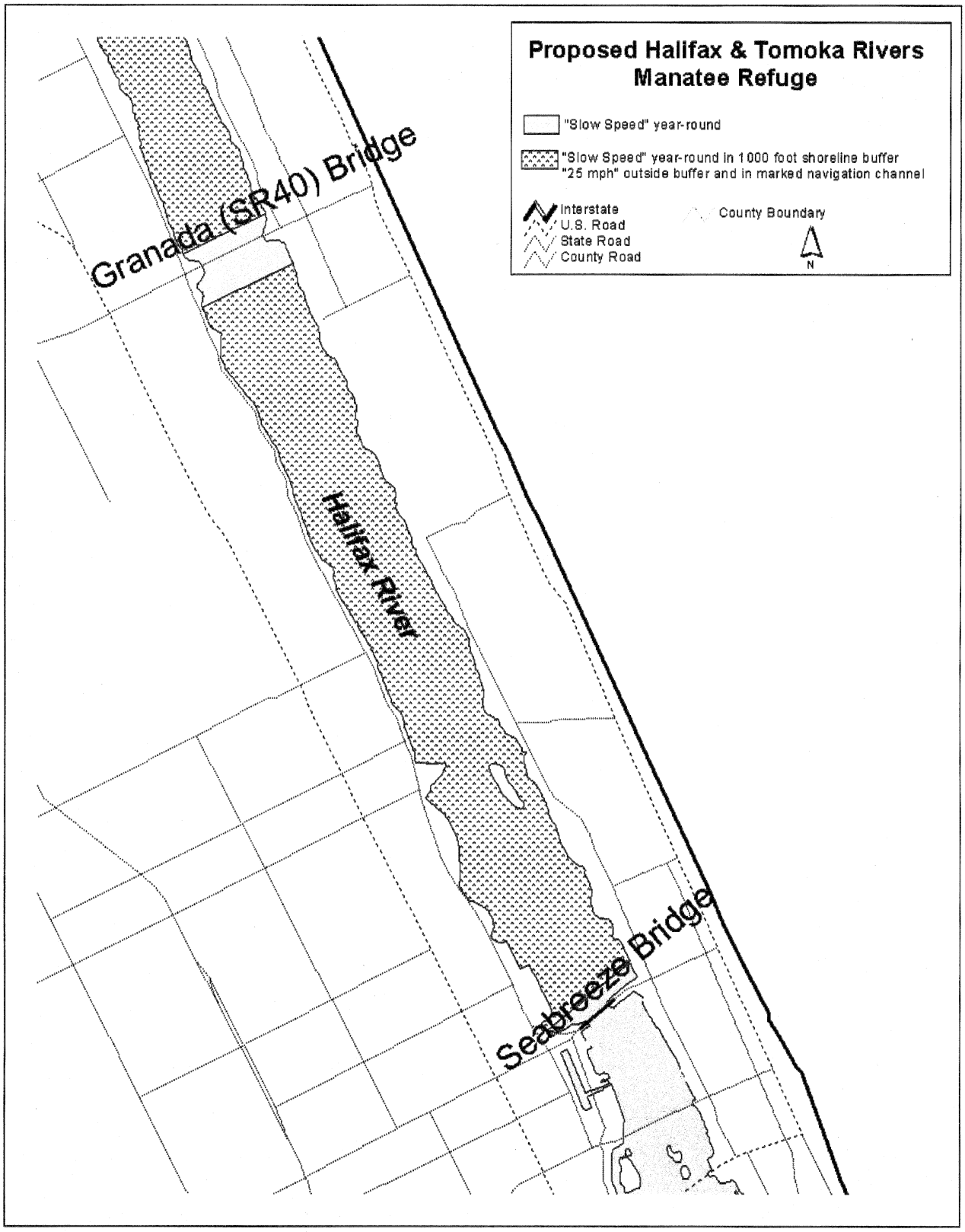
Halifax Creek



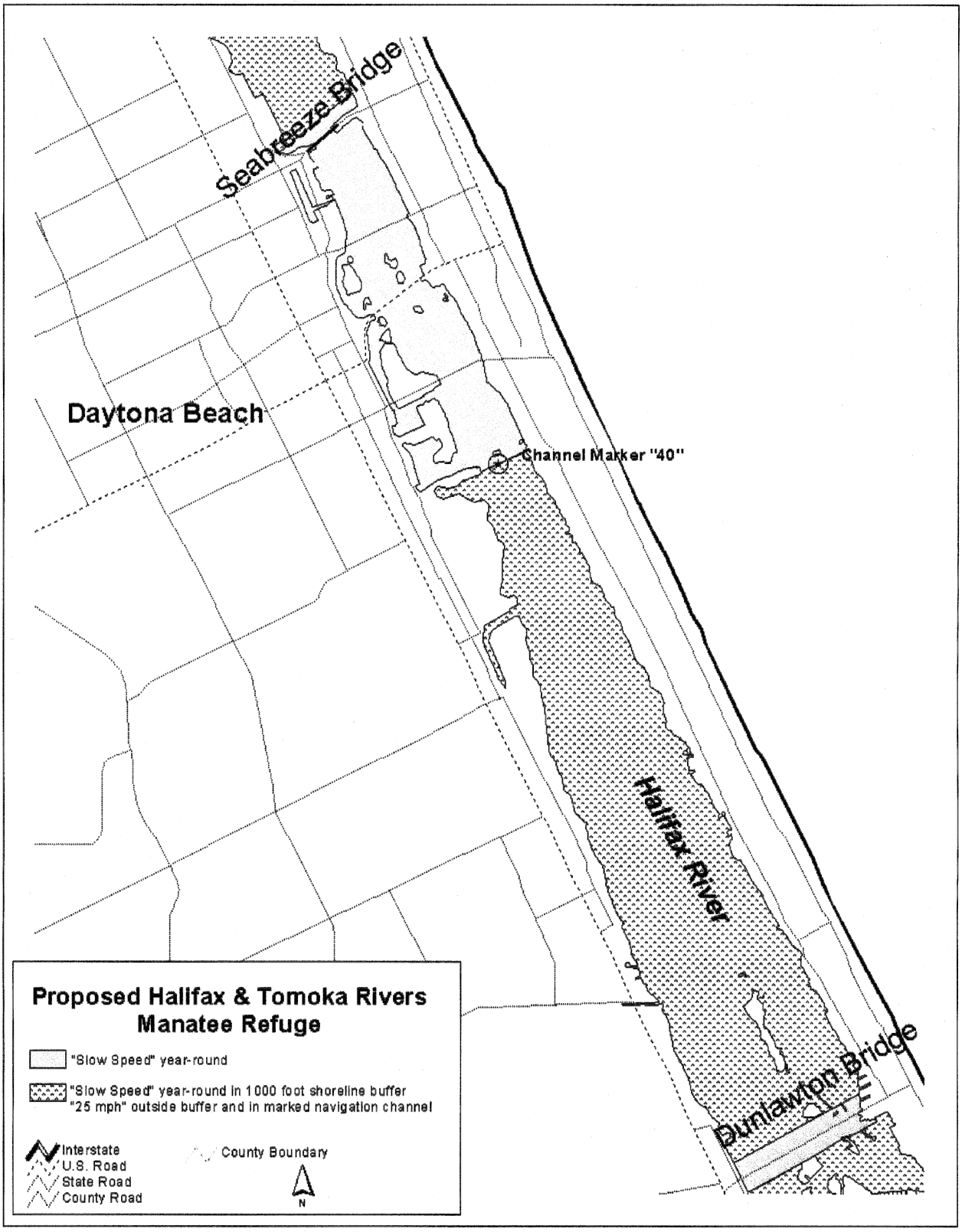
Tomoka River Basin



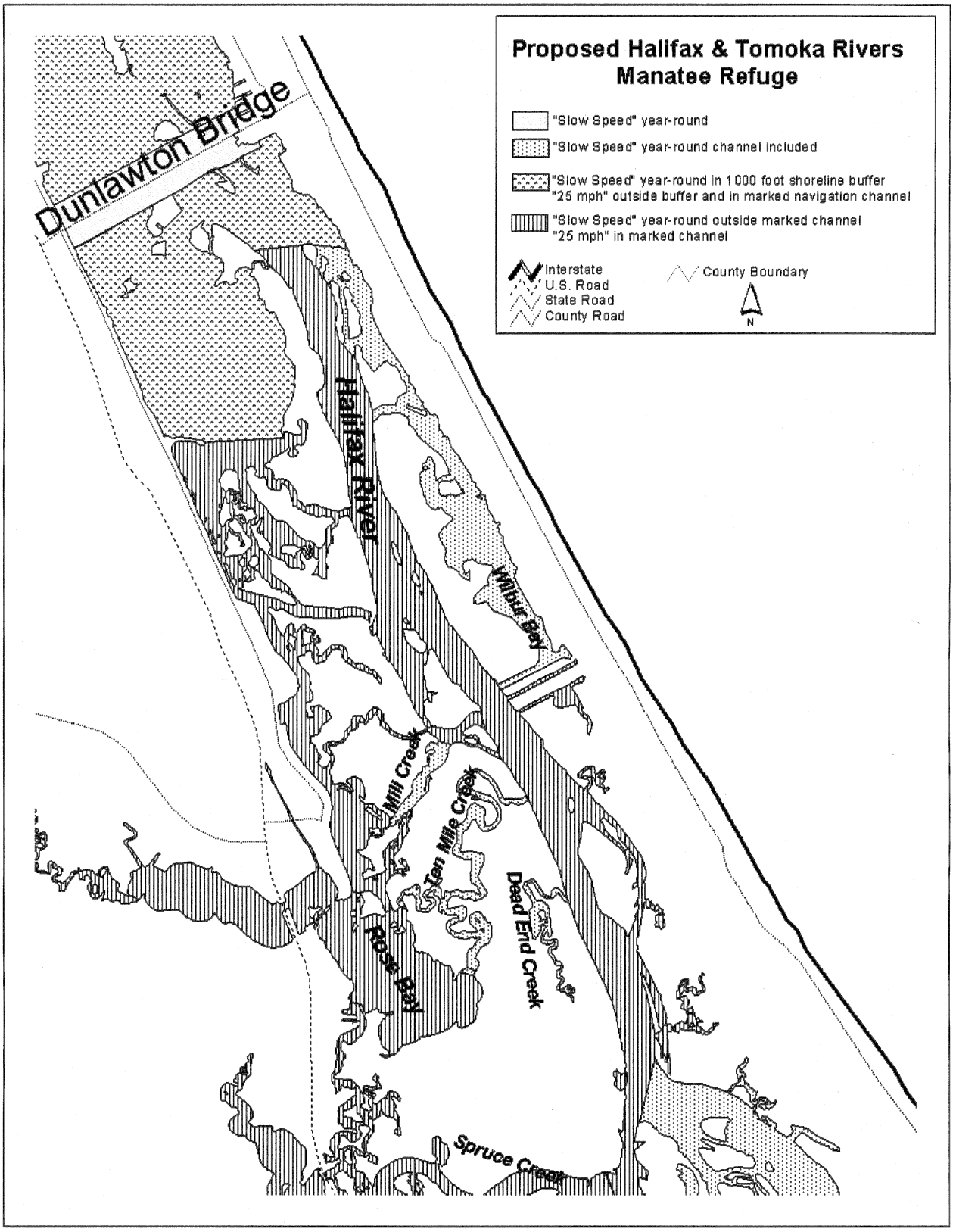
Tomoka River



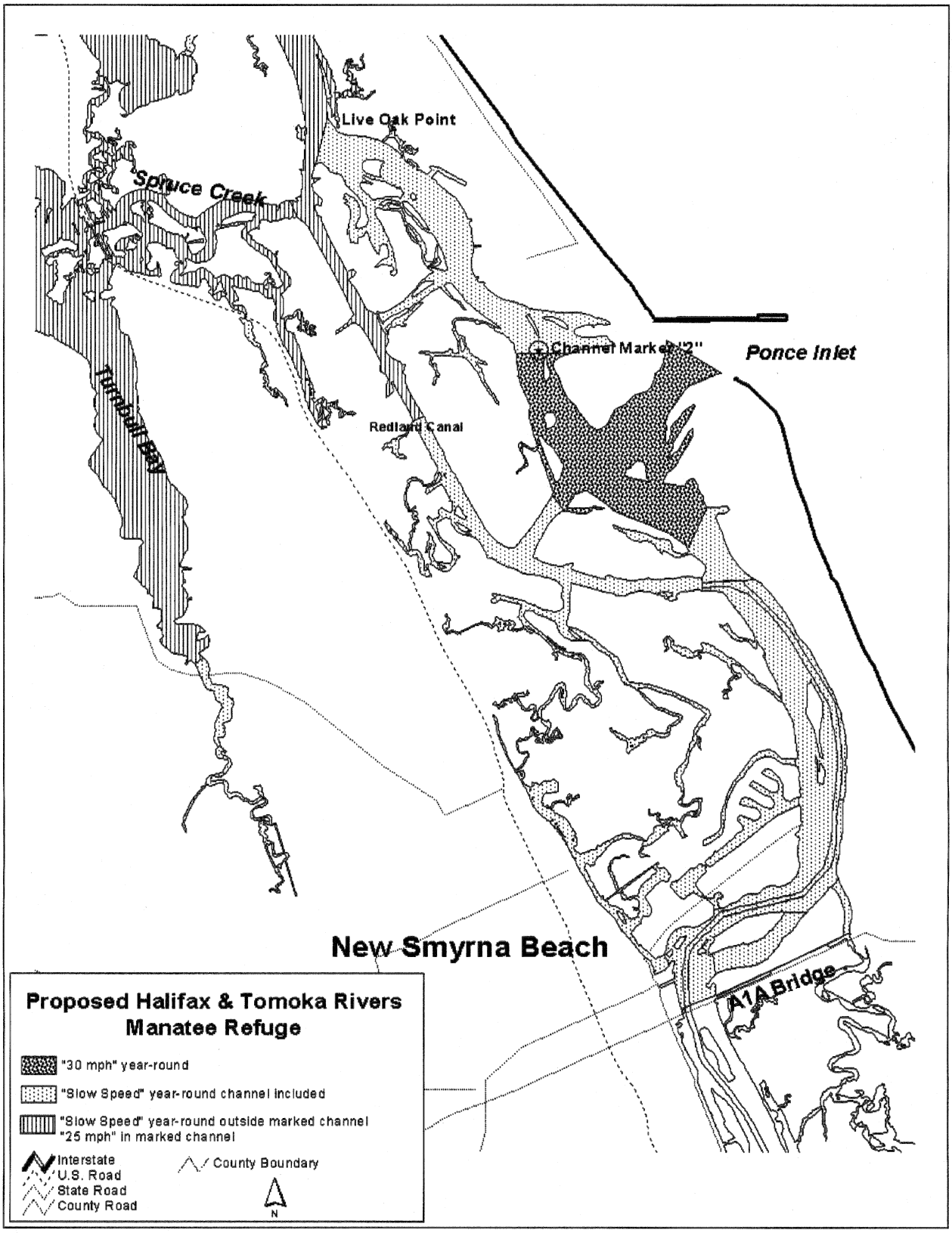
Halifax River A



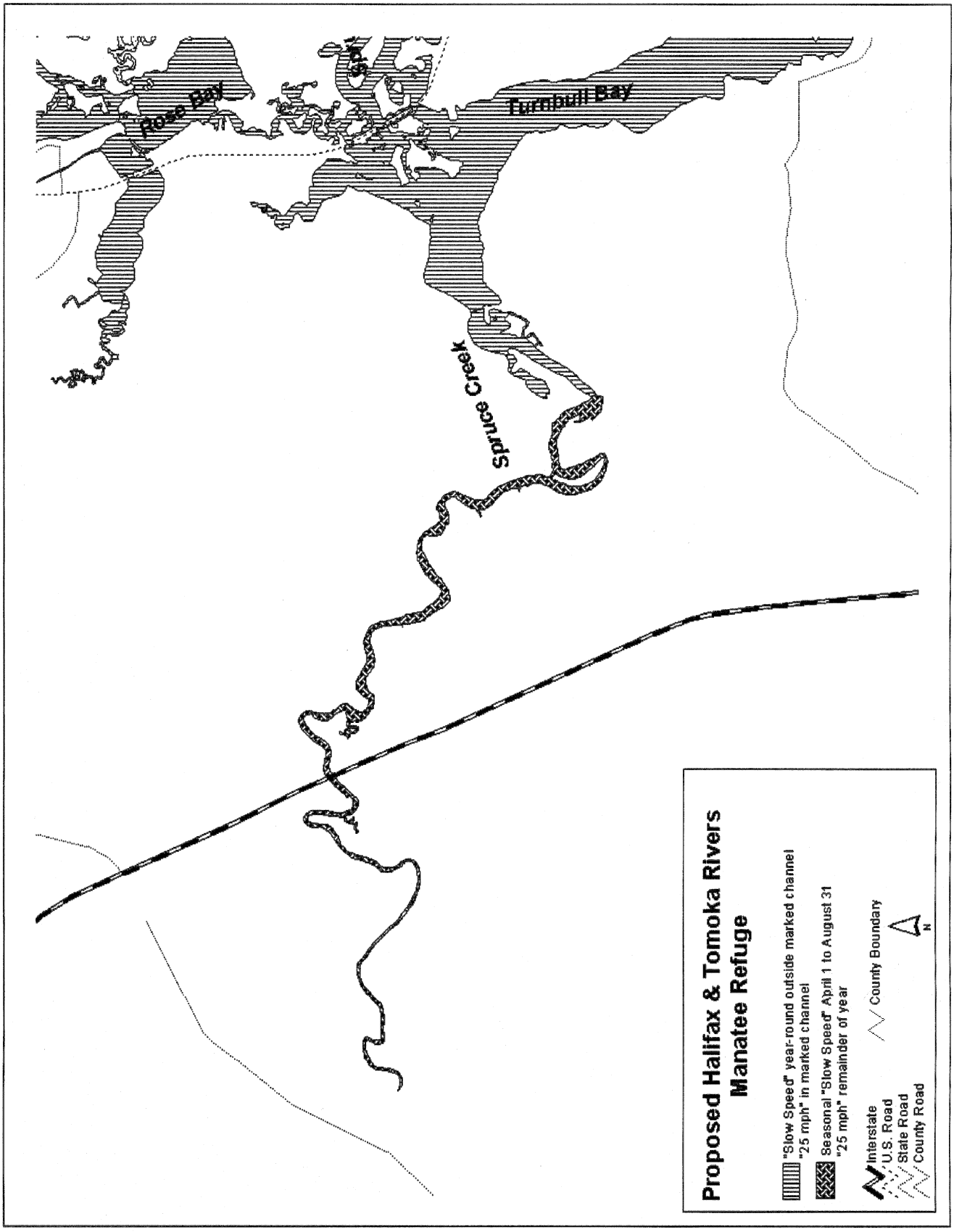
Halifax River B



Ponce Inlet Area A



Ponce Inlet Area B



Ponce Inlet Area C

Dated: March 26, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–8179 Filed 4–3–03; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Friday,
April 4, 2003

Part III

Environmental Protection Agency

40 CFR Part 52
Section 126 Rule: Withdrawal Provision; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–7476–3]

RIN 2060–AK41

Section 126 Rule: Withdrawal Provision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In today's action, EPA is proposing to revise one narrow aspect of a final rule published on January 18, 2000, known as the Section 126 Rule. The EPA promulgated the rule in response to petitions submitted by four Northeastern States under section 126 of the Clean Air Act (CAA) for the purpose of mitigating interstate transport of nitrogen oxides (NO_X) and ozone. Nitrogen oxides are one of the main precursors of ground-level ozone pollution. The Section 126 Rule requires electric generating units (EGUs) and non-electric generating units (non-EGUs) located in 12 eastern States and the District of Columbia to reduce their NO_X emissions through a NO_X cap-and-trade program.

Originally, EPA harmonized the Section 126 Rule with a related ozone transport rule, known as the NO_X State implementation plan call (NO_X SIP Call), which also addresses NO_X and ozone transport in the eastern United States. The EPA established the same compliance date for both rules, May 1, 2003. Where States adopted, and EPA approved, SIPs meeting the NO_X SIP Call, and with a May 1, 2003 compliance date, EPA would withdraw the Section 126 requirements for sources in that State. This was a practical way to address the overlap between the two rules. As a result of court actions, the compliance dates for the Section 126 Rule and the NO_X SIP Call have now been delayed until May 31, 2004. In addition, the NO_X SIP Call has been divided into two phases. Therefore, EPA is proposing to revise the Section 126 withdrawal provision so that it will operate under these new circumstances. In today's action, EPA is proposing to withdraw the Section 126 Rule if a State adopts, and EPA approves, a SIP with a May 31, 2004 compliance date that meets either the full NO_X SIP Call or Phase 1 where the State is regulating the Section 126 sources to the same stringency as the Section 126 Rule.

DATES: The comment period on this proposal ends on May 24, 2003. Comments must be postmarked by the last day of the comment period and sent directly to the Docket Office listed in **ADDRESSES** (in duplicate form if possible). A public hearing will be held on April 24, 2003 in Washington, DC, if one is requested by April 10, 2003. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the comment period and hearing.

ADDRESSES: Comments may be submitted through the U.S. Postal Service to the following address: U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Avenue, NW., Room B108, Mail Code 6102T, Washington, DC 20460, Attention: Docket No. A–97–43. To mail comments or documents through Federal Express, UPS, or other courier services, the mailing address is: U.S. Environmental Protection Agency, EPA Docket Center (Air Docket), 1301 Constitution Avenue, NW., Room B108, Mail Code 6102T, Washington, DC 20004. The telephone number for the Air Docket is (202) 566–1742 and the fax number is 202–566–1741. The EPA encourages electronic submission of comments and data following the instructions under **SUPPLEMENTARY INFORMATION** of this document. No confidential business information should be submitted through e-mail.

Documents relevant to this action are available for public inspection at the EPA Docket Center, located at 1301 Constitution Avenue, NW., Room B102, Washington, DC between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

The public hearing, if requested, will be held at Ariel Rios North, Room 1332, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Questions concerning today's action should be addressed to Carla Oldham, EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, C539–02, Research Triangle Park, NC 27711, telephone (919) 541–3347, e-mail at *oldham.carla@epa.gov.*

SUPPLEMENTARY INFORMATION:

Public Hearing

The EPA will conduct a public hearing on this proposal on April 24, 2003 beginning at 9 a.m., if requested on or before April 10, 2003. The EPA will not hold a hearing if one is not requested. Please check EPA's Web page at *http://www.epa.gov/ttn/naaqs/ozone/rto/rto_whatsnew.html* on April 11, 2003 for the announcement of whether the hearing will be held. If there is a public hearing, it will be held at Ariel Rios North, Room 1332, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The Metro stop is Federal Triangle. If you want to request a hearing and present oral testimony at the hearing, you should notify, on or before April 10, 2003, JoAnn Allman, EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, C539–02, Research Triangle Park, NC 27711, telephone (919) 541–1815, e-mail *allman.joann@epa.gov.* Oral testimony will be limited to 5 minutes each. The hearing will be strictly limited to the subject matter of the proposal, the scope of which is discussed below. Any member of the public may file a written statement by the close of the comment period. Written statements (duplicate copies preferred) should be submitted to Docket No. A–97–43 at the addresses given above for submittal of comments. The hearing schedule, including the list of speakers, will be posted on EPA's Web page at *http://www.epa.gov/ttn/naaqs/ozone/rto/rto_whatsnew.html.* A verbatim transcript of the hearing, if held, and written statements will be made available for copying during normal working hours at the EPA Docket Center address given above for inspection of documents.

Availability of Related Information

The official record for this rulemaking, as well as the public version, has been established under docket number A–97–43 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information, is available for inspection from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in **ADDRESSES** at the beginning of this document. In addition, the **Federal Register** rulemaking actions and associated documents are located at *http://www.epa.gov/ttn/naaqs/ozone/rto/126/index.html.*

The EPA has issued a separate rule on NO_X transport entitled, ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone.'' The rulemaking docket for that rule (Docket No. A–96–56), hereafter referred to as the NO_X SIP Call, contains information and analyses that EPA has relied upon

in the section 126 rulemaking, and hence documents in that docket are part of the rulemaking record for this rule. Documents related to the NO_X SIP Call rulemaking are available for inspection in docket number A–96–56 at the address and times given above.

Submitting Electronic Comments

Electronic comments are encouraged and can be sent directly to EPA at *A-and-R-Docket@epa.gov.* Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 8.0 or ASCII file format. All comments and data in electronic form must be identified by the docket number A–97–43. Electronic comments may be filed online at many Federal Depository Libraries.

Outline

I. What Is the Relationship Between the Section 126 Rule and the NO_X SIP Call?

In the past several years, EPA has been engaged in two separate rulemakings to address the interstate ozone transport problem in the eastern half of the United States. These rules, known as the NO_X SIP Call and the Section 126 Rule, both require reductions in NO_X emissions, which are precursors to ground-level ozone formation.

On October 27, 1998 (63 FR 57356), EPA promulgated the NO_X SIP Call thereby requiring 22 Eastern States and the District of Columbia to reduce statewide NO_X emissions to a specified level (NO_X budget).[1] The States have the flexibility to choose the particular mix of control measures necessary to meet the NO_X budget. The primary statutory provision for the NO_X SIP Call is CAA section 110(a)(2)(D)(i), under which, in general, each SIP is required to include provisions to assure that sources within the State do not emit pollutants in amounts that significantly contribute to nonattainment or interfere with maintenance problems downwind.

In 1997, while EPA was in the process of developing the NO_X SIP Call, eight Northeastern States submitted petitions under section 126 of the CAA seeking to mitigate significant interstate transport of NO_X and ozone. Section 126 refers to State obligations under CAA section 110(a)(2)(D)(i) as does the NO_X SIP Call. Section 126 authorizes a State to petition EPA to make a finding that any major source or group of stationary sources in upwind States are significantly contributing to nonattainment, or interfering with maintenance, in the petitioning State. If EPA makes such a finding, EPA is authorized to establish Federal emission limits for the affected sources. The petitions requested that EPA make such findings and establish control requirements for certain sources in about 30 States.

The EPA took action on the Section 126 petitions in final rules issued on May 25, 1999 and January 18, 2000 (together known as the Section 126 Rule) (64 FR 28250 and 65 FR 2674). In acting on the section 126 petitions, EPA relied on analyses and information used in the NO_X SIP Call rulemaking, including the linkages it drew between specific upwind States and nonattainment and maintenance problems in specific downwind States. The EPA determined that large EGUs and large industrial boilers and turbines (non-EGUs) in 12 States and the District of Columbia were significantly contributing to nonattainment problems in four of the petitioning States under the 1-hour ozone national ambient air quality standard.[2] The EPA required these sources to reduce their NO_X emissions through a Federal NO_X cap-and-trade program.

The Section 126 Rule overlaps considerably with the NO_X SIP Call. Both the Section 126 Rule and the NO_X SIP Call are based on much the same set of facts regarding the same pollutants. Both rely on section 110(a)(2)(D)(i) of the CAA. All of the sources affected by the Section 126 Rule are located in States that are covered by the NO_X SIP Call. Therefore, as discussed below, EPA coordinated its actions under the two transport rules. (*See* the May 25, 1999 and January 18, 2000 Section 126 Rules for a detailed history of the relationship between the NO_X SIP Call and the Section 126 Rule.)

II. What Is the History of the Section 126 Rule Withdrawal Provision?

When EPA issued the May 25, 1999 Section 126 Rule, there was an existing requirement under the NO_X SIP Call for States to reduce their NO_X emissions and an explicit and expeditious schedule to do so. Therefore, EPA was able to coordinate, or harmonize, the Section 126 Rule with the NO_X SIP Call. The EPA established the same compliance date, May 1, 2003 for both rules. Then, EPA structured its action on the section 126 petitions to give a State the opportunity to address its NO_X transport first under the NO_X SIP Call before EPA would directly regulate sources in the State under the Section 126 Rule. Thus, in the May 25, 1999 Section 126 Rule, EPA made technical determinations as to which sources were significantly contributing to the petitioning States but deferred making the Section 126 findings, which would trigger the control requirements, as long as States and EPA stayed on track to meet the NO_X SIP Call obligations. The EPA included a withdrawal provision in the Section 126 Rule under which the Section 126 Rule for sources in a State would be automatically withdrawn if that State submitted and EPA approved a NO_X SIP fully meeting the NO_X SIP Call (*see* 64 FR 28271–28274; May 25, 1999). Thus, the section 126 control requirements would not go into place if

[1] As a result of a court decision, EPA will now only be including 21 States and the District of Columbia in the SIP Call.

[2] Several of the petitions also requested that EPA also make findings under the 8-hour ozone standard. The EPA made technical determinations under the 8-hour standard in the May 25, 1999 rule but later stayed that portion of the rule in light of litigation on the 8-hour standard (65 FR 2674; January 18, 2000).

a State took timely action under the NO_X SIP Call. This gave upwind States the flexibility to address the ozone transport problem themselves, but would not delay implementation of the NO_X transport remedy beyond the May 1, 2003 Section 126 Rule compliance date.[3] This was a practical way to address the overlap between the actions that would be required under the NO_X SIP Call and under the rulemaking on the section 126 petitions. (The basis for the withdrawal provision is discussed below in section III.A. For a more detailed discussion of the basis for harmonizing the two rules and the interplay of the underlying statutory provisions, see the May 25, 1999 final rule.)

The NO_X SIP Call originally required States to submit their NO_X SIPs to EPA by September 30, 1999. On May 25, 1999, in response to a request by States challenging the NO_X SIP Call, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit or the court) issued a stay of the SIP submission deadline pending further order of the court. *Michigan* v. *EPA,* 213 F.3d 663 (D.C. Cir., 2000), *cert. denied,* 121 S. Ct. 1225 (2001) (order granting stay in part). Inasmuch as the compliance date is linked with the SIP submission date, the stay created uncertainty regarding the compliance date. Because there was no longer a schedule for the NO_X SIP Call, and therefore, no assurance that transport would be addressed by May 1, 2003, EPA no longer had a basis for deferring action under the Section 126 Rule. Therefore, in a final rule published on January 18, 2000, EPA moved forward to make the findings with respect to the 1-hour ozone standard and activate the control requirements under the Section 126 Rule (65 FR 2674).[4] However, the Section 126 Rule continued to contain a provision (§ 53.34(i)) whereby the section 126 requirements would be automatically withdrawn for sources in a State if EPA approved a State's SIP that provided for the NO_X SIP Call emission reduction requirements by May 1, 2003.

[3] This approach of ''harmonizing'' the Section 126 Rule and the NO_X SIP Call was provided as a rulemaking option in a consent decree developed by the petitioning States and EPA.

[4] Because of the stay on the Section 126 Rule with respect to the 8-hour standard, EPA did not make findings under the 8-hour standard at that time. EPA plans to complete it's actions on the 8-hour petitions in a future rulemaking.

III. Why Does the Section 126 Rule Withdrawal Provision Need To Be Revised?

A. Under What Circumstances Does the Section 126 Rule Withdrawal Provision Currently Operate?

Section 52.34(i) of the Section 126 Rule currently provides that:

> * * * a finding [under the Section 126 Rule] as to a particular major source or group of stationary sources in a particular State will be deemed to be withdrawn, and the corresponding part of the relevant petition(s) denied, if the Administrator issues a final action putting in place implementation plans that comply with the requirements of §§ 51.121 and 51.122 [the NO_X SIP Call] of this chapter for such State.

As discussed in the Section 126 Rule (65 FR 2682–2684), the premise for the automatic withdrawal provision was that once a SIP (or Federal implementation plan (FIP)) controls the full amount of significant contribution from a State, the section 126 sources in that State could no longer be significantly contributing to downwind nonattainment, and hence the basis for the section 126 findings would no longer be present. Further, the provision would ensure that the downwind petitioning States receive the emission reduction benefits they are entitled to under section 126 by May 1, 2003, which was then the compliance date, either under the Section 126 Rule or under a Federally enforceable SIP or FIP (65 FR 2684). Thus, EPA's rationale for adopting the automatic withdrawal provision depended upon a May 1, 2003 compliance date for sources under the SIP that would substitute for the control remedy under the Section 126 Rule. Accordingly, EPA interpreted section 52.34(i) to apply only where EPA approves a SIP revision (or promulgates a FIP) meeting the full requirements of the NO_X SIP Call and including a May 1, 2003 compliance date for sources (See 65 FR 2683). The automatic withdrawal provision does not address any other circumstances.

B. How Have Court Actions Affected the Circumstances Upon Which the Section 126 Rule Withdrawal Provision Was Based?

Both the NO_X SIP Call and the Section 126 Rule were challenged in court. As a result of court actions, certain circumstances upon which the Section 126 withdrawal provision was based have changed—the deadlines for the NO_X SIP Call and the Section 126 Rule have been delayed and the SIP Call has been divided into 2 phases (known as Phase 1 and Phase 2).

1. Court Actions on the NO_X SIP Call

On March 3, 2000, a panel of the D.C. Circuit largely upheld the NO_X SIP Call but remanded a few issues to EPA for further consideration. (*See Michigan* v. *EPA,* 213 F.3d 663 (D.C. Cir., 2000), *cert. denied,* 121 S. Ct. 1225 (2001).) As discussed in section II above, during the litigation, the court issued a stay of the SIP submission deadline. On June 22, 2000, in response to a motion by EPA, the court lifted the stay and established a new SIP submission date of October 30, 2000. On August 30, 2000, the D.C. Circuit ordered that the deadline for implementation of the NO_X SIP Call be extended from May 1, 2003 to May 31, 2004. The NO_X SIP Call then had a later compliance date and was no longer harmonized with the Section 126 Rule.

As a result of the court decision, EPA divided the NO_X SIP Call into two phases. Phase 1 represents the portion of the rule that was upheld by the court and accounts for approximately 90 percent of the total emissions reductions called for by the original NO_X SIP Call. The court-established SIP submission date and compliance date apply to Phase 1. Phase 2 of the NO_X SIP Call is addressing issues remanded by the court. The EPA proposed the Phase 2 requirements on February 22, 2002 (67 FR 8396). The SIP submission date and compliance date for the Phase 2 will be established through that rulemaking action.

The EPA promulgated the January 2000 Section 126 Rule at the time when the NO_X SIP Call stay was in place. In the preamble to the rule, EPA noted that if EPA prevailed in the NO_X SIP Call litigation, the court or EPA would need to establish a new deadline for SIP submission and the delay from the original September 1999 SIP deadline could require a shift in the date for achieving the NO_X SIP Call emissions reductions beyond May 1, 2003 (65 FR 2683). The EPA indicated that when and if such a situation were to arise, EPA would address through rulemaking the effects of the new NO_X SIP Call deadline on the Section 126 withdrawal provision.

2. Court Actions on the Section 126 Rule

On May 15, 2001, the court ruled on a number of challenges to EPA's Section 126 Rule. *See Appalachian Power* v. *EPA,* 249 F.3d 1032 (D.C. Cir. 2001). The court largely upheld the Section 126 Rule, but remanded two issues to EPA. The court directed EPA to: (1) Properly justify either the current or a new set of EGU heat input growth rates to be used in estimating State heat input

in 2007, and (2) either properly justify or alter its categorization of cogenerators that sell electricity to the electric grid as EGUs.[5]

On August 24, 2001, the D.C. Circuit Court tolled (suspended) the compliance period for EGUs under the Section 126 Rule as of the May 15, 2001 decision pending EPA's response to the remand related to EGU growth rates. *Appalachian Power* v. *EPA,* 249 F.3d 1052 (D.C. Cir 2001), Order (August 24, 2001). The EPA issued its response in a notice published on May 1, 2002 (67 FR 21868). Because of the time needed to fully respond to the growth factor remand, the tolling of the compliance period resulted in a delay in the implementation of the Section 126 Rule until the 2004 ozone season. This created a need for EPA to once again harmonize the Section 126 Rule with the NO_X SIP Call. Therefore, on April 30, 2002, EPA issued a final rulemaking to revise the Section 126 Rule compliance date and other related dates (67 FR 21522). The new compliance date is May 31, 2004, which is the same compliance date for Phase 1 of the NO_X SIP Call, but slightly more than a year later than the compliance date upon which the Section 126 Rule withdrawal provision was based.

IV. What Is EPA's Proposal To Revise the Section 126 Rule Withdrawal Provision?

A number of reasons supported structuring the May 25, 1999 Section 126 Rule to provide for an automatic withdrawal of the section 126 findings upon approval of a SIP revision complying with the NO_X SIP Call. As discussed above, EPA believes it is appropriate, when consistent with the relevant statutory provisions, to structure the Section 126 Rule to allow for State rather than Federal regulation when either would be equally effective in implementing the statutory goal of producing timely emissions reductions. The withdrawal provision also avoids the overlap of the Federal requirements under section 126 and State measures in response to the NO_X SIP Call. However, due to the changes that have occurred to the Section 126 Rule and the NO_X SIP Call as a result of court actions, the Section 126 Rule withdrawal provision is now out of date. Therefore, it is necessary to revise and update the withdrawal provision so that it will function as originally intended.

[5] The EPA is responding to the remand related to the categorization of cogenerators in a rulemaking that was proposed on February 22, 2002 (67 FR 8396).

A. What Is EPA's Proposal Related to the SIP Compliance Date?

As discussed in Section III.A. above, EPA interprets the current Section 126 Rule withdrawal provision to operate only when the SIP has a May 1, 2003 compliance date. Because the Section 126 Rule compliance deadline is now May 31, 2004, a NO_X SIP to pre-empt or replace the Section 126 Rule requirements would not need to be implemented until May 31, 2004. Therefore, in today's action, EPA is proposing that the section 126 findings for sources in a State will be deemed to be withdrawn, and the corresponding portion of the relevant petition will be denied, if EPA approves a NO_X SIP that meets the NO_X SIP Call requirements of 40 CFR 51.121 and 51.122 (or Phase 1 requirements under the circumstances discussed below) by May 31, 2004 rather than by May 1, 2003.

B. What Is EPA's Proposal Related to Withdrawing the Section 126 Rule Based on a Phase 1 SIP?

The current withdrawal provision requires a State to meet the full NO_X SIP Call. If a State controls its statewide significant contribution under the NO_X SIP Call, it necessarily must have addressed the significant contribution from the section 126 sources in that State. This provided the basis for EPA to revoke the section 126 findings and requirements as to those sources.

At the time EPA promulgated the Section 126 Rule, the NO_X SIP Call had not yet been divided into two phases. Therefore, EPA did not address the question of whether something less than a full NO_X SIP, that is, a Phase 1 SIP, could adequately substitute for the section 126 requirements. Phase 1 of the NO_X SIP Call provides around 90 percent of the SIP Call reductions. States are required to achieve the Phase 1 reductions by May 31, 2004, the same compliance date as the Section 126 Rule. In February of this year, EPA proposed the Phase 2 requirements. The Phase 2 compliance date will be established in a future final rule. Because EPA expects that the Phase 2 compliance date will be later than the 2004 ozone season, States will be required to achieve only the Phase 1 reductions in 2004 and not the full NO_X SIP Call reductions. Therefore, in order to avoid having sources be subject to two different sets of transport requirements in 2004 under the NO_X SIP Call and the Section 126 Rule, EPA is proposing criteria for withdrawing the Section 126 Rule based on a Phase 1 SIP.

Although the Phase 1 SIP would achieve the vast majority of the SIP Call reductions, there is no guarantee that a Phase 1 SIP would, in all cases, control at least the same amount of emissions as the Section 126 Rule in a State or that the State would choose to regulate all the identified Section 126 sources. Therefore, EPA is not proposing that simply meeting the Phase 1 reductions would provide a basis for automatic withdrawal of the Section 126 requirements. Instead, EPA is proposing that the Section 126 Rule be withdrawn in a State under the more limited circumstances where EPA determines that an approved Phase 1 SIP is requiring at least the same total quantity of emissions reductions from the same group of sources as controlled under the Section 126 Rule by May 31, 2004. In this situation, the SIP would retain the environmental benefits that section 126 would have provided and the section 126 sources would no longer be significantly contributing to downwind nonattainment problems.

The process for withdrawing the Section 126 Rule based on a Phase 1 SIP would differ slightly from the situation where a State adopts a SIP meeting the full NO_X SIP Call requirements in that a second step would be involved. In the latter case, the Section 126 Rule would be automatically withdrawn upon SIP approval. In the case of the Phase 1 SIP, the Section 126 Rule would be withdrawn upon EPA's determination that the approved Phase 1 SIP regulates the group of section 126 sources to the same or greater stringency as the Section 126 Rule.

Based on the review of SIPs to date, EPA believes it is likely that all of the Phase 1 SIPs from States affected by the Section 126 Rule will regulate all of the section 126 sources to the same stringency as the Section 126 Rule. However, not all of the Phase 1 SIPs have been fully approved yet and one affected State has not yet submitted its SIP. Therefore, EPA is still considering whether there are other circumstances under which it would be appropriate to withdraw the Section 126 Rule. The EPA is soliciting comments on alternative approaches for withdrawing the Section 126 Rule based on an approved Phase 1 SIP.

V. What Is the Current Status of the NO_X SIPs Under the NO_X SIP Call and EPA's Proposed Action To Withdraw the Section 126 Rule in a State?

The January 2000 Section 126 Rule affected sources located in the District of Columbia and the following 12 States: Delaware, Indiana, Kentucky, Maryland, Michigan, New Jersey, New York, North

Carolina, Pennsylvania, Ohio, Virginia, and West Virginia.[6] All of these States are required to submit Phase 1 SIPs under the NO_X SIP Call. To date, EPA has given final approval to NO_X SIPs from ten of the thirteen jurisdictions (all but Michigan, Ohio, and Virginia).

The District of Columbia, Maryland, New Jersey, and New York voluntarily adopted SIPs that meet the original full NO_X SIP Call budgets (65 FR 11222; March 2, 2000) and include a May 1, 2003 compliance date. Therefore, these SIPs meet the criteria for the current Section 126 withdrawal provision and the Section 126 Rule already has been automatically withdrawn for sources in those four jurisdictions.[7]

North Carolina adopted a SIP meeting the original full NO_X SIP Call budget with a May 31, 2004 compliance date. If EPA finalizes today's action as proposed, the Section 126 Rule under the 1-hour standard will be automatically withdrawn for sources in that State upon the effective date of the final rule.

The EPA is today proposing that the approved Phase 1 SIPs from Delaware, Indiana, Kentucky, Pennsylvania, and West Virginia regulate the total group of section 126 sources in the respective States to the same stringency as the Section 126 Rule and include a compliance date no later than May 31, 2004. If EPA finalizes today's rule revision as proposed, the Section 126 Rule under the 1-hour standard will be withdrawn for sources in those States upon the effective date of the final rule.

The EPA proposed to conditionally approve the Virginia and Ohio SIPs. In today's action, EPA is proposing that once Virginia and Ohio satisfy the conditions identified in their respective SIP proposal actions and EPA fully approves the SIPs, each SIP would regulate the total group of section 126 sources in the respective State to the same stringency as the Section 126 Rule. If EPA finalizes today's rule revision as proposed and fully approves the Virginia and Ohio SIPs, the Section 126 Rule under the 1-hour standard will be withdrawn for sources in those States upon the later of the effective date for the final rule based on today's proposal and the effective date for final SIP approval.

We expect Michigan to submit a Phase 1 SIP shortly. The EPA will address the removal of the Section 126 Rule in Michigan in a separate rulemaking action once EPA receives and proposes action on the Michigan SIP.

The EPA notes that this proposal to withdraw the Section 126 Rule only affects the portion of the Section 126 Rule based on the 1-hour ozone standard. In evaluating the section 126 petitions, EPA made separate determinations under the 1-hour and 8-hour standards. In light of the litigation on the 8-hour standard, EPA previously stayed the 8-hour portion of the Section 126 Rule. Recently, EPA issued its final response to a U.S. Court of Appeals for the D.C. Circuit remand of the 8-hour standard. After a careful review, EPA has reaffirmed the 8-hour ozone standard and is moving forward to implement the standard. Therefore, EPA will be initiating a rulemaking to lift the 8-hour stay on the Section 126 Rule. In that rulemaking, EPA will complete its action on the 8-hour petitions.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Under Executive Order 12866, this proposed action is not a ''significant regulatory action'' and is therefore not subject to review by OMB. The January 2000 Section 126 Rule (65 FR 2674) establishes control requirements for certain sources in 12 States and the District of Columbia. The Section 126 Rule contains a provision under which EPA would withdraw the control requirements in a State if EPA approves a State plan to control the NO_X transport in response to the NO_X SIP Call. As the result of court actions, the compliance dates for the Section 126 Rule and the NO_X SIP Call have now been delayed until May 31, 2004. In addition, the NO_X SIP Call has been divided into two phases. Therefore, EPA is proposing to revise and update the Section 126 withdrawal provision so that it will operate under these new circumstances.

This proposed action would not create any additional impacts beyond what was promulgated in the January 2000 Rule. This proposed rule also does not raise novel legal or policy issues. Therefore, EPA believes that this action is not a ''significant regulatory action.''

B. Paperwork Reduction Act

Today's action does not propose any new information collection request requirements. Therefore, an information collection request document is not required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the proposed rule on small entities, small entity is defined as: (1) A small business according to the U.S. Small Business Administration size standards for the NAICS codes listed in the following table; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-

[6] Indiana, Kentucky, Michigan, and New York were only partially covered by the Section 126 Rule.

[7] The EPA is currently revising certain portions of the NO_X SIP Call in response to a March 3, 2000 decision by the U.S. Court of Appeals for the D.C. Circuit. *See Michigan* v. *EPA,* 213 F.3d 663 (D.C. Cir. 2000). In this decision, the court upheld the NO_X SIP Call on all major issues, but remanded four narrow issues to EPA for further rulemaking. The EPA expects to complete the rulemaking by the end of the year, which will slightly modify the NO_X SIP budgets based on the court's holding. In light of the changes necessary to respond to the court decision, EPA anticipates that the final NO_X SIP budgets would be no more stringent than the original SIP budgets as modified by the March 2, 2000 technical amendment (65 FR 11222). Therefore, a SIP meeting the March 2, 2000 budgets and providing for reductions by May 1, 2003, should fully address the significant NO_X transport from that State, and the current section 52.34(i) withdrawal provision applies to automatically withdraw the section 126 requirements for sources in that State.

profit enterprise which is independently owned and operated and is not dominant in its field.

NAICS code	Economic activity or industry	Size standard in number of employees, millions of dollars of revenues, or output
322121	Pulp mills	750
322122		
325211	Plastics materials, synthetic resins, and nonvulcanized elastomers	750
325188	Industrial organic chemicals	1,000
325199		
324110	Petroleum refining	1,500
331111	Steel works, blast furnaces, and rolling mills	1,000
333611	Steam, gas, and hydraulic turbines	1,000
333618	Stationary internal combustion engines	1,000
333415	Air-conditioning and warm-air heating equipment and commercial and industrial refrigeration equipment	750
222111	Electric utilities	[1] 4
222112		
486210	Natural gas transmission	$6.0
221330	Steam and air conditioning supply	$10.5

[1] Million megawatt hrs.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Today's proposal, if promulgated, would not create new requirements for small entities or other sources. Instead, this action is proposing to revise the Section 126 Rule to withdraw the section 126 requirements under specified circumstances. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rules with ''Federal mandates'' that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. A ''Federal mandate'' is defined to include a ''Federal intergovernmental mandate'' and a ''Federal private sector mandate'' (2 U.S.C. 658(6)). A ''Federal intergovernmental mandate,'' in turn, is defined to include a regulation that ''would impose an enforceable duty upon State, local, or tribal governments,'' (2 U.S.C. 658(5)(A)(i)), except for, among other things, a duty that is ''a condition of Federal assistance'' (2 U.S.C. 658(5)(A)(I)). A ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector,'' with certain exceptions (2 U.S.C. 658(7)(A)).

The EPA has determined that this proposed action does not include a Federal mandate that may result in estimated costs of $100 million or more for either State, local, or tribal governments in the aggregate, or for the private sector. This Federal action does not propose any new requirements, as discussed above. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, would result from this action.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), 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.''

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

This proposed action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's proposed action would not impose any additional burdens beyond those imposed by the January 2000 Rule. Thus, the requirements of section 6 of the Executive Order do not apply to this rulemaking action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), 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 proposed rule does not have tribal implications. If promulgated, it 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. Today's action does not significantly or uniquely affect the communities of Indian tribal governments. As discussed above, today's proposed action would not impose any new requirements that would impose compliance burdens beyond those that would already apply under the January 2000 rule. Accordingly, the requirements of Executive Order 13175 do not apply to this rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because this action is not ''economically significant'' as defined under Executive Order 12866 and the Agency does not have reason to believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355; May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Today's action does not propose any new regulatory requirements.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Transfer and Advancement Act of 1995 (''NTTAA,'' Pub. L. 104–113 section 12(d) 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The National Technology Transfer and Advancement Act of 1997 does not apply because today's action does not propose any new technical standards. This action is proposing to amend the January 2000 Rule by specifying circumstances under which the Section 126 requirements would be withdrawn.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, trading, Intergovernmental Relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: March 27, 2003.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart A—General Provisions

2. Section 52.34 is amended by revising paragraph (i) to read as follows:

§ 52.34 Action on petitions submitted under section 126 relating to emissions of nitrogen oxides.

* * * * *

(i) *Withdrawal of section 126 findings.* Notwithstanding any other provision of this subpart, a finding under paragraphs (c), (e)(1) and (e)(2), (g), and (h)(1) and (h)(2) of this section as to a particular major source or group of stationary sources in a particular State will be deemed to be withdrawn, and the corresponding part of the relevant petition denied, if the Administrator issues a final action approving implementation plan provisions that:

(1) Comply with the applicable requirements of §§ 51.121 and 51.122 of this chapter for such State, modified to require achievement of the emission reductions under § 51.121 of this chapter starting no later than May 31, 2004; or

(2)(i) Comply with the applicable requirements of §§ 51.121 and 51.122 of this chapter, except for § 51.121(e) of this chapter, for such State, modified to require achievement of the emission reductions under § 51.121 of this chapter starting no later than May 31, 2004, and

(ii) Achieve emissions reductions, from the large EGUs and large non-EGUs subject to paragraph (j) of this section in such State, that equal or exceed the emissions reductions otherwise required under Part 97 of this chapter for such State.

* * * * *

[FR Doc. 03–8152 Filed 4–3–03; 8:45 am]

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Federal Register

Friday,
April 4, 2003

Part IV

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 422 and 489

Medicare Program; Improvements to the Medicare+Choice Appeal and Grievance Procedures; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

42 CFR Parts 422 and 489

[CMS–4024–FC]

RIN 0938–AK48

Medicare Program; Improvements to the Medicare+Choice Appeal and Grievance Procedures

AGENCY: The Centers for Medicare & Medicaid Services, HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule with comment period responds to comments on the January 24, 2001, proposed rule regarding improvements to the Medicare+Choice (M+C) appeal and grievance procedures. It establishes new notice and appeal procedures for enrollees when an M+C organization decides to terminate coverage of provider services. The January 24, 2001 proposed rule was published as a required element of an agreement entered into between the parties in *Grijalva* v. *Shalala,* civ. 93–711 (U.S.D.C. Az.), to settle a class action lawsuit.

This rule also specifies a Medicare-participating hospital's responsibility for issuing discharge or termination notices under both the original Medicare and M+C programs, amends the Medicare provider agreement regulations with regard to beneficiary notification requirements, and amends M+C enrollee grievance procedures.

DATES: *Effective date:* Except for §§ 422.564, 422.620, 422.624, and 422.626, which are subject to the Paperwork Reduction Act (PRA), this final rule with comment period is effective May 5, 2003. We will publish the effective dates of those sections of the rule that are subject to the PRA in the **Federal Register** when the sections have been approved by the Office of Management and Budget.

Comment date: We will consider comments on this final rule if received at the appropriate address, as provided below, no later than 5 p.m. on June 3, 2003.

ADDRESSES: Mail written comments (one original and three copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4024–FC, P.O. Box 8013, Baltimore, MD 21244–8013. To insure that mailed comments are received in time for us to consider them, please allow for possible delays in delivering them.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses: Room 443G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–8013.

Comments mailed to the above addresses may be delayed and received too late for us to consider them.

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code CMS–4024–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's office at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Chris Gayhead, (410) 786–6429 (for issues concerning improvements to the M+C appeals and grievance procedures); Rhonda Greene Bruce, (410) 786–7579 (for issues related to hospital discharge notices).

I. Background

A. Balanced Budget Act of 1997

Section 4001 of the Balanced Budget Act of 1997, (BBA) (Pub. L. 105–33), enacted August 5, 1997, added sections 1851 through 1859 to the Social Security Act (the Act) to establish a new Part C of the Medicare program, known as the ''Medicare+Choice (M+C) Program.'' Implementing regulations for the M+C program are set forth in 42 CFR part 422. Subpart M of part 422 implements sections 1852(f) and (g), which set forth the procedures M+C organizations must follow with respect to grievances, organization determinations, and reconsiderations and other appeals. Under section 1852(f) of the Act, an M+C organization must provide meaningful procedures for hearing and resolving grievances between the organization (including any other entity or individual through which the organization provides health care services) and enrollees in its M+C plans.

Section 1852(g) of the Act addresses the procedural requirements concerning coverage determinations (called ''organization determinations'') and reconsiderations and other appeals of such determinations. In general, organization determinations involve the question of whether an enrollee is entitled to receive, or should continue to receive, a health service, and the amount the enrollee is expected to pay for the service. An organization determination may also involve an enrollee's request for reimbursement for services obtained with or without prior authorization. Only disputes concerning organization determinations are subject to the reconsideration and other appeal requirements under section 1852(g) of the Act. All other disputes are subject to the grievance requirements under section 1852(f) of the Act. For purposes of this final rule, a reconsideration consists of a review of an adverse organization determination (a decision that is unfavorable to the M+C enrollee, in whole or in part) by either the M+C organization or an independent review entity (IRE) or entities. We use the term ''appeal'' to denote any of the procedures that deal with the reviews of organization determinations, including reconsiderations, hearings before administrative law judges (ALJs), reviews by the Medicare Appeals Council (MAC) and judicial review.

B. Grijalva v. Shalala

Grijalva v. *Shalala* is a 1993 class action lawsuit brought by beneficiaries enrolled in Medicare risk-based managed care organizations. The plaintiffs challenged the adequacy of the managed care appeals process and claimed that CMS failed to assure that contracting managed care organizations afforded enrollees rights to which plaintiffs contended enrollees were entitled when the organization denied, reduced, or terminated health care coverage.

The Secretary and the plaintiffs reached a settlement agreement in the case, which the Arizona District Court approved on December 4, 2000. Under the settlement agreement, we agreed to publish a notice of proposed rulemaking (NPRM) proposing regulations that would establish new notice and appeal procedures when an M+C organization decides to terminate coverage of provider services to an enrollee. Providers that would be affected under the proposed rules published pursuant to the settlement agreement included skilled nursing facilities (SNFs), home health agencies (HHAs) and comprehensive outpatient rehabilitation facilities (CORFs). A key element of the agreement was that CMS would propose to establish an independent review entity to conduct fast-track reviews of appeals of decisions to terminate services. Under the proposed process, M+C enrollees would receive detailed written notices concerning their service

terminations and their appeal rights at least four days before a service termination. The proposed appeal process would be carried out during those four days. (*See* our January 24, 2001, proposed rule, 66 FR 7594, for a more detailed description of the settlement agreement.)

The settlement agreement contained a great deal of specificity with respect to both the notice and appeal procedures to be set forth in the proposed rule, and the timeframes for publication of proposed and final rules. However, consistent with Administrative Procedure Act (APA) standards for notice and comment rulemaking, the agreement explicitly established that publication of the proposed requirements ''[should] not be construed as a promise or predetermination regarding the content of [the] final rule * * * on notice and appeal procedures for M+C organization decisions to terminate provider services.''

II. Provisions of the Proposed Rule

On January 24, 2001, we published an NPRM (66 FR 7593) that, consistent with the settlement agreement, proposed regulations that would establish that an M+C enrollee who is dissatisfied with an M+C organization's decision to terminate SNF, HHA, or CORF services would have the right to a fast-track review by an independent entity. As described below, the proposed rule set forth the notification and appeals procedures for implementing this new appeal right. The proposed rule also addressed the notification procedures associated with similar appeal rights available to Medicare beneficiaries receiving inpatient hospital services as well as M+C beneficiary grievance procedures.

A. Proposed Notice and Appeal Procedures

We proposed that for any termination of services furnished by one of the affected types of providers, the enrollee would receive a standardized notice informing them of the M+C organization's decision to terminate the services. Under our proposal, the provider would be charged with the delivery of the notice four calendar days before the scheduled termination. If the services were expected to be furnished to an enrollee for a time span of fewer than four calendar days in duration, the enrollee would be given the notice upon admission. Valid delivery of the notice required the enrollee to sign the notice to indicate that he or she had received the notice and could comprehend it.

We proposed that the termination notice contain the following information:

A specific and detailed explanation why services were either no longer medically necessary or were no longer covered (with a description of any applicable Medicare coverage rule).

Any applicable M+C organization policy, contract provision, or rationale upon which the termination decision was based.

Specific, relevant information to an extent sufficient to advise the enrollee of how a Medicare or M+C organization policy applied to the enrollee's case, as well as the date and time that the organization's coverage of services would end (and the enrollee's liability would begin).

A description of the enrollee's fast-track appeal rights, including how to contact the IRE to initiate an appeal, as well as the availability of other M+C appeal procedures if the enrollee failed to meet the deadline for (or decided not to pursue) a fast-track IRE appeal.

Under our proposal, an enrollee who wanted to appeal a termination decision to the IRE needed to contact the IRE by noon of the first calendar day after receiving the termination notice. We specified that an enrollee who timely sought IRE review would be protected from liability for the costs of services during the fast-track appeals process. Coverage of provider services would continue until noon of the day after an enrollee received notice of an IRE's decision upholding the M+C organization's determination, or until the time and date designated on the termination notice, whichever was later.

We proposed that when an enrollee appealed an M+C organization's decision to terminate provider services, the burden was on the M+C organization to prove that the termination was the correct decision. The M+C organization would be required to supply any information that the IRE required to sustain the termination decision, including a copy of the termination notice. The M+C organization would be required to supply this information as soon as possible, but no later than the close of business of the first day after the day the IRE notified the M+C organization that the enrollee had requested a review.

Assuming that the IRE received all needed information on a timely basis, the proposed process would have resulted in a decision by the close of business on the second full day after the deadline for an enrollee's appeal request, with the following possible results:

If the IRE decided that services should not be terminated, a new termination notice would be required, with attendant appeal rights, before the M+C organization could terminate services.

If the IRE deferred its decision, coverage of the services would continue until the decision was made but no additional termination notice would be required.

If the IRE decided to uphold the M+C organization's decision to discontinue services, coverage of the enrollee's services would end at noon on the day after the IRE made its decision or as specified in the termination notice, whichever is later.

In the event that the M+C organization's decision was upheld, the enrollee would be financially liable for any services provided after the effective date identified in the notice. The proposed rule outlined that an enrollee's first recourse after an unfavorable IRE decision would be to request, within 60 days, that the IRE reconsider its decision. The IRE would have up to 14 calendar days from the date of the request for reconsideration to issue its reconsidered determination, with subsequent appeals possible to an ALJ and the MAC, consistent with the procedures set forth in the existing M+C regulations.

B. Hospital Notification Procedures

We also proposed in the January 24, 2001, rule requirements regarding hospitals' responsibility for issuing discharge notices under both the original Medicare and the M+C program. Specifically, we proposed that hospitals be required to provide to all Medicare beneficiaries (including those enrolled in M+C plans) a notice that includes the reasons for a discharge and information on their appeal rights. Under the proposed rule, hospitals would be responsible for delivering such a notice to each beneficiary the day before the date of the discharge. We noted that these notices would have to be approved by the Office of Management and Budget under section 3506(c)(2)(A) of the Paperwork Reduction Act.

C. Grievance Procedures

The January 2001 rule also proposed to revise the existing definition of a ''grievance,'' and proposed that an M+C organization be required to notify the enrollee of its decision as expeditiously as the case required, but no later than 30 calendar days after the date the organization received the grievance. In conjunction with this timeframe, we also proposed that the M+C organization be permitted to extend the timeframe by

up to 14 calendar days if the enrollee requested the extension or if the organization justified a need for additional information and the delay was in the interest of the enrollee.

Our proposal would require an M+C organization to inform the enrollee of the disposition of the grievance in writing if the grievance was submitted in writing. Grievances submitted orally could under the proposal be responded to either orally or in writing unless a written response was specifically requested by the M+C enrollee.

We proposed that the M+C organization's written response to a grievance involving quality of care issues or concerns must describe the enrollee's right to seek Quality Improvement Organization (QIO) review. For any complaint involving a QIO, the M+C organization must cooperate with the QIO in resolving the complaint.

The proposed rule specified that an M+C organization would be required to expedite a grievance if: (1) The grievance involved an M+C organization's decision to invoke an extension relating to an organization determination or reconsideration; (2) the grievance involved an M+C organization's refusal to grant an enrollee's request for an expedited organization determination; or (3) applying the standard timeframe could seriously jeopardize the enrollee's life, health or ability to regain maximum function. We proposed that the M+C organization notify the enrollee of its decision on an expedited grievance within 72 hours of receipt of the enrollee's grievance. The proposed grievance procedures concluded with the requirement that the M+C organization have a system to track and maintain records on all grievances received both orally and in writing, including the final disposition of the grievance. The tracking system would be required to maintain, at a minimum, date of receipt, disposition and date the response was given.

D. Reductions of Service

As part of the *Grijalva* settlement, we agreed to solicit comments in the January 2001 rule on how to provide notice and appeal procedures for decisions by M+C organizations to reduce provider services. We stated in the January 2001 proposed rule that, based on our review of this issue, we were considering adopting the position that a written notice should be required whenever there was a reduction in any previously authorized ongoing course of treatment. We did not put forth specific regulatory language to implement this approach, but instead asked for public comments on the appropriateness of such a requirement and recommendations on specific regulatory revisions in this regard.

III. Analysis of and Responses to Public Comments

A. Overview of Comments on January 24, 2001 Proposed Rule

We received 33 timely comments from organizations representing hospitals and other providers, M+C organizations, beneficiary advocacy groups and others. Commenters representing providers and managed care organizations uniformly agreed that the new appeals procedures were unworkable as proposed. They raised a series of objections to the proposed provisions, with concerns focusing on the following areas:

- Creation of a fast-track appeals process.
- Timing of the termination notices.
- Content and delivery of the notices.

The commenters representing beneficiary groups generally supported the procedures as proposed and urged CMS to finalize the proposed provisions. Commenters also expressed concern over the revised procedures for notifying Medicare beneficiaries of their right to appeal when discharged from an inpatient hospital. We also received comments on the proposed grievance procedures and the appropriateness of establishing notice and appeal procedures for reductions in provider services. These comments and our responses are discussed below.

B. The Proposed Fast-Track Review Process (Sections 422.624 and 422.626)

1. Need for a New Fast-Track Appeals Process

Comment: Several commenters opposed the creation of a fast-track, independent appeals process. These commenters argued that the current expedited appeals process is effective to handle appeals of provider terminations. They pointed out that the appeals process had changed considerably since the *Grijalva* lawsuit was first filed in 1993, including the implementation of an expedited appeals process for Medicare managed care enrollees (through an April 30, 1997, final rule (62 FR 23375)) and the subsequent establishment of the M+C program appeals procedures (under the BBA and implementing regulations). They asserted that the new fast-track appeals process would be confusing, duplicative, burdensome and expensive.

Response: We recognize that many of the problems that led to the original *Grijalva* lawsuit have been rectified through subsequent statutory and regulatory changes, and we believe that the existing expedited appeals process constitutes an important and effective beneficiary protection. However, the current expedited appeals process was designed primarily to address denials of the initiation of a service. The fast-track appeals process proposed in the January 24, 2001, rule would deal with decisions about the termination of provider services. Moreover, obtaining an independent review of an M+C organization's decision to terminate an enrollee's provider services now takes at least 6 days to complete, under a process where both the M+C organization and CMS's independent contractor must review an adverse organization determination about the need for further services. Our experience has been that decisions involving the termination of provider services, particularly in nursing homes, have been among the most contentious, and have often exposed enrollees to potentially significant financial liability for continuation of services. Under the fast-track process, an enrollee may appeal directly to an IRE, with greatly limited, if any, financial liability. This one-step process, carried out at government expense, can limit appeal processing costs for both the enrollee and the M+C organization.

We also note that section 1869(b) of the Act, as amended by section 521 of the Medicare Medicaid, and SCHIP Benefits Improvement and Protection Act (BIPA), has introduced significant new appeal requirements for beneficiaries under the original Medicare program that substantially parallel those proposed pursuant to the *Grijalva* settlement. BIPA requires the Secretary to establish a new fast-track appeal process when a provider of services plans to terminate an individual's services or discharge the individual from the provider. Currently, this right to an expedited review only exists with respect to hospital discharges under sections 1154 and 1155 of the Act. Our decision to implement an independent review process for terminations of provider services furnished to M+C enrollees is entirely consistent with, and bolstered by, the Congressional intent and direction evidenced by the BIPA provisions. (*See* our November 15, 2002, proposed rule, at 67 CFR 69312 for further details on the BIPA statute and our proposed new appeal provisions.) We believe that CMS must assure that all Medicare beneficiaries are afforded a fair and equitable process to appeal

provider terminations whether the beneficiary is enrolled in M+C or original Medicare.

2. Timing of the Termination Notices

Comment: Many commenters stated that it is clinically improbable that an M+C organization or provider could accurately predict four days in advance when a discharge would be appropriate, particularly in the nursing home setting where discharge decisions are made ''at most 48 hours prior to discharge.'' They argued that requiring delivery of the termination notices four days in advance would result in unnecessary appeals being initiated in situations where there could be a subsequent decision that services should not be terminated. They also believe that the four-day advance notice would greatly complicate the appeals decision-making process, since appeals would need to be decided as much as two days before the actual termination of services. Commenters suggested a number of alternative requirements for delivery of the termination notice, including: three days before termination of services, two days before termination, one day before termination of services, and ''promptly'' after the M+C organization decides that termination is appropriate.

Several commenters representing home health providers expressed concern that providers of such intermittent care in effect would be required to arrange for their staff to make extra visits solely to deliver termination notices. Commenters also suggested that if CMS retained the four-day advance notice requirement, the requirement should be more flexible, *i.e.*, delivery could be carried out before the proposed four-day deadline if circumstances permitted.

Response: The primary intent of the proposed four-day advance notification requirement was to enable the appeals process to be completed by the time services were scheduled to end, and thus to protect enrollees from any financial liability during the course of the appeal process. However, we have become convinced based on our review of the comments and further research into medical practice patterns that providing these notices four days in advance of termination is often not practical, particularly in institutional settings. Therefore, in this final rule, we are requiring under 422.624(b)(1) that enrollees receive notices *no later than two days* in advance of termination of services. We are also revising the proposed requirements to state explicitly that if, in a noninstitutional setting, the span of time between services exceeds two days, the notice may be provided the next to last time services are furnished.

We recognize that the result of this change would be that in some situations, enrollees will be exposed to potential liability for services that are found unnecessary by the independent review entity. However, we have concluded that it is not possible to construct a system that in all situations provides a meaningful notice about termination of services and still builds in complete financial protection for enrollees during the course of an appeal to an IRE. Note that we are also revising the appeals process itself (by shortening the time frame for records to be sent to the IRE, under 422.626(e)(3)) to ensure that it is completed within three days of the notice of termination. The effect of these changes is that an enrollee will face a maximum of one day of financial liability if the IRE rules that the disputed discharge date is appropriate.

In establishing this policy, we carefully considered how to balance two conflicting responsibilities—the need to ensure that an M+C enrollee has an opportunity to a meaningful appeal without undue financial exposure with the obligation not to impose inappropriate financial burdens on M+C organizations. Clearly, except in the inpatient hospital setting, the Medicare statute generally does not provide financial liability protection for either M+C enrollees or other Medicare beneficiaries who have chosen to continue to receive services pending the result of an appeal or claim determination. Absent a statutory mandate, we do not believe we have the authority to require M+C organizations to pay for services that are subsequently determined by an independent review entity not to be medically necessary, or otherwise covered, for the enrollee in question. (As noted above, section 521 of BIPA establishes a similar right to a fast track appeal of a termination of provider services (under section 1869(b)(1)(F) of the Act), but did not provide for continuation of Medicare coverage during the pendency of the appeal.)

It is important to note that an enrollee's potential financial liability for continuing provider services occurs only after valid delivery of the advance termination notice. That is, consistent with the requirements outlined at § 422.624(b), a standardized, signed and dated advance termination notice is required for financial liability to accrue to the enrollee. Providing this notice as soon as the termination date is known (rather than waiting until two days in advance of service termination) will in many cases serve the best interests of both plan enrollees and the M+C organizations who are responsible for payment for the services.

Comment: Several commenters responded to our specific request for comments on what constituted four-day notice and expressed confusion over whether the deadline for notice delivery would be 3 p.m. or ''close of business.'' Commenters indicated that requiring that the notices be delivered by 3 p.m. was not appropriate, given for example that physicians frequently visit nursing homes late in the afternoon or early in the evening after their office hours are over. Commenters recommended that CMS clarify that termination notices could be given until the end of the business day, which would still enable enrollees to request an appeal by noon of the next day.

Response: We agree with commenters that the deadline for notice delivery needs to be later than 3 p.m. to allow physicians and other practitioners enough time to visit nursing homes or other service settings late in the day. We recognize that practice patterns are different in these settings than in inpatient hospitals and thus that it may not be appropriate to apply the same standard across all provider settings. Thus, rather than establish a more precise time standard in regulations, the regulations will continue to indicate *the latest day* that a notice must be delivered. We intend to issue further program guidance that will be based on the prevalent practice patterns for the various service types. This guidance will reflect our general agreement that delivery of the advance termination notice by ''close of business'' will provide sufficient time for an enrollee to appeal by noon of the next day.

Comment: Two commenters raised concern over whether the four-day advance notice requirement should include weekends and holidays. One commenter asked that we consider the fact that many of the notices may be given on a day that would place the fourth day on a Saturday, Sunday, or holiday. Another commenter stated that since HHA and CORF services are not usually rendered on weekends or holidays, and M+C organizations have limited staff available on these days, CMS should consider using business rather than calendar days, where appropriate.

Response: As noted above, this final rule changes the requirement for advance notification of termination of services or discharge from the four day standard in the proposed rule to no later than two calendar days prior to termination of services or discharge. The new standard of ''at least'' two days

affords an M+C organization or provider the option of providing notice more than two days in advance if the second day before discharge is a non-business day (for example, for a Monday discharge). We have also provided that situations involving non-institutional settings, where the time-span between service delivery exceeds two days, an enrollee should be notified no later than the next to the last time services are furnished. We will work with provider and M+C organization representatives, and with the IRE to develop uniform procedures to deal with those rare situations where an enrollee needs to be given notice or discharged on a weekend. At a minimum, we intend to require, through its contract, that the IRE be able to accept expedited review requests on any day of the week and notify an M+C organization of that request.

3. Content and Delivery of the Termination Notice

Comment: Commenters raised a series of related concerns about both the delivery and content of the termination notices. Many commenters viewed as unnecessarily burdensome the requirement that each enrollee in a provider setting receive a detailed termination notice, regardless of whether the enrollee agreed with the termination of services. They generally believe that in most situations the contents of the required notice were too extensive and would provide little or no benefit to most enrollees.

Commenters were divided on the issue of who should be responsible for distributing the notices. Managed care industry commenters generally supported the proposed requirement that the providers of services deliver the notices, although they expressed concern over their liability in situations where the providers failed to do so. Commenters representing providers objected to being charged with this responsibility, particularly in view of the detailed nature of the notice. They indicated that it would be difficult to obtain all needed information from M+C organizations and that it was unfair to in effect shift the responsibilities of M+C organizations to providers. One commenter argued that a policy whereby providers would be responsible for giving notices does not comport with the settlement agreement.

Response: We continue to believe that providers clearly are in a better position than M+C organizations to carry out routine delivery of service termination notices to their patients. At the same time, although all enrollees need to be made aware of their appeal rights on a timely basis, we recognize that only a small proportion are likely to object to the termination of their services. Thus, it is in the best interests of all parties that the notice delivery process be as streamlined and simple to administer as possible.

To that end, we are requiring a two-step notification procedure under this final rule. We are revising the proposed requirement that providers deliver a detailed termination notice to M+C enrollees. Instead, we are requiring under 422.624(b) that providers deliver a standardized, largely generic, notice to each M+C enrollee whose services are terminating that will explain the enrollee's appeal rights. The notice will contain only two enrollee-specific elements—the enrollee's name and the date services will end. These notices will contain standardized information on an enrollee's appeal rights and how to initiate an appeal if necessary. Unless the enrollee wishes to dispute the termination of services, no further notice will be required.

The notice will instruct the enrollee to contact the IRE if he or she believes that the services should continue. If the enrollee indicates to the IRE that he or she disagrees with the discharge, the IRE will immediately contact the M+C organization, which will be required under 422.626(e) to deliver a detailed notice to the dissatisfied enrollee and to the IRE. The detailed notice must contain the remaining elements required under the proposed rule, including an explanation of why services were no longer needed, a description of any applicable Medicare coverage rule or policy, a statement of any applicable M+C organization policy or rationale, and facts specific to the enrollee that establish the applicability of Medicare or M+C organization policies. We believe that M+C organizations are in the best position to give detailed notices regarding their specific policies and the criteria that they applied in deciding to terminate provider services. Moreover, in view of the fact that M+C organizations ultimately bear the responsibility for both the service termination/discharge decision and for paying for services covered under their plans, we believe that is appropriate that M+C organizations be responsible for preparing and delivering them under the limited circumstances when they are needed.

Comment: Commenters were concerned that providers would refuse to comply with instructions to deliver notices and wanted to know what incentives were in place to obligate providers to deliver notices.

Response: We believe that the streamlined notification process should greatly ameliorate this concern. Providers will be obligated to comply with notice requirements through the amendment of the provider agreement regulations at § 489.27(b), as well as through their contractual arrangements with M+C organizations. We recognize that M+C organizations may also choose to delegate to providers the responsibility for discharge and termination decisions, and for the delivery of detailed notices in disputed termination cases. M+C organizations may choose to offer incentives to providers for compliance with these responsibilities, or penalties for non-compliance, through these private contractual arrangements. However, consistent with 422.502(i), M+C organizations remain ultimately responsibility for carrying out such delegated requirements.

We also note that section 1819(h) of the Act specifies remedies that may be used by the Secretary when a SNF is not in substantial compliance with the requirements for participation in the Medicare program. These penalties are applied on the basis of surveys conducted by CMS or by a survey agency. The regulations at § 488.406 include other penalties for non-compliance such as denials of payment, and corrective action plans. Also, HHAs are regulated in part by conditions of participation found at § 484.12, which indicate that HHAs must operate and furnish services in compliance with all applicable Federal, State and local laws and regulations.

Comment: Several commenters raised questions about financial liability in situations where a provider failed to deliver timely notice. They believe that it would be unfair for M+C organizations to be liable for services in such situations.

Response: Again, we believe that the prevalence of this sort of situation will be greatly lessened in light of the direction that we have taken in this final rule, which places a clear, reasonable obligation on both providers and M+C organizations with respect to informing enrollees of their rights. Nevertheless, the nature of the arrangement between an enrollee and a managed care organization dictates that the organization is ultimately responsible for payment for services that are found to be covered under the enrollee's plan. When an IRE makes a decision on an enrollee's appeal of a service termination, that decision will determine the extent to which liability rests on either the M+C organization or the enrollee. Consistent with

422.624(a)(2), an IRE's review will be available with respect to termination decisions where an enrollee first was ''authorized, either directly or by delegation, to receive an ongoing course of treatment from that provider.'' Thus, the IRE's determination is limited to whether continuation of an ongoing course of treatment is covered under an enrollee's plan. The IRE will not be expected to assign liability between the provider and the M+C organization.

Accomplishing proper advance notification of termination by the provider requires coordination and information sharing between the provider and the M+C organization to ensure that the enrollee receives the correct information at the proper time. We believe that the interdependence between M+C organizations and SNFs, HHAs, and CORFs reflects the typical daily reality of health plans and insurers.

Comment: Some commenters suggested that the 4-day advance notice requirement could result in the overutilization of services. They were concerned, for example, that an enrollee could be kept in a SNF unnecessarily even if the individual's condition had improved sufficiently to permit an unexpectedly early discharge. Commenters also asked about situations where an IRE determined that services should continue only one or two additional days. They questioned the need for additional notices in such situations.

Response: The notice requirement is not intended to impede or substitute for appropriate medical decision-making practices. Nothing in these requirements precludes an enrollee from being discharged from a SNF or HHA when an enrollee and his or her physician are in agreement that the discharge is medically appropriate. To clarify this point, we have revised section 422.624(d) to specify that, although an M+C organization is financially liable for continued services until 2 days after an enrollee receives a termination notice, the enrollee may waive the right to continued services if he or she agrees with being discharged sooner than 2 days after receiving the notice. However, an enrollee who objects to the service termination would not be liable for the services until 2 days after receiving the notice.

Similarly, it is not our intent to require M+C organizations to provide more care than an IRE determines would be appropriate. If an IRE specifies the number of days that coverage should continue, the IRE's decision itself takes the place of any further notice. However, there may be instances where an IRE will defer to an M+C organization to determine when coverage should end. In those cases, another advance termination notice must be given to the enrollee within a time frame consistent with the circumstances involved. Again, we believe that this concern is lessened or eliminated under the change to a 2-day advance notice.

Comment: Several commenters were concerned about the length and complexity of the notice, believing that this would cause delays in its preparation and create noncompliance with the delivery and appeals timeframes. Some commenters also argued that preparing these detailed notices about policies, coverage rules and contract provisions for every enrollee prior to provider services terminating would be administratively burdensome.

Response: As discussed above, we agree that it is not necessary to provide a detailed notice to all enrollees. We have learned through consumer testing that Medicare beneficiaries prefer to receive relevant information timed according to when they need to act. Thus, we have revised the proposed policy from requiring 100 percent distribution of a detailed notice from providers to all enrollees, to 100 percent distribution of a largely generic notice that explains when services will end, where to appeal if the enrollee disagrees, and potential liability for continued coverage during an appeal. For those enrollees who choose to appeal, M+C organizations would be required to provide a detailed notice that: explains why services are no longer covered or medically necessary, describes any applicable coverage rules, policies, or contract provisions, and contains facts specific to the enrollee and relevant to the coverage determination that are sufficient to advise the enrollee about the enrollee's care. We believe that this two-step notification process meet the needs of the large majority of enrollees who need to know when their services will end and what their appeal rights are, as well as the small minority of enrollees who want more specific information about why their services are ending. This approach also ensures that providers and M+C organizations are not faced with unnecessary administrative costs and burdens. CMS will develop both notices—the advance termination notice, and the detailed termination notice, through OMB's PRA process.

Comment: Some commenters viewed our proposal to require providers to deliver termination notices as evidence that CMS was unfairly favoring M+C organizations over providers, by allowing M+C organizations to avoid responsibility for providing notices. Some commenters believed that making providers responsible for termination notices simply because they were in the best position to deliver notices was unprecedented and argued that this violated the Administrative Procedure Act (APA).

Response: In developing these proposals, as well as in developing this final rule, we have attempted to arrive at policies that balance the rights and responsibilities of all the involved parties, including Medicare beneficiaries, providers, and M+C organizations. We continue to believe that beneficiaries need to be informed of their appeal rights and that providers are in the best position to carry out this function. At the same time, we are very cognizant of the need to accomplish such notification in the most cost-effective and least burdensome manner. Thus, as explained above, we have made adjustments to the proposed provisions to reflect concerns raised by commenters. This is the essence of notice and comment rulemaking, and thus we believe that implementing the notification requirement through this rulemaking process is entirely consistent with the APA. That is, the preamble to the proposed rule satisfied the requirements of the APA by describing our proposed policies and explaining the reasoning behind the proposal that providers deliver the termination notices. This final rule then reflects our careful consideration of the comments received. In response to comments on the burden imposed by the proposal on providers, we have in this final rule lessened that burden.

Comment: Various commenters raised questions regarding whether a notice needed to be provided in certain scenarios, such as when services did not meet Medicare coverage criteria, or where a provider or attending physician disagreed with an M+C organization's decision to terminate services.

Response: M+C organizations must determine when services should end on the basis that services are no longer medically necessary, or otherwise are not covered under Medicare or the M+C plan's coverage policies. Once an M+C organization determines that provider services should end, providers must deliver notices to enrollees at least two days in advance of services terminating. The requirement to provide the notice is independent of the basis for termination of a course of treatment. In other words, it applies whether the decision is based on a medical necessity judgment or the application of a Medicare coverage rule.

Similarly, the provider's obligation to give an advance termination notice to the enrollee exists even if a provider or attending physician disagrees with the M+C organization that services should terminate. The M+C organization's decision to end services is not an indication that the provider necessarily agrees that services should end, but it is necessary to ensure that the enrollee has the opportunity to appeal the M+C organization's decision.

Comment: Commenters recommended that CMS permit providers to request appeals on behalf of enrollees and recommended that an IRE's decision bind an M+C organization to pay a provider for necessary services.

Response: Providers have the ability to file appeals on behalf of enrollees as authorized representatives in accordance with § 422.562(d). We have not created any additional provider appeal rights in this regulation. The purpose of these regulations is to ensure that enrollees receive the services that they are entitled to under their M+C plans, through the implementation of appropriate notice and appeal. CMS generally does not specify the payment arrangements between M+C organizations and providers; therefore, an IRE's reversal of an M+C organization's decision to terminate services is not a ruling on whether, or the extent to which, an M+C organization is financially obligated to the provider. Instead, the relevance of an IRE's reversal is that the M+C organization is obligated to continue services for the enrollee beyond the services that the M+C organization previously authorized.

Comment: Some commenters suggested that the requirement for a 4-day advance notice in situations where an IRE determined that services should continue only one or two additional days would result in the overutilization of health care services. They questioned the need for additional notices in such situations.

Response: It is not our intent to require M+C organizations to provide more care than an IRE determines would be appropriate. If an IRE specifies the number of days that coverage should continue, the IRE's decision itself takes the place of any further notice. However, there may be instances where an IRE will defer to an M+C organization to determine when coverage should end. In those cases, another advance termination notice must be given to the enrollee within a time frame consistent with the circumstances involved. Again, we believe that this concern is lessened or eliminated under the change to a two-day advance notice.

Comment: Commenters expressed concern that an IRE might delay making a decision if it believed that it needed additional information from the M+C organization. The commenter proposed that CMS require an IRE to inform the M+C organization promptly, by fax or e-mail, if an IRE believed that it needed more information to make a decision, and to specify the precise information it required to make a decision on the merits.

Response: Section 422.626(d)(5) specifies that if an M+C organization fails to provide sufficient information to support its decision to terminate an enrollee's services, an IRE may defer issuing a decision until it receives needed information about the case. If an IRE chooses to do so (rather than simply decide the case in the enrollee's favor based on the evidence at hand), we agree that an IRE should make best efforts to promptly notify an M+C organization of the information the IRE needs, and that the submission of this information could affect the IRE's decision on the merits. However, M+C organizations should not expect IREs to routinely follow-up to complete the record. It is the M+C organization's responsibility to provide all relevant material necessary to sustain its termination decision by close of business of the day that the IRE notifies the M+C organization that an enrollee has requested an appeal. Thus, we will instruct IREs through their contracts with CMS that in the event that the M+C organization fails to submit documentation that would sustain the M+C organization's decision, and the IRE either cannot obtain the prompt cooperation of the M+C organization, or does not deem it practical to obtain additional information, the IRE should issue a decision based on the information available and err on the side of the beneficiary.

Comment: One commenter suggested that CMS should extend the same provider notice requirements to original Medicare beneficiaries whose services are being terminated.

Response: As noted above, section 1869(b)(1)(F) of the Act, as amended by section 521 of BIPA, establishes appeal rights for beneficiaries under original Medicare that are largely parallel to those available to M+C enrollees under this final rule. As discussed in detail in our November 15, 2002, proposed rule concerning those provisions, we believe that existing Advance Beneficiary Notices (ABNs) that are now used in Medicare fee-for-service settings are the appropriate vehicle to trigger the right to an expedited appeal of a provider termination of services. (*See* 67 FR 69337.)

Comment: Several commenters are concerned that the standard for ''valid delivery'' of a termination notices is difficult to meet. They indicated that it would require a clinician to deliver the notice in order to determine the enrollee's level of consciousness, and ability to read and comprehend it, which would be expensive and burdensome.

Response: Section 422.624(c) specifies that ''delivery'' of a notice is valid only if an enrollee has signed and dated the notice to indicate that he or she both received the notice and can comprehend its contents. This policy is consistent with other CMS requirements governing the delivery of similar notices such as those set forth in CMS program memoranda A–99–52 and A–99–54 for HHA advanced beneficiary notices under original Medicare. We have no indication that this standard has proven problematic and believe that it is appropriate to apply similar protections to enrollees in the M+C program. Note that this requirement for successful delivery does not permit an enrollee to extend coverage indefinitely by refusing to sign a notice of termination. If an enrollee refuses to sign a notice, the provider would annotate its copy of the notice to indicate the refusal, and the date of the refusal would be considered the date of receipt of the notice.

By the time that termination notices are issued, providers will have already needed to assess an enrollee's ability to accept delivery of a notice, based on typical admission assessments, care planning evaluations and discharge planning activities that have taken place during the course of treatment. In the event a provider believes that an enrollee is not capable to receive the notice, providers should be well-acquainted enough with the enrollee's particular situation to make alternative arrangements, if necessary, to deliver a valid notice. For example, an incapacitated enrollee is not able to act on his or her rights and, therefore, could not validly ''receive'' the notice. This situation could be remedied through the use of an authorized representative under Federal or State law.

4. Other Comments

Comment: Several commenters objected to the proposed requirement under § 422.502(i)(3)(iv) that M+C organizations include specific provisions in their contracts with providers to require providers to comply with the notice requirements in 422.624. They believe it is burdensome to reopen

contracts with providers to incorporate these requirements, citing that the change in the conditions of participation at § 489.27(b) should be sufficient to ensure compliance.

Response: We agree that the change in conditions of participation at § 489.27(b) is sufficient to ensure that providers comply with the notice requirements at § 422.624. Although we believe that it would be in the best interests of providers and M+C organizations to include these notice requirements in their contracts, we do not intend to require that providers and M+C organizations renegotiate their contracts solely for the purpose of including a clause regarding notice delivery requirements. Therefore we have removed proposed § 422.502(i)(3)(iv).

Comment: One commenter wanted to know if M+C organizations could charge enrollees a reasonable flat fee for the costs of duplicating and mailing case files to enrollees upon request.

Response: In accordance with the Privacy Act and 45 CFR 5b.13, ''[f]ees may only be charged where an individual requests that a copy be made of the record to which he is granted access.'' No fee is permissible unless the copying costs are at least $25. Thus, an M+C organization may not charge a fixed fee for the costs of duplicating and mailing case files to enrollees, but may apply the fee schedule outlined in § 5b.13(b). This would allow an M+C organization to charge $.10 per page for photocopied records above the $25 threshold, or the actual cost determined on a case-by-case basis for records not susceptible to photocopying.

Comment: One commenter noted that the proposed rule was silent on the type of entity that could serve as an IRE. The commenter (an organization representing Quality Improvement Organizations) recommended that QIOs should be designated as IREs since QIOs already interact on a daily basis with families who question whether the timing of a provider discharge is appropriate. The commenter indicated that relying on an entity other than QIOs would be confusing to enrollees. The commenter recommended that CMS change all references from IRE to QIO so that CMS would not have to develop and maintain a costly and unnecessary contractual and regulatory structure that duplicates the QIO program.

Response: Although we recognize that QIOs have experience with making similar determinations, we do not believe that it is appropriate to designate in a final rule that QIOs will carry out the fast-track reviews. We are still evaluating whether these reviews are more appropriately accomplished through a single IRE, or multiple entities, as well as the extent to which these procedures can be linked with expedited reviews required under the new BIPA provisions. There are various independent entities, including QIOs, which already have contractual relationships with CMS to make coverage decisions. As we attempt to develop improved, more efficient appeals procedures under both M+C and original Medicare, CMS will determine whether it is prudent to use these existing contractors to fulfill the requirements of this regulation, or whether it is necessary to seek bids for this important work.

Comment: One commenter expressed concern that the proposed rule did not require that IRE reviewers include clinicians or practicing physicians. The commenter also believed that a reviewer should have a background in the specialty or subspecialty relevant to the case.

Response: The regulations at §§ 422.624 and 626 are part of the overall M+C appeals process under subpart M. These fast-track reviews effectively replace M+C organization's reconsiderations on SNF, HHA, and CORF termination cases. Thus, similar to the requirement under § 422.590(g)(2) for reconsideration decisions by M+C organizations, we intend to require through our contract with the IRE(s) that decisions involving denial of coverage based on a lack of medical necessity ''must be made by a physician with expertise in the field of medicine that is appropriate for the services at issue. The physician making the reconsidered determination need not, in all cases, be of the same specialty or subspecialty as the treating physician.''

C. Hospital Discharge Notices (§§ 422.620 and 489.27)

Comment: Many commenters strongly opposed the proposed requirements under 422.620 and 489.27 that hospitals issue a standardized notice of appeal rights for a second time on the day before discharge to all Medicare beneficiaries, including those that are enrolled in a Medicare managed care health plan. They believe that this requirement poses a significant administrative burden in both delivering and explaining the form and takes away from time better spent on providing services and discharge planning. They contend that the notice is unnecessary in either the managed care or fee-for-service context and indicated that, in many cases, beneficiaries are confused by the notice. One commenter stated that after the enactment in 1998 of the requirement under 422.620 that all M+C enrollees receive discharge notices the day before the end of their hospital stay, the Quality Improvement Organizations (QIO) received many phone calls from confused beneficiaries not understanding the notice. The commenters believe that very few beneficiaries have any interest in disputing their hospital discharges and thus the cons of this requirement far outweigh any benefits.

Two commenters supported the proposal that hospitals issue notices, both near admission and the day before discharge, to all Medicare beneficiaries. They supported CMS's efforts to combine the Important Message from Medicare (IM) with the Notice of Discharge & Medicare Appeals Rights (NODMAR), and Hospital Issued Notice of Noncoverage (HINN). The commenters found the notices largely duplicative and welcomed the simple one page document. (Please note that since the publication of the proposed rule, the required notices and the distribution process have also been the subject of public comment through the Office of Management and Budget (OMB) approval process required under section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA).)

Response: After careful consideration of the public comments on these requirements, the many comments received on the notices themselves through the PRA process, and evaluation of CMS data on the hospital discharge appeals process, we are convinced that changes are needed in the proposed notice requirements. Consistent with the notice requirements discussed above for other provider termination situations, we are revising 422.620 to eliminate the requirement that hospitals provide a written notice of noncoverage to each M+C enrollee the day before discharge. Section 489.27 will continue to require that hospitals furnish the Important Message from Medicare, which explains a beneficiary's appeal rights to every Medicare inpatient during their stay, but will not specify that the notice be delivered the day before discharge.

We continue to strongly believe that all beneficiaries need to be informed of their Medicare appeal rights when admitted as inpatients to hospitals, and this will continue to take place in compliance with section 1866(a)(1)(M) of the Act. However, we have reached the conclusion that requiring that this notice in effect be delivered twice, once upon admission and again before discharge, would be an unnecessarily burdensome requirement on hospitals. We have reviewed data from the QIOs

via CMS's Standard Data Processing System covering the period November 1999–March 2001. During this time, there were approximately 11 million Medicare beneficiaries discharged from hospitals, only about 15,000 of whom (slightly more than one tenth of 1 percent) chose to appeal the hospital discharge decision. Tellingly, the proportion of M+C enrollees that exercised their right to appeal was no different than that for other beneficiaries, despite the ongoing requirement that all M+C enrollees receive notice of their discharge and Medicare appeal rights the day before discharge—a requirement that does not exist for other Medicare beneficiaries. Thus, we believe this evidence indicates the efficacy of the current practice under which hospitals issue detailed notices of noncoverage to beneficiaries under original Medicare only when they express dissatisfaction with the termination of hospital services.

Therefore, hospitals will continue to be responsible for issuing both the Important Message from Medicare to all Medicare inpatients, as well as for issuing HINNs to inpatients covered under the original Medicare program when they indicate that they disagree with a hospital's discharge decision. For enrollees in the M+C program, we are revising 422.620 to specify that M+C organizations are responsible for providing a written notice of noncoverage when an enrollee disagrees with a discharge decision. The notice must be issued no later than the day before hospital coverage ends and must explain the reason why care is no longer needed, the enrollee's appeal rights, and the effective date of time of the enrollee's liability for continued inpatient care. We believe that it is appropriate to place this responsibility on M+C organizations, given their financial liability for continued care in such situations.

We intend to submit updated versions of both the Important Message from Medicare and the detailed notices of noncoverage to OMB for public comment through the PRA process. (We anticipate that there will continue to be two notices of noncoverage—one for patients under original Medicare and one for patients enrolled in the M+C program.) Until that process is completed, hospitals and M+C organizations should continue to use the existing Important Message, HINN, and NODMAR for accomplishing the notification requirements of this final rule. We intend to continue our efforts to simplify the messages delivered by these notices, including limiting each notice to a one-page format.

Comment: One commenter stated that although the proposed rule made it clear that CMS intends to have hospitals administer the IM to all Medicare beneficiaries, it was unclear as to when and how often the notice is to be administered during an inpatient stay. The commenter acknowledges the value to beneficiaries of administering appeal notices for inpatient stays, but believes that hospitals should continue to distribute the IM only at admission, as they have done for years.

Response: We recognize the need for clarity in this regard. The intent of the proposed rule, in conjunction with the procedures set forth through the PRA process, was that hospitals generally would issue the notice twice during an inpatient stay, that is, once at or near the time of admission and again before discharge. However, that proposal has been superceded by the requirements of this final rule. As explained above, hospitals thus should continue their current practice of issuing the IM at or near admission to all Medicare inpatients, and issuing a notice of noncoverage before discharge only in situations where a beneficiary other than an M+C enrollee has indicated dissatisfaction with his or her scheduled discharge date. M+C organizations will be responsible for administering notices of noncoverage to inpatient M+C enrollees when they disagree with an M+C organization's discharge decision.

Comment: One commenter suggests that CMS increase its educational and outreach efforts to ensure beneficiaries' understanding of the notices they receive. The commenter stated that hospitals should not be relied upon to provide all of the education necessary for a beneficiary to understand their Medicare rights.

Response: We are committed to ensuring that notices provided to beneficiaries are clear and understandable, and that beneficiaries with questions can get prompt, reliable answers. To this end, we now routinely consumer test major beneficiary notices such as these hospital notices, as well as subject them to public comment through OMB's Paperwork Reduction Act process. Beneficiaries with questions can contact Medicare's toll free number (1–800-MEDICARE) or work with beneficiary outreach groups sponsored by CMS, such as the State Health Insurance Assistance Programs (SHIPs).

Comment: Two commenters were strongly opposed to CMS's practice of submitting standard termination and similar notices, such as the hospital Important Message, for review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). For notices like these, these commenters believe that this practice makes no sense, and introduces lengthy and they believe unnecessary delays in the implementation of legally required notices. The commenters, citing 44 U.S.C. 3501 *et seq.*, contend that these notices do not fall within the requirements of the PRA for agency actions involving collection of information. They allege that the delay in implementing standardized notices caused by CMS's practice delays compliance with legal requirements, as noted above. Another commenter contends that, while Congress created the PRA to reduce the amount of paperwork providers utilize, over the past five years, providers have seen nothing but increases in the amount of paperwork they must complete. The commenter further argues that the notices required under the proposed rule add to the paperwork burden that providers have to comply with instead of decreasing the burden, as outlined under the PRA.

Response: We do not agree with the commenter's interpretation of the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA). The PRA applies both to information collection and paperwork burden, and thus we believe it is required and appropriate to obtain public comment on notices that are required under Federal regulations. We intend to work closely with OMB to minimize any delays in the development and clearance of the revised standardized notices. We note that in this final rule, we have reduced the paperwork burden that would have been imposed under the proposed rule, including the elimination of certain notice requirements absent an objection to, or decision to appeal, a discharge.

Comment: Several commenters raised concerns about the discharge decision-making process for hospital inpatients who are enrollees of M+C plans. They contend that there will inevitably be disagreements between plans and providers about the timing of patient discharges and that the proposed rule would exacerbate these disputes by requiring hospitals to distribute detailed discharge notices to all M+C enrollees. This in effect requires a hospital to explain an M+C organization's decision. Another commenter stated that over the past few years, its member hospitals have encountered numerous instances in which M+C plans have reduced or denied payment to hospitals for days during which the plan and the beneficiary's physician have disagreed

about whether the beneficiary should be discharged.

Response: Clearly, the hospital discharge decision-making process requires substantial coordination and cooperation between M+C organizations and hospitals. We recognize that requiring detailed discharge notices for all M+C inpatients would have potentially increased the difficulties in this regard without achieving any demonstrable benefits for enrollees. Thus, we have revised the requirements in this final rule to make clear that such notices, when needed, are the responsibility of M+C organizations. However, we continue to believe that it is inappropriate for CMS to interfere in the business relationships between M+C organizations and their hospital providers and that any tension between these parties largely parallels that in the private health insurance sector.

Comment: One commenter noted that under the original Medicare, hospitals must provide QIOs copies of all HINNs given to beneficiaries. In view of the proposal that a detailed discharge notice be given to each Medicare inpatient, the commenter suggested that we eliminate the requirement that QIOs receive copies of every discharge notice.

Response: We believe that hospitals should continue to provide QIOs with copies of all HINNs, and that M+C organization should provide QIOs with copies of the noncoverage notices that they provide to dissatisfied beneficiaries. This is consistent with the policy described above for expedited reviews of other provider terminations, where M+C organizations will furnish copies of their detailed termination notices to both the IRE and the enrollee when there is a dispute over a discharge or service termination.

D. Grievance Procedures (§§ 422.561 and 422.564)

Comment: Some commenters argued that the proposed grievance procedures were overly prescriptive, while others supported establishing the proposed new standards. One commenter believed that grievance procedures should be flexible, given our interpretation of the preemption provision under section 1856(b)(3)(B)(iii), *i.e.*, Federal rules do not specifically preempt State grievance requirements unless they relate to coverage determinations. One commenter stressed that any grievance requirements we imposed should be consistent with those applied by accrediting organizations, so that M+C organizations would not have to change current procedures to a great extent.

Response: In the June 26, 1998, interim final rule to establish the M+C program (63 FR 35,030), we set forth the general requirement that an M+C organization must resolve grievances in a timely manner and have grievance procedures to meet CMS guidelines. In both the interim final rule and the June 29, 2000, final rule (65 FR 40,170, 40,275), we indicated that we intended to establish more detailed requirements for grievance procedures.

We generally agree with the commenters that the regulations should not be overly prescriptive with respect to grievance procedures. We note that many States have processes to address complaints that involve issues other than coverage, and State grievance procedures, unlike appeal procedures, are not specifically preempted by Federal rules. We consulted with representatives of the managed care industry, beneficiary advocacy groups, and QIOs, and examined standards developed by the National Association of Insurance Commissioners (NAIC). We learned that M+C organizations already adhere to State requirements concerning grievances. Also, our experience has shown that enrollees overwhelmingly pursue appeals rather than grievances, and rarely raise concerns or problems associated with the existing grievance procedures. Therefore, as discussed below, we are not including in this final rule the proposed procedural provisions set forth in § 422.564(d) and (e), which pertain to the method for filing and the notification and time frames associated with grievances.

Nevertheless, we believe that a basic uniform grievance structure should be in place to address those issues that fall outside of the appeals process. In particular, we believe that grievance provisions are needed to address complaints involving procedural issues that arise during the appeals process. Thus § 422.564(d) establishes an expedited grievance process for the following circumstances: (1) The grievance involves an M+C organization's decision to invoke an extension related to an organization determination or reconsideration; or (2) the grievance involves an M+C organization's refusal to grant an enrollee's request for an expedited organization determination under § 422.570 or reconsideration under § 422.584.

We believe that the changes we are setting forth in this final rule either have a direct effect on the M+C appeals process, or provide clarification in existing requirements, but allow M+C organizations the flexibility needed to maintain current procedures that comply with State requirements.

Comment: Several commenters strongly encouraged CMS to establish mandatory time frames and notification procedures for resolving grievances. One commenter suggested that grievance time frames mirror those for standard and expedited organization determinations. Two commenters suggested a 30-calendar day time frame to render a grievance decision, with an opportunity for a 14-calendar day extension for peer review. Another commenter argued that the grievance procedure must have a mechanism to resolve a dispute regarding an M+C organization's denial to grant an expedited review within 24 hours, so that an inappropriately denied request can proceed quickly in the appeals process. Finally, one commenter expressed concern about State privacy requirements, which, in some cases, prevent health plans from providing specific information on how grievances get resolved.

Response: As noted above, we have not in this final rule adopted the proposed provisions that prescribed time frames for responding to grievances generally. We do not believe that establishing Federal requirements for the manner and timeliness within which grievances must be disposed is necessary, and as we have noted it could be unduly burdensome in light of varying State requirements. Furthermore, we have not received any reports that enrollees have encountered frustration or problems in getting M+C organizations to respond to enrollees' grievances timely or communicate in an effective manner. Enrollees will continue to have regulated formal avenues to pursue complaints involving all payment, coverage and quality of care issues.

We also agree with the commenter who suggested that grievances involving expedited appeals needed to be addressed as quickly as possible. Therefore, as noted above, we are specifying under § 422.564(d) that an M+C organization must notify the enrollee within 24 hours of receiving a grievance about the M+C organization's refusal to expedite a review, or the M+C organization's decision to invoke an extension to the organization determination or reconsideration time frames. This will ensure that any inappropriate procedural actions under the appeals process are resolved and that the appeal proceeds without delay. In this situation, any extension would clearly be inappropriate, since it would constitute a de facto denial of the

enrollee's request for an expedited review.

Comment: One commenter asked who will determine which route is more appropriate for the beneficiary in pursuing a remedy to a complaint, since we acknowledge that the same claim or circumstances that gave rise to an appeal could have elements of a grievance. This may cause the beneficiary to be confused as to which route is more appropriate. Another commenter asserted that M+C organizations should be required to provide clear, accurate and standardized information concerning grievance and appeal procedures.

Response: We are adding to § 422.564(b) a requirement that when an M+C organization receives a complaint, it must promptly determine and inform the enrollee whether the issue is subject to its grievance procedures or its appeal procedures. Note that we view ''complaint'' and ''dispute'' as generic terms that cover various expressions of dissatisfaction or disagreement that may be brought to the attention of an M+C organization or its providers. Thus, complaints or disputes can encompass grievable or appealable issues, but in either case would require resolution in accordance with the organization's internal procedures.

CMS already requires M+C organizations to provide clear and concise information to all enrollees regarding appeal and grievance procedures. M+C organizations include this information annually in their Evidence of Coverage (EOC). In addition to other information that M+C organizations wish to convey, CMS also provides standard information that all EOCs must contain regarding appeals and grievances.

Comment: Various commenters expressed conflicting views on the most appropriate means for dealing with quality of care issues. Some commenters believed that a quality of care issue should first be resolved by the M+C organization and subsequently sent to the QIO. Other commenters argued that quality of care issues should be referred immediately to the QIO for resolution, while others maintained that complaints should be processed by both M+C organizations and QIOs simultaneously.

Response: As reflected under new § 422.564(c), we decided that the most flexible approach would be to permit enrollees to file quality of care complaints with either the M+C organization, the QIO, or both. We expect M+C organizations and QIOs to coordinate and cooperate with one another to resolve enrollees' complaints.

Comment: Many commenters suggested that CMS should not include a definition of ''quality of care'' in the regulations because defining it would oversimplify the many issues that quality of care might encompass.

Response: We agree with the commenters that the term ''quality of care'' does not lend itself to a regulatory definition. Instead, we will rely on the States and M+C organizations to identify the types of issues that might fall into the quality of care category.

Comment: A commenter questioned how CMS would enforce record-keeping requirements for M+C organization grievances.

Response: Section 422.564(e) requires M+C organizations to maintain records associated with processing grievances. M+C organizations already should have a system to track and maintain records on all grievances in light of existing requirements under section 1852(c)(2)(C) and § 422.111(c)(3), whereby M+C organizations must report aggregate information on the disposition of grievances. Thus, the record-keeping requirement will be enforced through CMS' existing procedures to monitor grievance activities, and if appropriate, place M+C organizations on corrective action plans. We expect M+C organizations, at a minimum, to keep track of the receipt date and final disposition of the grievance, and the date that the M+C organization notified the enrollee of the disposition.

E. Reductions of Services

This final rule does not set forth any new regulations regarding reductions in services. As part of the *Grijalva* settlement, we agreed to solicit comments on whether new notice and appeal procedures were needed for decisions by M+C organizations to reduce health services. The issue of what constitutes appropriate notice and appeal procedures for reductions of service was also raised in the regulations to implement the M+C program.

In the M+C final rule, we made several changes to § 422.566(b), which describes actions that constitute organization determinations. We added language at § 422.566(b)(3) to clarify that an organization's refusal to pay for or provide services, in whole or in part, ''including the type or level of services'' can constitute an organization determination if the enrollee believes that services should be furnished or arranged. We stated in the preamble to the final rule that we agreed that a reduction in service could be considered an organization determination that was subject to an appeal. To the extent that the organization refused to continue to provide all or part of the services that the enrollee believed should be furnished, the reduction constituted an appealable issue.

However, the existing M+C regulations do not specify that notices are routinely required in connection with reductions of services. The notices are required only if the enrollee disagrees that the services are no longer medically necessary.

We have reviewed several public comments on these issues, both after the publication of the M+C interim final rule on June 26, 1998, and again with respect to the January 24, 2000, proposed rule. Several commenters both times strongly urged us to consider the administrative and financial burden associated with notice requirements. They maintained that it is unnecessary to require notification to enrollees when services are reduced because the normal progression of a clinical course of treatment is from increased to decreased services. Some commenters have argued that providing detailed notices in all reduction situations would be confusing, burdensome and intrusive upon the physician/patient relationship.

Based on our review of current and previous comments on this issue, we believe that the process of changing the notice requirement for reductions of services is unnecessary, particularly in light of the requirement that all enrollees receive notice of their appeal rights before the termination of services in hospital and other provider settings. We will monitor the new policy on discontinuations of provider services, and if we find that it is necessary to create additional procedures for reductions of services, we will initiate the necessary rulemaking.

IV. Provisions of This Final Rule With Comment Period

A. Summary of Provisions

For the convenience of the reader, listed below are the major changes to the M+C regulations that are set forth in this final rule with comment period. This listing is intended solely as a reference aid rather than as a comprehensive statement of the policies set forth in the regulation text.

- New § 422.502(i)(3)(iv) specifies that M+C organization contracts with providers and other related entities entered into after (the effective date of this final rule) must contain a provision specifying that these entities will comply with the applicable notice and appeal provisions in §§ 422.620, 422.624, and 422.626.

• In § 422.561, the definition of grievance is revised to mean any complaint or dispute, other than one that constitutes an organization determination, expressing dissatisfaction with any aspect of an M+C organization's or provider's operations, activities, or behavior, regardless of whether remedial action is requested.

• In § 422.564, paragraph (c) clarifies that an enrollee may file a quality of care complaint either with the QIO, the M+C organization, or both entities. New paragraphs (d) and (e) establish specific procedures for handling expedited grievances and for record-keeping with respect to grievances, respectively.

• Section 422.620 provides that an M+C organization (or a hospital that has accepted delegation of the authority to make the discharge decision) must issue a written notice of noncoverage to any M+C enrollee who disagrees with the M+C organization's decision to discharge the enrollee. As discussed above, this represents a change from the proposed provision that hospitals issue such notices for all discharges of M+C enrollees.

• Section 422.624 sets forth the requirements for notifying enrollees when their SNF, HHA, or CORF services are being terminated. These procedures require that the provider deliver, generally no later than two days before the termination of services, a standardized advanced termination notice that informs the enrollee of the date of discharge and how to file an appeal. As discussed above, the provisions set forth in this final rule represent a change from the proposed provisions, which would have required that more detailed notices be delivered four days in advance of service termination.

• Section 422.626 establishes an enrollee's right to a fast-track appeal of an M+C organization's decision to terminate these provider services, and the requirements and procedures associated with these fast-track appeals. This section explains the liability rules and evidence standards during these appeals, and establishes the procedures to be followed, including the responsibilities of M+C organizations and the IRE that makes the decisions on the appeals. As discussed above, this final rule with comment period provides that M+C organizations must furnish detailed termination notices only to enrollees who timely request a fast-track appeal but must furnish these notices to the enrollee and the IRE on the day of the request. This change from the proposed rule may result in a maximum of one day of potential financial liability for services for an enrollee whose appeal is unsuccessful. (Note that under existing M+C appeal procedures, an enrollee's potential liability in an unsuccessful appeal would be at least 4 days.)

• Section 489.27 specifies that, as an element of the provider's agreement to participate in the Medicare program, hospitals and other providers must furnish beneficiaries with applicable OMB-approved notices concerning their discharge rights, including the hospital discharge notice required under section 1866(a)(1)(M) of the Act and the advance termination notice for M+C enrollees whose SNF, HHA, or CORF services are being terminated. This final rule with comment period does not specify that a hospital discharge notice must be provided the day before a discharge.

B. Decision To Issue a Final Rule With Comment Period

As discussed above, section 1869(b)(1)(F) of the Act, as revised by section 521 of BIPA, requires that the Secretary establish a process by which a beneficiary may obtain an independent, expedited determination if he or she receives a notice from a provider of services that the provider plans to terminate the services or discharge the individual from the provider. Currently, this right to an expedited review exists only with respect to hospital discharges (under sections 1154 and 1155 of the Act). On November 15, 2002, we published a proposed rule setting forth the procedures needed to implement this statutory directive.

Clearly, the new appeal rights proposed in accordance with section 1869 of the Act in many ways resemble those envisioned by the *Grijalva* settlement agreement and now set forth in this final rule. However, for the most part, the January 24, 2001, proposed rule that preceded this final rule was developed without the benefit of that statutory direction. We believe it is prudent and appropriate to consider further public comments on the requirements set forth here, now that the public has had an opportunity to review our proposal to implement the BIPA provisions. For example, we welcome comments on whether, and the extent to which, the procedures set forth here for M+C enrollees and those proposed to implement the BIPA expedited determination rights for original Medicare beneficiaries can or should be integrated or combined, or at least made uniform. If these additional comments result in changes to these requirements, we will publish a subsequent final rule to set forth these changes. (Note that publication of such a final rule would not delay the implementation of the procedures established under this final rule, which will begin on January 1, 2004, consistent with our commitment not to implement significant changes to the M+C program on a mid-year basis.)

V. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to the document.

VI. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), agencies are required to provide a 30-day notice in the **Federal Register** and solicit public comment when a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comments on the following issues:

Whether the information collection is necessary and useful to carry out the proper functions of the agency;

The accuracy of the agency's estimate of the information collection burden;

The quality, utility, and clarity of the information to be collected; and

Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Several commenters addressed the burden associated with the proposed termination notice provisions, and these comments are discussed in detail above in section III.B.3 of this final rule. As discussed there, this final rule contains changes to these provisions based on public comments. Our estimates of the revised information collection requirements are set forth below, and we welcome further comments on these issues.

Section 422.564—Grievance Procedures

As discussed in detail in section II.D of this preamble, this final rule does not include the proposed detailed requirements with respect to the general grievance procedures to be followed by

M+C organizations. Instead, we have largely maintained the existing standard. That is, an M+C organization must have an established process to track and maintain records on all grievances received both orally and in writing, including, at a minimum, the date of receipt, final disposition of the grievance, and the date that the M+C organization notified the enrollee of the disposition. We have specified that an M+C organization must respond to an enrollee's grievance within 24 hours if the complaint involves an M+C organization's refusal to grant an enrollee's request for an expedited organization determination or an M+C organization's decision to invoke an extension on an appeal request. M+C organizations must routinely respond to such grievances, and although the 24-hour time frame represents a new requirement, it does not affect the information collection burden. (Note that M+C organizations already document their case files or notify enrollees when they process requests for expedited reviews under §§ 422.570 and 422.584, and invoke extensions to the organization determination and reconsideration times frames under §§ 422.568, 422.572, and 422.590.) Thus, while the new requirement is subject to the PRA, the burden associated with this requirement is captured by the requirements in §§ 422.568, 422.572 and 422.590, approved under OMB number 0938–0829.

Section 422.620—How M+C Enrollees Must Be Notified of Noncoverage of Inpatient Hospital Care

When an M+C organization has authorized coverage of the inpatient admission of an enrollee, either directly or by delegation (or the admission constitutes emergency or urgently needed care, as described in sections 422.2 and 422.113), the M+C organization (or hospital that has been delegated the authority to make the discharge decision) must provide a written notice of noncoverage when the beneficiary disagrees with the discharge decision.

Based on the 2002 CMS Data Compendium, (CMS Publication Number 03437), there are approximately 11.8 million Medicare beneficiaries discharged from hospitals each year. We extrapolate that approximately 1.8 million of these are M+C discharges. As discussed in section II.C of this preamble, based on previous inpatient hospital appeals data from the QIO's Standard Data Processing System, we estimate that about 0.1 to 0.2 percent (1,800 to 3,6000) of M+C enrollees' hospital discharges will be disputed. We project that it would take M+C organizations (or hospitals that have been delegated the authority to make the discharge decision) approximately 30 minutes to prepare and furnish the notice required in these cases. Thus, the total annual burden associated with providing notices to M+C enrollees is approximately 900 to 1800 hours. (Note that issuance of these notices will not take effect until a separate PRA statement has been published.)

Section 422.626—Fast-Track Appeals of Service Terminations to the IRE

An enrollee who desires a fast-track appeal must submit a request for an appeal to the IRE, in writing or by telephone, by noon of the first calendar day after receipt of the written termination notice. If the IRE is closed on the day the enrollee requests a fast-track appeal, the enrollee must file a request by noon of the next day that the IRE is open for business.

In 1999, the Center for Health Dispute Resolution (CHDR), the entity with whom CMS now contracts to conduct appeals of M+C reconsiderations, reviewed approximately 3,000 cases involving services provided by SNFs, HHAs, and CORFs. (Note that we have no way of knowing the proportion of these cases that involved service terminations, but for purposes of this analysis, we will make the assumption that all of these 3,000 cases involve service terminations.) Based on the General Accounting Office's 1999 Report to the Special Committee on Aging, ''Greater Oversight Needed to Protect Beneficiary Rights,'' managed care organizations reverse their original adverse organization determinations in approximately 75 percent of appealed cases. Therefore, we believe that the 3,000 cases that went to CHDR likely represent about 25 percent of all appeals (*i.e.*, ''reconsiderations'') involving affected providers that are now conducted by M+C organizations. Thus, we estimate that the number of provider appeals that would likely be heard by an IRE would be 12,000 cases. This constitutes approximately 2 percent of the 616,500 M+C enrollees that we estimate will receive termination notices, which we believe is a reasonable estimate of the maximum number of enrollees that are likely to file appeals with the IRE. It is estimated that it will take 12,000 enrollees 15 minutes to file an appeal on an annual basis. The total annual burden associated with this requirement is 3,000 hours.

The enrollee may submit evidence to be considered by the IRE in making its decision and may be required by the IRE to authorize access to his or her medical records in order to pursue the appeal. It is likely that no more than 10 percent of the 12,000 enrollees who file appeals will also submit additional evidence. It is estimated that it will take 1,200 enrollees 60 minutes to submit evidence on an annual basis. That is, since enrollees may not be functioning at their maximum capacity, they may need to contact family members, friends, or their personal physicians who might provide assistance in gathering additional evidence. The total annual burden associated with this requirement is 1,200 hours.

Upon notification by the IRE of a fast-track appeal, the M+C organization must supply any and all information, including a copy of the notice sent to the enrollee, no later than by close of business of the following day. It is estimated that it will take M+C organizations 60–90 minutes to gather and prepare a case file to send to the IRE. Since we have estimated that approximately 12,000 enrollees would request appeals, the total annual burden associated with this requirement is 12,000–18,000 hours.

Upon an enrollee's request, the M+C organization must provide a copy of, or access to, any documentation sent to the IRE no later than close of business of the first day after the day the material is requested. We estimate that 20% of the 12,000 enrollees who file an appeal will request copies of information forwarded to the IRE. It is estimated that it will take M+C organizations 15 minutes to provide a copy of all of the information provided to the IRE, to 2,400 enrollees. The total annual burden associated with this requirement is 600 hours.

If the IRE upholds an M+C organization's termination decision in whole or in part, the enrollee may appeal by requesting that the IRE reconsider its decision. It is estimated that 50 percent of the 12,000 appeals will result in the IRE upholding the M+C organization's termination decision. Of those 6,000 cases, we estimate that 20 percent of the enrollees will request a reconsideration by the IRE. It is estimated that it will take 1,200 enrollees 30 minutes to file a request for reconsideration on an annual basis. The total annual burden associated with this requirement is 600 hours.

Section 489.27—Beneficiary Notice of Discharge Rights

A hospital that participates in the Medicare program must furnish each Medicare beneficiary, or an individual acting or his or her behalf, the notice of discharge rights required under section

1866(a)(1)(M) of the Act. In addition, providers (as identified at § 489.2(b)) that participate in the Medicare program must furnish each Medicare beneficiary, or authorized representative, applicable CMS notices in advance of the termination of Medicare services, including the notices required under § 422.624 of this part.

The information collection requirements associated with § 489.27 are currently approved under OMB PRA approval number 0938–0692.

We have submitted a copy of this final rule to OMB for its review of the information collection requirements in §§ 422.564, 422.620, 422.624,and 422.626. The new hours associated with these collections are summarized in the chart below.

Section No.	Entity	Estimated Burden Hours
422.620	Hospitals	900–1800
422.624	SNFs/HHAs/CORFs	200,320
422.626 (a) and (c)	M+C Enrollees	4,200
422.626 (e)	M+C organizations	12,600–18,600
422.626 (f)	M+C organizations	600

These requirements are not effective until they have been approved by OMB. If you have any comments on any of these information collection and record keeping requirements, please mail the original and 3 copies within 30 days of this publication date directly to the following: Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Office of Regulations Development and Issuances, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850. Attn: Julie Brown, CMS–4024–FC.

And, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Brenda Aguilar, CMS Desk Officer.

VII. Regulatory Impact Statement

A. Introduction

We have examined the impact of this rule under the criteria of Executive Order 12866 (September 1993, Regulatory Planning and Review), section 1102(b) of the Social Security Act, the Regulatory Flexibility Act (RFA), Pub. L. No. 96–354, the Unfunded Mandates Reform Act of 1995, Pub. L. No. 104–4, and Executive Order 13132. Executive Order 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 annually). We estimate a burden of not more than $10 million associated with this final rule. Thus, this rule does not meet the $100 million threshold and is not, therefore, a major rule. In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

The RFA requires agencies, in issuing certain rules, to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations and government agencies. Most hospitals, SNFs, and HHAs are small entities, either by nonprofit status or by having revenues of $25 million or less annually. For purposes of the RFA, all providers affected by this regulation 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 for a final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 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.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals. While it will have an impact on small entities, the economic impact on any particular entity will be negligible.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that would include any Federal mandate that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This rule would not have such an effect on State, local, or tribal governments, or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that would impose substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. This rule does not have a substantial effect on State and local governments.

Although a regulatory impact analysis is not mandatory for this final rule, we believe it is appropriate to discuss the possible impacts of the new appeals procedures on beneficiaries, providers, and M+C organizations, regardless of the monetary threshold of that impact. Therefore, a discussion of the anticipated impact of this rule is presented below.

B. Scope of the Proposed Changes

As discussed in detail above, this final rule establishes new notice and appeal procedures for enrollees when an M+C organization decides to terminate coverage of services by SNFs, HHAs, and CORFs. This rule specifies the responsibilities of M+C organizations and providers in issuing termination notices associated with these new appeal rights. It also clarifies the responsibilities of hospitals and M+C organizations for informing Medicare beneficiaries of their right to appeal a hospital discharge and amends the associated Medicare provider agreement regulations with regard to beneficiary notification requirements. Finally, it revises the existing regulations with respect to M+C grievance procedures. In general, we believe that these changes would enhance the rights of M+C enrollees and other Medicare beneficiaries, without imposing any

significant financial burden on these individuals. The impact of the final rule on M+C organizations and providers is discussed below.

C. New Notice and Appeal Procedures for Provider Terminations (§§ 422.624 and 422.626)

As explained in detail in the proposed rule, we examined available appeals data from the Center for Health Dispute Resolution (CHDR), the organization with whom CMS now contracts to conduct appeals of M+C reconsiderations to project the likely number of appeals that may be expected under these new provisions. (Under existing § 422.592, any case where an M+C organization's reconsideration results in affirming an adverse organization determination is automatically sent to CHDR for review.) Based on this analysis, we estimated that the annual number of possible appeals that will be heard by an IRE under the procedures set forth in this final rule will be approximately 12,000 cases. We received no comments on the validity of this estimate and continue to believe that it is realistic. (*See* our January 24, 2001, proposed rule for further details—66 FR 6600–6602.)

Although commenters generally did not object to this volume estimate, both provider and M+C industry commenters found the procedures associated with implementing the new expedited appeals very problematic. Throughout this preamble, we have acknowledged and responded to the comments concerning the unnecessarily burdensome nature of these procedures. As discussed in detail above, we have made several significant changes to the notification procedures that we believe should ameliorate these concerns. Most notably, this final rule greatly simplifies the notice that providers furnish to enrollees whose services are ending and provides that M+C organizations must furnish detailed termination notices only to enrollees who timely request a fast-track appeal.

Thus, for approximately 12,000 cases, M+C organizations will be required under this final rule to make available to the enrollee a copy of the detailed termination notice, and to the IRE, and to the enrollee upon request, a copy of any documentation needed to decide on the appeal. Although we recognize that there is an administrative burden associated with this requirement, we believe that the existing M+C reconsideration process would already result in the M+C organization gathering and reviewing the case file to reach a termination decision. Moreover, we note that this burden on M+C organizations is largely offset by the fact that M+C organizations will no longer be responsible for conduct internal reconsiderations of any cases covered under this final rule. That is, IREs will conduct reviews not just of the 3,000 cases that now go to CHDR but also of the 9,000 cases that are now subject to the M+C organization reconsideration process.

Similarly, with respect to providers, the requirements of this final rule should prove much easier to implement than those in the proposed rule. The required termination notices will be largely standardized, requiring only the insertion of the enrollee's name and discharge date. We estimate that it should take no more than 5 minutes to deliver such a notice, at a per-notice cost of no more than $7.50 (based on a $30 per hour rate if the notice is delivered by health care personnel). Based on an estimated 600,000 notices annually, we estimate the aggregate cost of delivering these notices should be less than $5 million.

Thus, we believe that the new notice and appeal provisions of this final rule should have minimal financial impact on M+C organizations and providers. We note that both the advance termination notice and the detailed termination notice will be developed through OMB's Paperwork Reduction Act process and thus will be the subject of further opportunity for public comment.

D. Hospital Discharge Notices (§§ 422.620 and 489.27)

Under the proposed rule, hospitals would have been required to issue a standardized discharge notice to each Medicare beneficiary twice during an inpatient stay, that is, once at or near the time of admission and again before discharge. The second notice (a revised version of the Important Message from Medicare now required under section 1866(a)(1)(M) of the Act and 489.27) would have included more detailed information about the reason for the discharge. Comments on this proposal, many of which focused on the administrative burden associated with this notice, are discussed in detail above. We estimated that the additional aggregate burden on hospitals would exceed $100 million.

Under this final rule, hospitals instead will continue to be responsible for issuing the Important Message from Medicare to all Medicare inpatients, as well as for issuing HINNs to inpatients covered under the original Medicare program when they indicate that they disagree with a hospital's discharge decision. These requirements are identical to those currently in effect and thus will entail no additional burden for hospitals.

All inpatient enrollees in the M+C program will also continue to receive the Important Message from their hospital during an admission. In addition, consistent with the notice requirement for other Medicare beneficiaries, we are revising 422.620 to specify that M+C organizations are responsible for providing a written notice of noncoverage when an enrollee disagrees with a discharge decision. The notice must be issued no later than the day before hospital coverage ends and must explain the reason why care is no longer needed, the enrollee's appeal rights, and the effective date of time of the enrollee's liability for continued inpatient care. Again, we estimate that the incidence of this notice will be no more than 0.1 to 0.2 percent of all M+C enrollee discharges, or roughly 1800 to 3600 notices, at an estimate aggregate annual cost to M+C organizations of $15,000–$30,000. Again, all of the required notices for hospital inpatient discharges will be published through the OMB PRA process.

E. Grievance Procedures (§ 422.564)

Grievances essentially include any complaint or dispute, other than one that constitutes an organization determination, expressing dissatisfaction with any aspect of an M+C organization's or provider's operations. As discussed in detail above, the primary new requirements set forth under this final rule (422.564(d) and (e)) are that an M+C organization establish specific procedures for handling expedited grievances and for record-keeping with respect to grievances, respectively.

Again, we have carefully examined the grievance procedures now in use by M+C organizations, and in particular the grievance procedures spelled out in the NAIC's Model Grievance Act, in developing these procedures. We believe that M+C organizations are in large measure already in compliance with the grievance procedures set forth here, and thus these requirements will have no substantial impact on most M+C organizations.

F. Federalism Summary Impact Statement

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 requirement costs on State and local governments, preempts State law, or otherwise has federalism implications.

This rule would not have a substantial effect on State or local governments.

In accordance with Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 422

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Medicare+Choice, Penalties, Privacy, Provider-sponsored organizations (PSO), Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 422—MEDICARE+CHOICE PROGRAM

Part 422 is amended as set forth below:

■ 1. The authority citation for part 422 continues to read as follows:

Authority: Secs. 1102, 1851 through 1857, 1859, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395W–21 through 1395w–27, and 1395hh).

■ 2. In § 422.561, the definition of ''grievance'' is revised to read as follows:

§ 422.561 Definitions.

* * * * *

Grievance means any complaint or dispute, other than one that constitutes an organization determination, expressing dissatisfaction with any aspect of an M+C organization's or provider's operations, activities, or behavior, regardless of whether remedial action is requested.

* * * * *

3. Section 422.564 is revised to read as follows:

§ 422.564 Grievance procedures.

(a) *General rule.* Each M+C organization must provide meaningful procedures for timely hearing and resolving grievances between enrollees and the organization or any other entity or individual through which the organization provides health care services under any M+C plan it offers.

(b) *Distinguished from appeals.* Grievance procedures are separate and distinct from appeal procedures, which address organization determinations as defined in § 422.566(b). Upon receiving a complaint, an M+C organization must promptly determine and inform the enrollee whether the complaint is subject to its grievance procedures or its appeal procedures.

(c) *Distinguished from the quality improvement organization (QIO) complaint process.* Under section 1154(a)(14) of the Act, the QIO must review beneficiaries' written complaints about the quality of services they have received under the Medicare program. This process is separate and distinct from the grievance procedures of the M+C organization. For quality of care issues, an enrollee may file a grievance with the M+C organization; file a written complaint with the QIO, or both. For any complaint submitted to a QIO, the M+C organization must cooperate with the QIO in resolving the complaint.

(d) *Expedited grievances.* An M+C organization must respond to an enrollee's grievance within 24 hours if:

(1) The complaint involves an M+C organization's decision to invoke an extension relating to an organization determination or reconsideration.

(2) The complaint involves an M+C organization's refusal to grant an enrollee's request for an expedited organization determination under § 422.570 or reconsideration under § 422.584.

(e) *Recordkeeping.* The M+C organization must have an established process to track and maintain records on all grievances received both orally and in writing, including, at a minimum, the date of receipt, final disposition of the grievance, and the date that the M+C organization notified the enrollee of the disposition.

■ 4. Section 422.620 is revised to read as follows:

§ 422.620 How M+C enrollees must be notified of noncoverage of inpatient hospital care.

(a) *Enrollee's entitlement.* (1) Where an M+C organization has authorized coverage of the inpatient admission of an enrollee, either directly or by delegation (or the admission constitutes emergency or urgently needed care, as described in §§ 422.2 and 422.113), the M+C organization (or hospital that has been delegated the authority to make the discharge decision) must provide a written notice of noncoverage when—

(i) The beneficiary disagrees with the discharge decision; or

(ii) The M+C organization (or the hospital that has been delegated the authority to make the discharge decision) is not discharging the individual but no longer intends to continue coverage of the inpatient stay.

(2) An enrollee is entitled to coverage until at least noon of the day after such notice is provided. If QIO review is requested under § 422.622, coverage is extended as provided in that section.

(b) *Physician concurrence required.* Before notice of noncoverage is provided, the entity that makes the noncoverage/discharge determination (that is, the hospital by delegation or the M+C organization) must obtain the concurrence of the physician who is responsible for the enrollee's inpatient care.

(c) *Notice to the enrollee.* The written notice of non-coverage must be issued no later than the day before hospital coverage ends. The written notice must include the following elements:

(1) The reason why inpatient hospital care is no longer needed.

(2) The effective date and time of the enrollee's liability for continued inpatient care.

(3) The enrollee's appeal rights.

(4) Additional information specified by CMS.

■ 5. New §§ 422.624 and 422.626 are added to subpart M to read as follows:

§ 422.624 Notifying enrollees of termination of provider services.

(a) *Applicability.* (1) For purposes of §§ 422.624 and 422.626, the term provider includes home health agencies (HHAs), skilled nursing facilities (SNFs), and comprehensive outpatient rehabilitation facilities (CORFs).

(2) *Termination of service defined.* For purposes of this section and § 422.626, a termination of service is the discharge of an enrollee from covered provider services, or discontinuation of covered provider services, when the enrollee has been authorized by the M+C organization, either directly or by delegation, to receive an ongoing course of treatment from that provider. Termination includes cessation of coverage at the end of a course of treatment preauthorized in a discrete increment, regardless of whether the enrollee agrees that such services should end.

(b) *Advance written notification of termination.* Prior to any termination of service, the provider of the service must deliver valid written notice to the enrollee of the M+C organization's decision to terminate services. The provider must use a standardized notice, required by the Secretary, in accordance with the following procedures—

(1) *Timing of notice.* The provider must notify the enrollee of the M+C organization's decision to terminate covered services no later than two days before the proposed end of the services. If the enrollee's services are expected to be fewer than two days in duration, the provider should notify the enrollee at

the time of admission to the provider. If, in a non-institutional setting, the span of time between services exceeds two days, the notice should be given no later than the next to last time services are furnished.

(2) *Content of the notice.* The standardized termination notice must include the following information:

(i) The date that coverage of services ends.

(ii) The date that the enrollee's financial liability for continued services begins.

(iii) A description of the enrollee's right to a fast-track appeal under § 422.626, including information about how to contact an independent review entity (IRE), an enrollee's right (but not obligation) to submit evidence showing that services should continue, and the availability of other M+C appeal procedures if the enrollee fails to meet the deadline for a fast-track IRE appeal.

(iv) The enrollee's right to receive detailed information in accordance with § 422.626 (e)(1) and (2).

(v) Any other information required by the Secretary.

(c) *When delivery of notice is valid.* Delivery of the termination notice is not valid unless—

(1) The enrollee (or the enrollee's authorized representative) has signed and dated the notice to indicate that he or she has received the notice and can comprehend its contents; and

(2) The notice is delivered in accordance with paragraph (b)(1) of this section and contains all the elements described in paragraph (b)(2) of this section.

(d) *Financial liability for failure to deliver valid notice.* An M+C organization is financially liable for continued services until 2 days after the enrollee receives valid notice as specified under paragraph (c) of this section. An enrollee may waive continuation of services if he or she agrees with being discharged sooner than 2 days after receiving the notice.

§ 422.626 Fast-track appeals of service terminations to independent review entities (IREs).

(a) *Enrollee's right to a fast-track appeal of an M+C organization's termination decision.* An enrollee of an M+C organization has a right to a fast-track appeal of an M+C organization's decision to terminate provider services.

(1) An enrollee who desires a fast-track appeal must submit a request for an appeal to an IRE under contract with CMS, in writing or by telephone, by noon of the first day after the day of delivery of the termination notice. If, due to an emergency, the IRE is closed and unable to accept the enrollee's request for a fast-track appeal, the enrollee must file a request by noon of the next day that the IRE is open for business.

(2) When an enrollee fails to make a timely request to an IRE, he or she may request an expedited reconsideration by the M+C organization as described in § 422.584.

(3) If, after delivery of the termination notice, an enrollee chooses to leave a provider or discontinue receipt of covered services on or before the proposed termination date, the enrollee may not later assert fast-track IRE appeal rights under this section relative to the services or expect the services to resume, even if the enrollee requests an appeal before the discontinuation date in the termination notice.

(b) *Coverage of provider services.* Coverage of provider services continues until the date and time designated on the termination notice, unless the enrollee appeals and the IRE reverses the M+C organization's decision. If the IRE's decision is delayed because the M+C organization did not timely supply necessary information or records, the M+C organization is liable for the costs of any additional coverage required by the delayed IRE decision. If the IRE finds that the enrollee did not receive valid notice, coverage of provider services by the M+C organization continues until at least two days after valid notice has been received. Continuation of coverage is not required if the IRE determines that coverage could pose a threat to the enrollee's health or safety.

(c) *Burden of proof.* When an enrollee appeals an M+C organization's decision to terminate services to an IRE, the burden of proof rests with the M+C organization to demonstrate that termination of coverage is the correct decision, either on the basis of medical necessity, or based on other Medicare coverage policies.

(1) To meet this burden, the M+C organization must supply any and all information that an IRE requires to sustain the M+C organization's termination decision, consistent with paragraph (e) of this section.

(2) The enrollee may submit evidence to be considered by an IRE in making its decision.

(3) The M+C organization or an IRE may require an enrollee to authorize release to the IRE of his or her medical records, to the extent that the records are necessary for the M+C organization to demonstrate the correctness of its decision or for an IRE to determine the appeal.

(d) *Procedures an IRE must follow.* (1) On the date an IRE receives the enrollee's request for an appeal, the IRE must immediately notify the M+C organization and the provider that the enrollee has filed a request for a fast-track appeal, and of the M+C organization's responsibility to submit documentation consistent with paragraph (e)(3) of this section.

(2) When an enrollee requests a fast-track appeal, the IRE must determine whether the provider delivered a valid notice of the termination decision, and whether a detailed notice has been provided, consistent with paragraph (e)(1) of this section.

(3) The IRE must notify CMS about each case in which it determines that improper notification occurs.

(4) Before making its decision, the IRE must solicit the enrollee's views regarding the reason(s) for termination of services as specified in the detailed written notice provided by the M+C organization, or regarding any other reason that the IRE uses as the basis of its review determination.

(5) An IRE must make a decision on an appeal and notify the enrollee, the M+C organization, and the provider of services, by close of business of the day after it receives the information necessary to make the decision. If the IRE does not receive the information needed to sustain an M+C organization's decision to terminate services, it may make a decision on the case based on the information at hand, or it may defer its decision until it receives the necessary information. If the IRE defers its decision, coverage of the services by the M+C organization would continue until the decision is made, consistent with paragraph (b) of this section, but no additional termination notice would be required.

(e) *Responsibilities of the M+C organization.* (1) When an IRE notifies an M+C organization that an enrollee has requested a fast-track appeal, the M+C organization must send a detailed notice to the enrollee by close of business of the day of the IRE's notification. The detailed termination notice must include the following information:

(i) A specific and detailed explanation why services are either no longer reasonable and necessary or are no longer covered.

(ii) A description of any applicable Medicare coverage rule, instruction or other Medicare policy including citations, to the applicable Medicare policy rules, or the information about how the enrollee may obtain a copy of the Medicare policy from the M+C organization.

(iii) Any applicable M+C organization policy, contract provision, or rationale upon which the termination decision was based.

(iv) Facts specific to the enrollee and relevant to the coverage determination that are sufficient to advise the enrollee of the applicability of the coverage rule or policy to the enrollee's case.

(v) Any other information required by CMS.

(2) Upon an enrollee's request, the M+C organization must provide the enrollee a copy of, or access to, any documentation sent to the IRE by the M+C organization, including records of any information provided by telephone. The M+C organization may charge the enrollee a reasonable amount to cover the costs of duplicating the information for the enrollee and/or delivering the documentation to the enrollee. The M+C organization must accommodate such a request by no later than close of business of the first day after the day the material is requested.

(3) Upon notification by the IRE of a fast-track appeal, the M+C organization must supply any and all information, including a copy of the notice sent to the enrollee, that the IRE needs to decide on the appeal. The M+C organization must supply this information as soon as possible, but no later than by close of business of the day that the IRE notifies the M+C organization that an appeal has been received from the enrollee. The M+C organization must make the information available by phone (with a written record made of what is transmitted in this manner) and/or in writing, as determined by the IRE.

(4) An M+C organization is financially responsible for coverage of services as provided in paragraph (b) of this section, regardless of whether it has delegated responsibility for authorizing coverage or termination decisions to its providers.

(5) If an IRE reverses an M+C organization's termination decision, the M+C organization must provide the enrollee with a new notice consistent with § 422.624(b).

(f) *Reconsiderations of IRE decisions.* (1) If the IRE upholds an M+C organization's termination decision in whole or in part, the enrollee may request, no later than 60 days after notification that the IRE has upheld the decision that the IRE reconsider its original decision.

(2) The IRE must issue its reconsidered determination as expeditiously as the enrollee's health condition requires but no later than within 14 days of receipt of the enrollee's request for a reconsideration.

(3) If the IRE reaffirms its decision, in whole or in part, the enrollee may to appeal the IRE's reconsidered determination to an ALJ, the DAB, or a federal court, as provided for under this subpart.

(4) If on reconsideration the IRE determines that coverage of provider services should terminate on a given date, the enrollee is liable for the costs of continued services after that date unless the IRE's decision is reversed on appeal. If the IRE's decision is reversed on appeal, the M+C organization must reimburse the enrollee, consistent with the appealed decision, for the costs of any covered services for which the enrollee has already paid the M+C organization or provider.

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

Part 489 is amended as set forth below:

■ 1. The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102, 1819, 1861, 1864(m), 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395i-3, 1395x, 1395aa(m), 1395cc, and 1395hh).

■ 2. In § 489.20, paragraph (p) is revised to read as follows:

§ 489.20 Basic commitments.

The introductory text of § 489.20 is republished without change and paragraph (p) is revised to read as follows:

The provider agrees to the following:

* * * * *

(p) To comply with § 489.27 of this part concerning notification of Medicare beneficiaries of their rights associated with the termination of Medicare services.

* * * * *

■ 3. Section 489.27 is revised as follows;

§ 489.27 Beneficiary notice of discharge rights.

(a) A hospital that participates in the Medicare program must furnish each Medicare beneficiary, or an individual acting on his or her behalf, the notice of discharge rights required under section 1866(a)(1)(M) of the Act. The hospital must provide timely notice during the course of the hospital stay. For purposes of this paragraph, the course of the hospital stay begins with the provision of a package of information regarding scheduled preadmission testing and registration for a planned hospital admission. The hospital must be able to demonstrate compliance with this requirement.

(b) Notification by other providers. Other providers (as identified at § 489.2(b)) that participate in the Medicare program must furnish each Medicare beneficiary, or authorized representative, applicable CMS notices in advance of the termination of Medicare services, including the notices required under 42 CFR 422.624. These notices must be approved by the Office of Management and Budget prior to implementation under section 3506(c)(2)(A) of the Paperwork Reduction Act.

Dated: February 10, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: February 25, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–8204 Filed 4–1–03; 2:28 pm]

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April 4, 2003

Part V

Department of Housing and Urban Development

Notice of Funding Availability for HOPE VI Demolition Grants Fiscal Year 2002; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4801–N–01]

Notice of Funding Availability for HOPE VI Demolition Grants Fiscal Year 2002

AGENCY: Office of Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: This NOFA announces the availability of approximately $ 40 million in Fiscal Year (FY) 2002 funds for HOPE VI Demolition Grants.

I. Program Overview

(A) *Purpose of the Program.* The purpose of HOPE VI Demolition grants is to assist public housing agencies (PHAs) to demolish severely distressed public housing and provide relocation and other supportive services for residents.

(B) *Available Funds.* Approximately $40 million, in accordance with Section II of this NOFA, below.

(C) *Eligible Applicants.* PHAs that operate severely distressed public housing. PHAs that only administer the Housing Choice Voucher Program, Tribal Housing Authorities and Tribally Designated Housing Entities are ineligible to apply.

(D) *Application Deadline.* Demolition grant applications are due on June 3, 2003, as described in Section IV of this NOFA.

(E) *Authority.*

(1) The funding authority for HOPE VI Demolition grants under this HOPE VI NOFA is provided by the FY 2002 Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 2002 (Public Law 107–73, approved on November 26, 2001) (FY 2002 HUD Appropriations Act) under the heading ''Revitalization of Severely Distressed Public Housing (HOPE VI).'' The FY 2002 HUD Appropriations Act provides that these HOPE VI funds ''remain available until September 30, 2003.''

(2) The program authority for the HOPE VI Program is section 24 of the United States Housing Act of 1937 (42 U.S.C. 1437v) (the 1937 Act), as added by section 535 of the Quality Housing and Work Responsibility Act of 1998 (Public Law 105–276, 112 Stat. 2461, approved October 21, 1998) (QHWRA).

II. Allocation of HOPE VI Funds

Type of assistance	Allocation of funds (approximate)	Funds available for award in this HOPE VI demolition NOFA (approximate)
Revitalization Grants	$492,485,000	.....
Demolition Grants	40,000,000	$40,000,000
Neighborhood Networks	5,000,000	.....
Technical Assistance	6,250,000	.....
Housing Choice Voucher Assistance	30,000,000	.....
Total	$573,735,000	$40,000,000

(A) *Revitalization Grants.* Approximately $492.5 million of the FY 2002 HOPE VI appropriation has been allocated to fund HOPE VI Revitalization grants and will be awarded in accordance with a separate HOPE VI Revitalization Grants NOFA.

(B) *Demolition Grants.* Approximately $40 million of the FY 2002 HOPE VI appropriation has been allocated to fund HOPE VI Demolition grants and will be awarded in accordance with this HOPE VI Demolition Grants NOFA.

(C) *Neighborhood Networks.* The FY 2002 appropriation for HOPE VI allocated $5 million for a Neighborhood Networks initiative for activities authorized in section 24(d)(1)(G) of the 1937 Act, which provides for the establishment and operation of computer centers in public housing for the purpose of enhancing the self-sufficiency, employability, and economic self-reliance of public housing residents by providing them with onsite computer access and training resources. The availability of these funds will be announced in a separate NOFA, and, in accordance with the appropriation, they will be awarded to PHAs on a competitive basis.

(D) *Technical Assistance.* The FY 2002 appropriation for HOPE VI allocated $6.25 million to provide technical assistance and contract expertise in the HOPE VI Program, to be provided directly by grants, contracts, or cooperative agreements, including training and cost of necessary travel for participants in such training, by or to officials and employees of HUD and of PHAs and to residents. The Office of Public Housing Investments will administer technical assistance funds.

(E) *Housing Choice Voucher Program.* The cost of assistance under the Housing Choice Voucher Program that will be provided to FY 2002 HOPE VI Revitalization and Demolition grantees will come from the FY 2002 HOPE VI appropriation. Approximately $30 million will be allocated for such assistance. If this amount is more than the amount necessary, the remaining funds will be made available for obligation before September 30, 2003.

(1) If you anticipate that you will need Housing Choice Voucher 8 assistance in order to carry out necessary relocation in conjunction with proposed demolition during FY 2003, your application must include the number of vouchers you will need, both in total and in FY 2003, and a Housing Choice Voucher application.

(2) If you will need Housing Choice Voucher assistance in fiscal years beyond FY 2003 for demolition that is being carried out in phases, or if you have unused vouchers that are available to be used for HOPE VI-related relocation in FY 2003 but will need more for subsequent years, you must request additional vouchers only as needed during the appropriate fiscal years.

(3) Housing Choice Voucher assistance cannot be awarded or used to relocate residents from units that are to be demolished until HUD has approved those units for demolition.

(4) If you have previously received Housing Choice Voucher assistance to relocate residents from the targeted severely distressed units, you may still apply for a HOPE VI Demolition Grant to demolish the units without replacement.

(5) You may request Housing Choice Voucher assistance for all units covered under a HOPE VI Demolition application to relocate residents from units that will not be replaced with hard units.

(F) *Funding of Previously Nonselected Applications.* Notwithstanding Section III(E)(4) of the General Section of the FY 2001 SuperNOFA, HUD will not use any funds from this HOPE VI Demolition NOFA to fund any previous-submitted, nonselected HOPE VI Demolition applications.

III. Application Thresholds

(A) Each required element of a HOPE VI Demolition grant application is a threshold requirement. Your application will not be eligible for funding unless each requirement listed in this NOFA is included in your application. HUD will give you the opportunity to submit any missing information up to the application deadline date, as provided in Section XI(C) of this NOFA.

IV. Application Submission Information

(A) *Application.*

(1) The HOPE VI Demolition Grant Application (Application) is appended to this NOFA and contains the required elements of the program. It provides explicit, specific instructions as to the requirements for your HOPE VI Demolition application. Your application must conform to the requirements of this HOPE VI Demolition NOFA and follow the format described in the Application. The Application is designed to guide you through the application process and ensure that your application addresses all requirements of this NOFA. Please note that if there is a discrepancy between information provided in the Application and the information provided in this NOFA, the information in the NOFA prevails.

(2) HUD will mail this NOFA, including the Application, to every eligible PHA. In addition, you may also obtain an Application from the HOPE VI Information Clearinghouse at 1–866–242–HOPE (1–866–242–4673). Persons with hearing or speech impairments may call the Clearinghouse's TTY number at 1–800–HUD–2209. When requesting an Application, please be sure to request the HOPE VI Demolition Application, and provide your name, address (including zip code), and telephone number (including area code). The Application also will be available on the HOPE VI Home Page *http://www.hud.gov/hopevi* and the HUD Home Page *http://www.hud.gov/grants.*

(B) *Application Due Date.* Demolition grant applications are due at HUD Headquarters on or before 5:15 p.m., Eastern Time, on June 3, 2003. *This application deadline is firm. Your application must arrive at HUD Headquarters by 5:15 p.m., Eastern Time, on the due date. You should submit your application early to avoid the risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.*

(C) *Application Delivery.*

(1) Send one copy of your completed application to Mr. Milan Ozdinec, Deputy Assistant Secretary for Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20410. Please make sure that you note the room number.

(2) *Applications Sent by Overnight Delivery.* It is strongly recommended that you send your application by an overnight carrier at least two days before the application due date. You should use only DHL, Falcon Carrier, FedEx, United Parcel Service (UPS), or the U.S. Postal Service, as they are the only carriers accepted into the HUD building without an escort. Delivery by these services must be made during HUD Headquarters business hours, between 8:45 a.m. and 5:15 p.m., Eastern Time, Monday through Friday. If these companies do not serve your area, you must submit your application via the U.S. Postal Service.

(3) No Hand Carried Applications. *Due to new security measures, HUD will no longer accept hand carried applications.*

(4) You must send one copy of your application to your HUD Field Office. The application sent to Headquarters will be the one that must meet the deadline. If the Field Office receives an application on time, but Headquarters does not, it will not be considered.

(5) HUD will not accept for review and evaluation any applications sent by facsimile (fax). Also do not submit resumes or videos.

(D) *Technical Assistance.*

(1) Before the application due date, HUD staff will be available to provide you with general guidance and technical assistance. HUD staff, however, is not permitted to assist in preparing your application. If you have a question or need clarification, you may call, fax, or write Mr. Milan Ozdinec, Deputy Assistant Secretary for Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20410; telephone (202) 401–8812; fax (202) 401–2370 (these are not toll free numbers). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

(2) Frequently asked questions, clarifications, and any technical amendments will be posted on the HOPE VI Web site at *http://www.hud.gov/hopevi.* In addition, all materials related to this NOFA, including the HOPE VI Demolition Application will be posted to this site. Any technical corrections will also be published in the **Federal Register**. Applicants are responsible for monitoring these sites during the application preparation period.

V. Eligible Demolition Activities

(A) Relocation, including reasonable moving expenses, for residents displaced as a result of the demolition of the project. *See* Section IX of this NOFA for relocation requirements.

(B) Demolition of dwelling units in buildings, in whole or in part, including the abatement of environmentally hazardous materials such as asbestos, in accordance with section 18 of the 1937 Act as amended.

(C) Demolition of nondwelling structures, if such demolition is directly related to the demolition of severely distressed dwelling units to be demolished with funds from the HOPE VI Demolition Grant.

(D) Restoration of the site to a ''Greenfield,'' a clean site by removing all demolished materials, filling in the site, and establishing a lawn. No additional improvements, such as constructing new curbs and gutters, installing playground equipment, installing permanent fences, or planting gardens, may be paid for with HOPE VI Demolition grant funds.

(E) In the case of partial demolition of a site, minimal site restoration after demolition and subsequent site improvements to benefit the remaining portion of the project in order to provide project accessibility or to make the site more marketable.

(F) Reasonable costs for administration, planning, technical assistance, and fees and costs that are deemed to be incremental costs of carrying out the demolition as specifically approved by HUD.

VI. Demolition Grant Limitations

(A) *Grant Limitations.*

(1) *Demolition.* You may request up to $6,000 per unit for demolition and other eligible related costs.

(2) *Relocation.*

(a) You may request up to $3,000 in relocation costs for each unit that is occupied as of the date you submit your HOPE VI Demolition grant application.

(b) At least half of the funds requested for relocation must be used to provide mobility counseling and other services to promote the self-sufficiency of displaced residents.

(3) *Nondwelling Structures.*

(a) You may request reasonable amounts to pay for the demolition of significant nondwelling structures related to the demolition of dwelling units. These costs must be included as part of an application for funding of demolition of public housing units; you may not apply for them separately. Examples of such costs include community centers and heating plants.

(b) Such costs must be justified and verified by an engineer or architect licensed by his or her state licensing board who is not an employee of the housing authority or the city. The engineer or architect must provide his or her license number and state of registration. A Nondwelling Structures Cost Certification is included in the HOPE VI Demolition Grant Application.

(B) HUD recognizes that the HOPE VI grant may not cover the total costs of relocation, abatement, and demolition in all cases and that you may have to provide additional funding from other sources.

(C) *You may not use HOPE VI Demolition Grant funds to pay for any demolition or related activities carried out before the date of the letter announcing the award of the HOPE VI Grant.*

VII. Site and Unit Requirements

(A) *Demolition Site and Unit Application Guidelines.*

(1) You may submit up to five HOPE VI Demolition grant applications that target a total of no more than 2,500 severely distressed public housing units.

(2) You may target units in only one public housing project (*i.e.* units that have the same project number) per application.

(3) You may submit more than one application targeting units in a single housing project.

(4) You may target as many or as few units per application as you wish.

(5) Unless otherwise indicated, the Executive Director of the applicant PHA, or his or her designate, must sign each form or certification, whether part of an attachment or a Standard Certification. Signatures need not be original.

(B) *Separability.* In accordance with section 24(j)(2)(A)(v) of the 1937 Act, if you propose to target only individual buildings of a project for demolition, you must:

(1) Demonstrate to HUD's satisfaction that the severely distressed public housing is sufficiently separated from the remainder of the project of which the building is part to make demolition of the building feasible, and

(2) Demonstrate that the plan for the demolished portion will provide defensible space for the occupants of the remaining building(s). Separations may include a road, berm, catch basin, or other recognized neighborhood distinction.

(C) *Appropriateness of Proposal.* In accordance with section 24(e)(1) of the 1937 Act, each application must demonstrate the appropriateness of the proposal in the context of the local housing market *relative to other alternatives.* You must briefly discuss other possible alternatives to your proposal, and explain why your plan is more appropriate. This is a statutory requirement as well as an application threshold.

Examples of alternative proposals may include:

(1) Rebuilding on the site and/or building off-site replacement public housing in isolated, non-residential, or otherwise inappropriate areas.

(2) Proposing a range of incomes, housing types (rental vs. homeownership, market rate vs. public housing, townhouse vs. detached house, etc.), or costs that cannot be supported by a market analysis.

(3) Targeting the land for something other than its highest and best use, given market conditions and the social goals of your agency.

VIII. Severe Distress

(A) *Severe Distress.*

(1) The targeted public housing project or building in a project must be severely distressed. In accordance with section 24(j)(2) of the 1937 Act, the term ''severely distressed public housing'' means a public housing project (or building in a project) that:

(a) Requires major redesign, reconstruction or redevelopment, or partial or total demolition, to correct serious deficiencies in the original design (including inappropriately high population density), deferred maintenance, physical deterioration or obsolescence of major systems, and other deficiencies in the physical plant of the project; and

(b) Is a significant contributing factor to the physical decline of, and disinvestment by, public and private entities in the surrounding neighborhood; and

(c)(i) Is occupied predominantly by families who are very low-income families with children, are unemployed, and dependent on various forms of public assistance; or

(ii) Has high rates of vandalism and criminal activity (including drug-related criminal activity) in comparison to other housing in the area; and

(d) Cannot be revitalized through assistance under other programs, such as the Capital and Operating Funds Programs for public housing under the Act, or the programs under sections 9 and 14 of the 1937 Act (as in effect before the effective date under section 503(a) of QHWRA) because of cost constraints and inadequacy of available amounts.

(B) *Demonstration of Severe Distress.* Units will be considered severely distressed if:

(1) They are included in a HUD-approved Section 202 Mandatory Conversion Plan. The Section 202 Conversion Plan must be approved by HUD on or before the HOPE VI Demolition grant application due date;

(2)(a) They are included in a Section 202 Mandatory Conversion Plan that you have submitted to HUD on or before the HOPE VI Demolition grant application deadline date, or

(b) They are, in HUD's sole determination under section 537(c) of QHWRA, subject to the removal requirements of 24 CFR part 971 and can be expected to be demolished in accordance with the time schedule required by Section IV(F)(1) of this NOFA;

(3) They are included in a HUD-approved application for demolition that was developed in accordance with section 18 of the 1937 Act, as amended (''section 18 demolition application''); or

(4) They are included in a HUD-approved Revitalization Plan as part of a HOPE VI Revitalization grant.

IX. Relocation

(A) *General.* You must provide suitable, decent, safe, and sanitary housing for each family required to relocate as a result of demolition activities. The relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4201–4655) (URA) and the implementing government-wide regulations at 49 CFR part 24 cover any person who moves permanently from real property or moves personal property from real property directly because of demolition for an activity undertaken with HUD assistance.

CPD Notice 02–08, entitled ''Guidance on the Application of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (URA), as Amended, in HOPE VI Projects,'' outlines the URA requirements and describes the framework for operating its relocation assistance activities connected with HOPE VI revitalization and demolition activities. Applicants

should use this document as a guide for formulating and implementing their HOPE VI Relocation Plans.

(B) *Standard Relocation Requirements.* You must carry out relocation activities in compliance with a relocation plan that conforms to the following statutory and regulatory requirements, as applicable:

(1) Relocation as a result of demolition approved by a section 18 demolition application is subject to the URA and section 18 of the 1937 Act.

(2) Relocation as a result of demolition approved as part of a Section 202 Mandatory Conversion Plan is subject to the URA.

(3) Relocation as a result of demolition approved as part of a HOPE VI Revitalization Plan is subject to the URA.

(C) *Relocation Guidelines.*

(1) Each applicant requesting funds for relocation must complete, as a condition for receipt of HOPE VI Demolition Grant funds, a HOPE VI Relocation Plan. In your application, you must provide a certification that you have completed a HOPE VI Relocation Plan, and that it conforms to the URA requirements described above.

(2) You are encouraged to involve HUD-approved housing counseling agencies, including faith-based, non-profit and/or other organizations and/or individuals in the community to which relocatees choose to move, in order to ease the transition and minimize the impact on the neighborhood.

(3) If applicable, you are encouraged to work with surrounding jurisdictions to assure a smooth transition if residents choose to move from your jurisdiction to the surrounding area.

(4) No relocation costs incurred before the award of the HOPE VI Grant may be reimbursed.

X. Fair Housing and Equal Opportunity

(A) *Compliance with Fair Housing and Civil Rights Laws.*

(1) All applicants and their subrecipients must comply with all Fair Housing and Civil Rights laws, statutes, regulations, and Executive Orders as enumerated in 24 CFR 5.105(a) enumerated at 24 CFR 1003.601, as applicable.

(2) If you, the applicant:

(i) Have been charged with a systemic violation of the Fair Housing Act alleging ongoing discrimination;

(ii) Are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an on-going pattern or practice of discrimination; or,

(iii) Have received a letter of non-compliance findings, identifying on-going or systemic noncompliance, under Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, or section 109 of the Housing and Community Development Act, and if the charge, lawsuit, or letter of findings has not been resolved to HUD's satisfaction before the application deadline stated in the NOFA, you may not apply for assistance under this NOFA. HUD will not rate and rank your application. HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken to address allegations of on-going discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings. Examples of actions that may be taken prior to the application deadline to resolve the charge, lawsuit, or letter of findings, include but are not limited to:

(a) a voluntary compliance agreement signed by all parties in response to the letter of findings;

(b) a HUD-approved conciliation agreement signed by all parties;

(c) a consent order or consent decree; or

(d) a judicial ruling or a HUD Administrative Law Judge's decision that exonerates the respondent of any allegations of discrimination.

(B) *Desegregation Orders.* You must be in full compliance with any desegregation or other court order and Voluntary Compliance Agreements related to Fair Housing (*e.g.*, Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and section 504 of the Rehabilitation Act of 1973) that affects your public housing program and that is in effect on the date of application submission.

(C) *Additional Nondiscrimination Requirements.* You and your subrecipients, must comply with:

(1) Title IX of the Education Amendments Act of 1972.

(2) The American with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*)

(D) *Ensuring the Participation of Disadvantaged Firms.* The Department is committed to ensuring that small businesses, small disadvantaged businesses, minority firms, women's business enterprises, and labor surplus area firms participate fully in HUD's direct contracting and in contracting opportunities generated by HUD grant funds. Too often, these businesses still experience difficulty accessing information and successfully bidding on federal contracts. HUD regulations at 24 CFR 85.36(e) require recipients of assistance (grantees and subgrantees) to take all necessary affirmative steps in contracting for purchase of goods or services to assure that these disadvantaged firms are used when possible. Affirmative steps include:

(1) Placing disadvantaged firms on solicitation lists;

(2) Assuring that disadvantaged firms are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by disadvantaged firms;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by disadvantaged firms;

(5) Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in Sections (1) through (5) above.

(E) HOPE VI grantees must comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Economic Opportunities for Low and Very Low-Income Persons in Connection with Assisted Projects) and its implementing regulations at 24 CFR part 135. Information about section 3 can be found at HUD's section 3 Web site *http://www.hud.gov/fhe/sec3over.html.*

XI. Hope VI Demolition Grant Application Selection Process

(A) *HOPE VI Demolition Grant Funding Categories.* HUD will select HOPE VI Demolition grant applications on a first-come, first-served basis, by an application's Priority Group and Ordinal. HOPE VI Demolition grant applications are not rated.

(1) *Eligible Units.* Severely distressed public housing units to be demolished with HOPE VI Demolition grant funds must meet one of the criteria in the description of priority groups below.

(2) *Priority Groups.* You must identify each HOPE VI Demolition grant application by its appropriate Priority Group, as described below. Each application must target units of a single Priority Group; *e.g.*, do not include Priority Group 1 units in the same application as Priority Group 2 units.

(a) *Priority Group 1.*

(i) Priority Group 1 applications target units included in an approved Section 202 Mandatory Conversion Plan. The Section 202 Conversion Plan must be approved by HUD on or before the HOPE VI Demolition grant application due date.

(ii) Units associated with a HOPE VI Revitalization grant are not eligible for this Priority Group. Every application

that targets units associated with a HOPE VI Revitalization Grant is only eligible for Priority Group 4.

(b) *Priority Group 2.*

(i) Priority Group 2 applications:

a. Target units included in a Section 202 Mandatory Conversion Plan that you have submitted to HUD on or before the HOPE VI Demolition grant application deadline date, or

b. Target units that, in HUD's sole determination under section 537(c) of QHWRA, are subject to the removal requirements of 24 CFR part 971 and can be expected to be demolished in accordance with the time schedule required by Section XIII(A) of this NOFA.

(ii) If you submit a HOPE VI Demolition grant application for units that are targeted in a Section 202 Mandatory Conversion Plan that was submitted under 24 CFR part 971 but not yet approved (Priority Group 2), and HUD subsequently approves the Conversion Plan before the HOPE VI Demolition grant application deadline date, you may revise your application and it will be reclassified as Priority Group 1. HUD will change the original Ordinal to the Ordinal corresponding to the date that the revision was received.

(iii) If you submit a Section 202 Mandatory Conversion Plan but HUD determines that the targeted project does not qualify for conversion under 24 CFR part 971, your HOPE VI Demolition grant application will not be eligible for funding. If you intend to submit a Priority 1 or 2 application, discuss the project with your Field Office to ensure that it qualifies under the standards of 24 CFR part 971.

(iv) Units associated with a HOPE VI Revitalization grant are not eligible for this Priority Group. Every application that targets units associated with a HOPE VI Revitalization Grant is only eligible for Priority Group 4.

(c) *Priority Group 3.* Priority Group 3 applications target units that were included in a HUD-approved application for demolition that was developed in accordance with section 18 of the 1937 Act, as amended (''section 18 demolition application'').

(i) HUD must approve your section 18 demolition application on or before the HOPE VI Demolition grant application deadline. If your section 18 demolition application does not meet the statutory requirements of section 18, including the requirement for HUD Field Office approval of the Interim or PHA Plan as required by 24 CFR part 903, HUD will not approve the section 18 demolition application and your HOPE VI Demolition grant application will not be eligible for funding.

(ii) If you have submitted a section 18 demolition application to the SAC but it has not yet been approved by HUD when you submit your HOPE VI Demolition grant application, your HOPE VI application will not be considered complete and you will not receive an Ordinal unless and until your section 18 demolition application is approved on or before the HOPE VI Demolition Grant Application deadline.

(iii) If your section 18 demolition application is approved by HUD on June 2, 2003 or June 3, 2003 only, you are not required to submit your approval letter to HUD, and HUD will deem the approval letter to have been submitted in the application. In such a case, if your application is otherwise complete, your Ordinal will be the date that HUD approves your section 18 demolition application.

(iv) If HUD has previously approved your section 18 demolition application but HUD later rescinded the approval, your section 18 demolition application will not be considered approved by HUD and your HOPE VI Demolition grant application will not be eligible for funding.

(v) Units associated with a HOPE VI Revitalization grant are not eligible for this Priority Group. Every application that targets units associated with a HOPE VI Revitalization Grant is only eligible for Priority Group 4.

(d) *Priority Group 4.*

(i) Priority Group 4 applications target units that:

a. Were targeted for demolition in a previously-approved HOPE VI Revitalization application and the demolition has not yet been carried out; or

b. Were not originally targeted for demolition in a previously-approved HOPE VI Revitalization application but are located in the same project and at the same site that will be revitalized using an existing Revitalization grant, and have not yet been demolished.

(ii) The requested HOPE VI Demolition grant funds, in combination with the existing HOPE VI Revitalization grant funds, may not exceed the Total Development Cost (TDC)/Housing Cost Cap (HCC) limits.

a. If the Revitalization grant is below TDC/HCC, any dollars freed up as a result of the proposed additional demolition grant funds may be used for any development costs, up to the project's TDC/HCC limit.

b. If the Revitalization grant is below or at TDC/HCC, the dollars freed up from the proposed additional demolition grant funds may be used for the demolition of additional units or for Community Renewal costs such as Extraordinary Site Costs that fall outside of HCC.

(iii) If a Priority Group 4 HOPE VI Demolition application is selected for funding, HUD will approve the planned demolition:

a. In its approval of your Supplemental Submissions for the Revitalization grant;

b. By amending its approval of your Supplemental Submissions, if it has already been approved by HUD; or

c. By approving a section 18 demolition application, if you choose to submit one.

(B) *Ordinals.* Upon receipt, HUD will assign each HOPE VI Demolition grant application an Ordinal (*i.e.*, ranking number) that reflects the date HUD Headquarters received the application. Ordinals correspond to business days, starting with the date HUD receives the first Demolition grant application and ending on the HOPE VI Demolition grant application deadline date. HUD will consider all applications received on the same date as received at the same time on that date, and those applications will all be assigned the same Ordinal.

(C) *Demolition Screening.*

(1) HUD will screen the application to ensure that it meets each HOPE VI threshold criterion listed in this NOFA.

(2) If HUD determines that an application is not eligible (*e.g.*, the applicant is not a PHA, the units have already been demolished, etc.), HUD will not consider the application further and will immediately notify the applicant that the application has been rejected.

(3) If HUD determines that an applicant is eligible but the application is incomplete, within approximately two days of receipt of the application, HUD will contact the applicant in writing by fax (followed with a hard copy by mail) to request the missing information. Applicants whose applications are received by HUD on the same date, and who have missing items, will be notified by HUD of their missing items on the same day to ensure that all applicants have the same number of days to provide the missing information.

Please Note: This provision means that the nearer to the deadline date you submit your application, the less time you will have to correct any deficiencies, and if HUD receives your application on the deadline date and there is a deficiency, that application will not be eligible for funding. You are advised to submit your application as soon as possible, in the event that HUD identifies a deficiency that you need to correct.

(4) If HUD determines that the information you submit in response to

a notification of deficiency is correct and completes the application, HUD will add to the application's Ordinal the number of days between notification of the deficiency and curing of the deficiency.

(5) If HUD determines that the information submitted does not make the application complete, HUD will notify you of the remaining deficiency. You will have the opportunity to submit information in response to notifications of deficiency until the HOPE VI Demolition grant application due date.

(6) If you do not submit the requested information by the HOPE VI Demolition grant deadline date, your application will be ineligible for funding.

(7) If a deficiency is cured on the same day the deficiency letter is sent, the application will add one Ordinal.

(D) *Funding.* HUD will award HOPE VI Demolition grants in the following order, based on fund availability.

(1) HUD will fund Priority Group 1 applications by Ordinal.

(2) If funds remain after HUD has funded all eligible Priority Group 1 applications, HUD will fund Priority Group 2 applications by Ordinal.

(3) If funds remain after HUD has funded all eligible Priority Group 2 applications, HUD will fund Priority Group 3 applications by Ordinal.

(4) If funds remain after HUD has funded all eligible Priority Group 4 applications, HUD will fund Priority Group 4 applications by Ordinal.

(5) At any stage, if there is more than one application with next Ordinal to be funded and there are insufficient funds to fund all of them, HUD will conduct a lottery among those applications to determine which application(s) will be funded.

(6) HUD reserves the right to partially fund the next eligible application if insufficient funds remain to fund the entire amount requested, and HUD determines that the funds available are adequate to carry out some significant demolition activities.

(7) If funds remain after all eligible HOPE VI Demolition grant applications have been funded or if the amount remaining is inadequate to feasibly fund the next eligible Demolition grant application, HUD reserves the right to:

(a) Reallocate unused funds to fund or supplement the next eligible HOPE VI Revitalization application(s), in rank order, or

(b) Carry over unused funds to the next fiscal year.

XII. Post Award Activities

(A) *Notification of Funding Decisions.* Because the HOPE VI Demolition grants are awarded on a first-come, first-served basis, HUD reserves the right either to award funds to Priority Group 1 applications as soon as they are determined to be eligible for funding, or announce all awards after the HOPE VI Demolition grant application deadline date has passed. HUD will notify ineligible applicants of their ineligibility immediately after that determination has been made. HUD will provide written notification to all HOPE VI applicants, whether or not they have been selected for funding.

(B) *Environmental Review.* HUD notification that you have been selected to receive a HOPE VI Demolition grant constitutes only preliminary approval. Grant funds may not be released until the responsible entity completes an environmental review and you submit and obtain HUD approval of a request for release of funds and the responsible entity's environmental certification in accordance with 24 CFR part 58 and Section XIV of this NOFA (or HUD has completed an environmental review under 24 CFR part 50 where HUD has determined to do the environmental review).

(C) *Demolition Grant Agreement.* When you are selected to receive a Demolition grant, HUD will send you a HOPE VI Demolition Grant Agreement, which constitutes the contract between you and HUD to carry out and fund public housing demolition activities. Both you and HUD will sign the cover sheet of the Grant Agreement. You must sign the Grant Agreement within 90 days of receiving it. Failure to sign the Grant Agreement within 90 days may cause the Department to withdraw its award of funds. It is effective on the date of HUD's signature. The Grant Agreement differs from year to year. The Grant Agreement from FY 2001 can be found on the HOPE VI Web site *www.hud.gov/hopevi.*

XIII. Post Award Requirements

(A) *Timeliness of Demolition.* Grantees must proceed within a reasonable timeframe, as indicated below. In determining reasonableness of such timeframe, HUD will take into consideration those delays caused by factors beyond your control.

(1) You must complete the proposed demolition within a reasonable timeframe, which is two years from the date of Grant Agreement execution. HUD will take into consideration delays caused by factors beyond your control when enforcing this requirement or as otherwise approved by HUD to accommodate reasonable relocation and demolition schedules.

(2) In accordance with section 24(i) of the 1937 Act, if you do not proceed within a reasonable timeframe, in the determination of HUD, HUD shall withdraw any grant amounts that you have not obligated. HUD shall redistribute any withdrawn amounts to one or more other applicants eligible for HOPE VI assistance or to one or more other entities capable of proceeding expeditiously in the same locality in carrying out the activities of the original Grantee.

(B) *Conflict of Interest.*

(1) *Prohibition.* In addition to the conflict of interest requirements in 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of a Grantee and who exercises or has exercised any functions or responsibilities with respect to activities assisted under a HOPE VI Grant, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

(2) *HUD-Approved Exception.*

(a) *Standard.* HUD may grant an exception to the prohibition in Section (1) above on a case-by-case basis when it determines that such an exception will serve to further the purposes of HOPE VI and its effective and efficient administration.

(b) *Procedure.* HUD will consider granting an exception only after the Grantee has provided a disclosure of the nature of the conflict, accompanied by:

(i) An assurance that there has been public disclosure of the conflict;

(ii) A description of how the public disclosure was made; and

(iii) An opinion of the Grantee's attorney that the interest for which the exception is sought does not violate state or local laws.

(c) *Consideration of Relevant Factors.* In determining whether to grant a requested exception under Section (b) above, HUD will consider the cumulative effect of the following factors, where applicable:

(i) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the Demolition Activities that would otherwise not be available;

(ii) Whether an opportunity was provided for open competitive bidding or negotiation;

(iii) Whether the person affected is a member of a group or class intended to

be the beneficiaries of the Demolition Plan and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(iv) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process, with respect to the specific activity in question;

(v) Whether the interest or benefit was present before the affected person was in a position as described in Section (iii) above;

(vi) Whether undue hardship will result either to the Grantee or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(vii) Any other relevant considerations.

(3) *Conducting Business in Accordance with Core Values and Ethical Standards.* Entities subject to 24 CFR parts 84 and 85 are required to develop and maintain a written code of conduct (see sections 84.42 and 85.36(b)(3)). Consistent with regulations governing specific programs, your code of conduct must: prohibit real and apparent conflicts of interest that may arise among officers, employees, or agents; prohibit the solicitation and acceptance of gifts or gratuities by your officers, employees and agents for their personal benefit in excess of minimal value; and, outline administrative and disciplinary actions available to remedy violations of such standards. If awarded assistance under this NOFA, you will be required, prior to entering into a grant agreement with HUD, to submit a copy of your code of conduct and describe the methods you will use to ensure that all officers, employees and agents of your organization are aware of your code of conduct.

(C) *OMB Circulars and Administrative Requirements.* You must comply with the following administrative requirements related to the expenditure of federal funds. OMB Circulars can be found at *http://www.whitehouse.gov/omb/circulars/index.html.* Copies of the OMB Circulars may be obtained from EOP Publications, Room 2200, New Executive Office Building, Washington, DC 10503, telephone (202) 395–7332 (this is not a toll free number). The Code of Federal Regulations can be found at *http://www.access.gpo.gov/nara/cfr/index.html.*

(1) Administrative requirements applicable to PHAs are:

(a) 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments), as modified by 24 CFR 941 or successor part, subpart F, relating to the procurement of partners in mixed finance developments.

(b) OMB Circular A–87 (Cost Principles for State, Local and Indian Tribal Governments);

(c) 24 CFR 85.26 (audit requirements).

(2) Administrative requirements applicable to non-profit organizations are:

(a) 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations);

(b) OMB Circular A–122 (Cost Principles for Non-Profit Organizations):

(c) 24 CFR 84.26 (audit requirements).

(3) Administrative requirements applicable to for profit organizations are:

(a) 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations);

(b) 48 CFR part 31 (contract cost principles and procedures);

(c) 24 CFR 84.26 (audit requirements).

(D) *Labor Standards.* HUD-determined wage rates apply to demolition and activities associated with filling in the site and establishing a lawn.

(1) Davis-Bacon wage rates apply to demolition followed by construction on the site.

(2) HUD-determined wage rates apply to demolition and activities associated with filling in the site and establishing a lawn.

(3) Under section 12(b) of the 1937 Act, wage rate requirements do not apply to individuals who:

(a) Perform services for which they volunteered;

(b) Do not receive compensation for those services or are paid expenses, reasonable benefits, or a nominal fee for the services; and

(c) Are not otherwise employed in the work involved (24 CFR part 70).

(4) If other federal funds are used in connection with your HOPE VI activities, labor standards requirements apply to the extent required by the other federal programs on portions of the project that are not subject to Davis-Bacon rates under the 1937 Act.

(E) *Lead-Based Paint.* You must comply with lead-based paint evaluation and reduction requirements as provided for under the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, *et seq.*). You must also comply with regulations at 24 CFR part 35, 24 CFR 965.701, and 24 CFR 968.110(k), as they may be amended or revised from time to time. Unless otherwise provided, you will be responsible for lead-based paint evaluation and reduction activities. The National Lead Information Hotline is 1–800–424–5323.

(F) *Internet Access.* You must have access to the Internet and provide HUD with email addresses of key staff and contact people.

(G) *Procurement of Recovered Materials.* State agencies and agencies of a political subdivision of a state that are using assistance under this NOFA for procurement, and any person contracting with such an agency with respect to work performed under an assisted contract, must comply with the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. In accordance with Section 6002, these agencies and persons must procure items designated in guidelines of the Environmental Protection Agency at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the quantity acquired in the preceding fiscal year exceeded $10,000; must procure solid waste management services in a manner that maximizes energy and resource recovery; and must have established an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

XIV. Environmental Review

(A) If you are selected for funding and an environmental review has not been conducted on the targeted site, the responsible entity, as defined in 24 CFR 58.2(a)(7), must assume the environmental review responsibilities for projects being funded by HOPE VI. If you object to the responsible entity conducting the environmental review, on the basis of performance, timing or compatibility of objectives, HUD will review the facts and determine who will perform the environmental review. At any time, HUD may reject the use of a responsible entity to conduct the environmental review in a particular case on the basis of performance, timing or compatibility of objectives, or in accordance with 24 CFR 58.77(d)(1). If a responsible entity objects to performing an environmental review, or if HUD determines that the responsible entity should not perform the environmental review, HUD may designate another responsible entity to conduct the review or may itself conduct the environmental review in accordance with the provisions of 24 CFR part 50. You must provide any

documentation to the responsible entity (or HUD, where applicable) that is needed to perform the environmental review.

(B) If you are selected for funding, you must have a Phase I environmental site assessment completed in accordance with the American Society for Testing and Material (ASTM) Standards E 1527–97, as amended, for each affected site. A Phase I assessment is required whether the environmental review is completed under 24 CFR part 50 or 24 CFR part 58. The results of the Phase I assessment must be included in the documents that must be provided to the responsible entity (or HUD) for the environmental review. If the Phase I assessment recognizes environmental concerns or if the results are inconclusive, a Phase II environmental site assessment will be required.

(C) You may not undertake any actions with respect to the project that are choice-limiting or could have environmentally adverse effects, including demolishing, acquiring, rehabilitating, converting, leasing, repairing, or constructing property proposed to be assisted under this NOFA, and you may not commit or expend HUD or local funds for these activities, until HUD has approved a Request for Release of Funds following a responsible entity's environmental review under 24 CFR part 58, or until HUD has completed an environmental review and given approval for the action under 24 CFR part 50. In addition, you must carry out any mitigating/remedial measures required by the Responsible Entity (or HUD). If a remediation plan, where required, is not approved by HUD and a fully-funded contract with a qualified contractor licensed to perform the required type of remediation is not executed, HUD reserves the right to determine that the grant is in default.

(D) The costs of environmental reviews and hazard remediation are eligible costs under the HOPE VI Program.

(E) HUD's Environmental web site is located at *http://hudstage.hud.gov/offices/cpd/energyenviron/environment/index.cfm*

XV. Findings and Certifications

(A) *Catalog of Federal Domestic Assistance Number.* The Catalog of Federal Assistance (CFDA) Number for HOPE VI is 14.866. The CFDA is a government-wide compendium of federal programs, projects, services, and activities that provide assistance or benefits to the public.

(B) *Environmental Impact.* A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Regulations Division, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

(C) *Federalism.* Executive Order 13132 prohibits, to the extent practicable and permitted by law, an agency from promulgating policies that have federalism implications and either impose substantial direct compliance costs on state and local governments and are not required by statute, or preempt state law, unless the relevant requirements of section 6 of the Executive Order are met. This NOFA does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

(D) *Intergovernmental Review of Federal Programs.* Executive Order 12372 was issued to foster intergovernmental partnership and strengthen federalism by relying on state and local processes for the coordination and review of federal financial assistance and direct federal development. The Order allows each state to designate an entity to perform a state review function. The official listing of State Points of Contact (SPOC) for this review process can be found at: *http://www.whitehouse.gov/omb/grants/spoc.html.* States that are not listed on the Web site have chosen not to participate in the intergovernmental review process, and therefore do not have a SPOC. If you are located within one of those states, you may send applications directly to HUD. If your state has a SPOC, you should contact them to see if they are interested in reviewing your application prior to submission to HUD. Please make sure that you allow ample time for this review process when developing and submitting your application.

(E) *Prohibition Against Lobbying Activities.* You are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991 (31 U.S.C. 1352) (the Byrd Amendment), which prohibits recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the federal government in connection with a specific contract, grant, or loan. You are required to certify, using the HUD–424 series form, that you will not, and have not, used appropriated funds for any prohibited lobbying activities. As necessary, you must disclose, using Standard Form LLL, ''Disclosure of Lobbying Activities,'' any funds, other than federally appropriated funds, that will be or have been used to influence federal employees, Members of Congress, and congressional staff regarding specific grants or contracts. The Lobbying Disclosure Act of 1995 (Public Law 104–65, approved December 19, 1995), repealed section 112 of the Housing and Urban Development Reform Act of 1989 (Public Law 101–235, approved December 15, 1989) (HUD Reform Act), and requires all persons and entities who lobby covered executive or legislative branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

(F) *Documentation and Public Access Requirements.* Section 102 of the HUD Reform Act (42 U.S.C. 3545) and the regulations codified in 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published a notice in the **Federal Register** that also provides information on the implementation of section 102 (57 FR 1942). The documentation, public access, and disclosure requirements of section 102 apply to assistance awarded under this NOFA as follows:

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) (FOIA) and HUD's implementing regulations in 24 CFR part 15.

(2) *Disclosures.* HUD will make available for public inspection all HOPE VI grant applications for five years beginning not less than 30 days following the grant award. Applications will be made available in accordance with FOIA and HUD's implementing regulations at 24 CFR part 15.

(3) *Publication of Recipients of HUD Funding.* HUD's regulations at 24 CFR 4.7 provide that HUD will publish a notice in the **Federal Register** to notify the public of all decisions made by the Department to provide:

(a) Assistance subject to section 102(a) of the HUD Reform Act; and/or

(b) Assistance that is provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

(G) *Section 103 HUD Reform Act.* HUD's regulations implementing section 103 of the HUD Reform Act (42 U.S.C. 3537a), codified in 24 CFR part 4, subpart B, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4. Applicants or HUD employees who have ethics related questions should contact the HUD Ethics Law Division at (202) 708–3815. (This is not a toll-free number.) HUD employees who have specific program questions should contact the appropriate field office counsel, or Headquarters counsel for the program to which the question pertains.

(H) *Paperwork Reduction Act Statement.* The information collection requirements contained in this notice have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), and assigned OMB control number 2577–0208. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Dated: March 28, 2003.

Michael M. Liu,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–P

U.S. Department of Housing
and Urban Development
Office of Public Housing Investments
Public and Indian Housing

OMB Approval No. 2577-0208
exp. 12/31/2004

HOPE VI DEMOLITION GRANT APPLICATION

HOPE VI WEBSITE: www.hud.gov/hopevi

The public reporting burden for this collection of information for the HOPE VI Demolition Program is estimated to average 40 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information, and preparing the application package for submission to HUD.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions to reduce this burden, to the Reports Management Officer, Paperwork Reduction Project, to the Office of Information Technology, US Department of Housing and Urban Development, Washington, DC 20410-3600. When providing comments, please refer to OMB Approval No. (insert program number (s) and name(s) of programs in the Application, placing each one after the other). HUD may not conduct and sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

The information submitted in response to the Notice of Funding Availability for the HOPE VI Program is subject to the disclosure requirements of the Department of Housing and Urban Development Reform Act of 1989 (Public Law 101-235, approved December 15, 1989, 42 U.S.C. 3545).

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

APPLICATION SUBMISSION INSTRUCTIONS

A. Application Preparation

1. Section 18 Demolition Application. HUD must approve your Section 18 demolition application by the HOPE VI Demolition grant application deadline date in order to be eligible for funding under Priority Group 3. If your Section 18 demolition application does not meet the statutory requirements of Section 18, including the requirement for HUD Field Office approval of the Interim or PHA Plan as required by 24 CFR part 903, HUD will not approve the HOPE VI Demolition Grant Application.

2. HUD Review. If HUD determines that a Demolition Grant Application is eligible but incomplete, HUD will contact you in writing by fax (followed up with a hard copy by mail) to request the missing information. If HUD finds your application and other applications received on the same day to be incomplete, HUD will notify all such applicants of their missing items on the same day. Since HOPE VI Demolition Grant Applications are not rated, you may submit information to complete your application at any time before the HOPE VI Demolition Grant Application deadline date. However, if your application is received on the deadline date and it is missing a required submission, you will have no opportunity to submit any missing item after the deadline date and your HOPE VI Demolition Grant Application will be ineligible for funding.

B. Application Content and Organization.

1. The first page of your application is the **HOPE VI Demolition Application Checklist**. This page serves three purposes:

   a. Use the left side of the Checklist to make sure that all pieces of the application are included.

   b. HUD will use the right side of the Checklist to screen the application for completeness.

   c. If any deficiencies are found, HUD will fax you the Checklist with a letter, if necessary, to identify any missing items.

   Please make sure that the HOPE VI Demolition Application Checklist is on the very top of your application. No transmittal letter is requested.

2. The next page is the **HOPE VI Demolition Application Receipt** (HUD-2993-A). This form serves both as an acknowledgement that HUD received your application, but also as a fax transmittal for the checklist above if HUD has found deficiencies in your application.

   a. Print or type the name and address of the person that should receive the receipt in the box provided and provide all of the information requested above the line.

b. HUD will record the date received, ordinal assigned, and application number.

c. After HUD has screened the application for completeness, it will either:

i. Fax the receipt to the fax number listed on the Receipt indicating that no deficiencies have been found, or

ii. Fax the receipt to you with the HOPE VI Demolition Checklist and a letter, if necessary, indicating the missing documentation. HUD will **not** notify you of deficiencies by telephone. **It is very important that the fax number listed on the Application Receipt is correct so that it gets to the right person on your staff.**

d. Applicants with deficient applications that share the same Ordinal will be notified by fax of deficiencies on the same day. To account for differences in the time of day of the fax notification and differences in time zones, any response that HUD receives on the same day as the fax notification was sent out will be counted as having been received on the day after the fax notification.

Place the HOPE VI Demolition Application Receipt directly behind the HOPE VI Demolition Application Checklist in the application.

3. The third page of your application is the **Application for Federal Assistance (HUD-424)**. This form provides HUD with essential information about your PHA and the funds you are requesting. Do not fill in box 15, as you will report your funding elsewhere in the application. The CFDA number for HOPE VI is 14.866. You will find a copy of HUD-424 in this HOPE VI Application and on the HOPE VI Website.

4. Attach **Exhibits A through I** next. Provide the narrative and attachments in the order presented. Please **DO NOT** provide any information that is not requested in this Application. Extraneous material hinders application review, does not improve an application, and may obscure important information. The HOPE VI Budget form needed for Exhibit H and the Section 8 application for Exhibit E can be found in this HOPE VI Application, and can be downloaded from the HOPE VI Website. Information on TDC needed for Exhibit D can also be found on the HOPE VI Website.

5. **Standard Certifications**. All statutorily required certifications are included in the HUD-424 and HUD-424B form.

C. Application Format

To speed the processing of your application, please follow these instructions when assembling your package:

1. Use 8-1/2 by 11" paper, one side only.

2. Mark each Exhibit with an appropriately labeled tab.

3. Package the application as securely and simply as possible; do not use a three ring binder.

4. Two-hole punch the pages at the top with a 2-3/4" center.

D. Application Submission

Follow the directions in Section IV of the NOFA for procedures for submitting your application (e.g., mailed applications, express mail, or overnight delivery). It is recommended that applications be placed with an overnight delivery carrier at least two days before the due date to ensure timely delivery. Experience has shown that attempts to place them in regular mail often result in late deliveries and disqualified applications. Due to new security measures, HUD will no longer accept hand carried applications.

HOPE VI DEMOLITION
APPLICATION CHECKLIST

PHA Name: _____

Development Name: _____

PHA CHECKOFF		HUD VERIFICATION
_____	HOPE VI Demolition Application Checklist	_____
_____	HOPE VI Demolition Application Receipt (HUD-2993-A)	_____
_____	Application for Federal Assistance (HUD-424)	_____
_____	Applicant Assurances and Certifications (HUD-424B)	_____
_____	**Exhibit A: Application Information**	_____
	Exhibit B: Priority Group and Documentation of Eligibility:	
_____	Priority 1: HUD's letter to PHA approving Section 202 Conversion Plan	_____
_____	Priority 2A: PHA's letter transmitting Section 202 Conversion Plan to HUD	_____
_____	Priority 2B: Documentation of HUD's Determination of Section 202 Status	_____
_____	Priority 3: HUD's letter to PHA approving Section 18 demolition application	_____
_____	Priority 4: HUD's letter awarding Revitalization Grant	_____
_____	**Exhibit C: Narrative of Proposed Activities**	_____
_____	**Exhibit D: Priority Group 4 Applications**	_____
_____	**Exhibit E: Relocation Plan Certification**	_____
_____	**Exhibit F: Program Schedule**	_____
_____	**Exhibit G: Grant Limitations Worksheet**	_____
_____	**Exhibit H: HOPE VI Budget**	_____
_____	**Exhibit I: Nondwelling Structures Certification**	_____

EXHIBIT A: APPLICATION INFORMATION

PHA Name:_____

Development Name:_____

Development Number(s): _____

DOFA:_____ Grant Amount Requested: $_____

Number of total units in development: _____

Number proposed for demolition: _____

Demolition Approval Status: (Complete grid below)

	Date	Number of Units		Number of Buildings	
		Requested	Approved	Requested	Approved
HUD-Approved Conversion Plan (24 CFR part 971)					
Submitted Conversion Plan (24 CFR part 971)					
HUD-Approved Section 18 Demolition Application					
Previously-awarded HOPE VI Revitalization Grant RP Approval					

Street Addresses of units to be demolished (including ZIP code):

EXHIBIT B: PRIORITY GROUP AND DOCUMENTATION OF ELIGIBILITY

Indicate the Priority Group in which your application qualifies and submit the corresponding documentation of eligibility.

_____ Priority 1: Approved Section 202 Mandatory Conversion Plan

Submit your letter from HUD approving your Section 202 Mandatory Conversion Plan. See **Section XI(A)(2)(a)** of the NOFA regarding Priority Group 1.

Priority 2: See **Section XI(A)(2)(b)** of the NOFA regarding Priority Group 2.

_____ Priority 2(A): Submitted Section 202 Mandatory Conversion Plan.

Submit your letter to HUD transmitting your Section 202 Plan to HUD.

_____ Priority 2(B): HUD-Designated Section 202 Units

Submit evidence that the targeted units, in HUD's sole determination under section 537(c) of the Public Housing Reform Act of 1998, are subject to the removal requirements of 24 CFR part 971 and can be expected to be demolished in accordance with the time schedule required by Section XIII(A) of the NOFA.

_____ Priority 3: Approved Section 18 Demolition Application

Submit your letter from HUD approving your Section 18 Demolition Application. If HUD approves your demolition application on the **day before** or **on the application deadline date**, the requirement to provide evidence of approval will be considered to be met and you will not have to submit HUD's approval letter back to HUD. See **Section XI(A)(2)(c)** of the NOFA regarding Priority Group 3.

_____ Priority 4: Previously-Awarded HOPE VI Revitalization Grant

Submit a copy of HUD's letter awarding the HOPE VI Revitalization Grant that is associated with this request for demolition funding. If demolition of the units targeted in this HOPE VI Demolition Grant application was approved via a Section 18 Demolition Application, provide the demolition approval letter as described in Priority 3 above. If demolition of the targeted units was approved in a letter approving the Revitalization Plan for the previously-awarded Revitalization Grant, submit the RP approval letter. *The units targeted in a Priority Group 4 HOPE VI Demolition Application are not required to be approved for demolition before the application is awarded.* See **Section XI(A)(2)(d)** of the NOFA regarding Priority Group 4.

EXHIBIT C: NARRATIVE OF PROPOSED ACTIVITIES

Provide a one- to two-page narrative that briefly summarizes the proposed demolition and related activities. Although this is a required exhibit, this overview is for informational purposes only and will not be used in the evaluation of the application.

1. Describe the scope of the proposed demolition. Provide the number of original dwelling units and buildings in the project, the number of any units previously demolished or disposed of, and the number of units proposed for demolition with funds from this HOPE VI Demolition Grant Application.

2. Describe any non-dwelling facilities to be demolished. Explain the relationship between the non-dwelling facilities and the dwelling units to be demolished, both in terms of proximity and use.

3. In the case of partial demolition of a site, describe any minimal site restoration that will take place after demolition and subsequent site improvements needed to benefit the remaining portion of the project in order to provide project accessibility or to make the site more marketable.

4. Demonstrate the appropriateness of your proposal in the context of the local housing market relative to other alternatives. This is a statutory threshold criterion. See **Section VII(C)** of the NOFA.

5. Describe the proposed plan for the use of the site after demolition, and the resources that will be used to carry out that plan.

6. If applicable, list all prior HUD public housing grant assistance you have used for the physical revitalization of the proposed development. This includes any public housing funds received for Capital Improvements as far back in time as possible. If only a portion of the targeted development has previously received such funds, provide the street addresses of the units assisted.

EXHIBIT D: PRIORITY GROUP 4 APPLICATIONS ONLY

In accordance with **Section XI(A)(2)(d)(ii)** of the NOFA:

1. Provide an analysis of TDC/HCC of the current Revitalization Grant. Use FY 2001 TDC Limits, as provided in Notice PIH 01-22. This Notice is available on the HOPE VI website.

2. Provide an analysis to TDC/HCC of the current Revitalization Grant plus the requested Demolition Grant. Use TDC figures as described above.

3. If this HOPE VI Demolition Grant Application targets units that were targeted for demolition in the original HOPE VI Revitalization application (regardless of any subsequent budget changes), provide a description of the use that will be made of Revitalization Grant funds that would be freed up if this Demolition Grant were awarded.

    a. If the analysis in (1) above indicates that the Revitalization grant is below TDC/HCC, any dollars freed up as a result of the proposed additional demolition grant funds may be used for any construction costs, up to the project's TDC/HCC limit.

    b. If the analysis in (1) above indicates that the Revitalization grant is below or at TDC/HCC, the dollars freed up from the proposed additional demolition grant funds may be used for the demolition of additional units or for Community Renewal costs such as Extraordinary Site Costs that fall outside of HCC.

EXHIBIT E: RELOCATION PLAN CERTIFICATION

This Exhibit is required for all applications that request HOPE VI Demolition Grant funding for relocation. In accordance with **Section IX** of the NOFA, you must provide a certification that you have completed a HOPE VI Relocation Plan and that it conforms to the URA requirements. This certification may be in the form of a letter. The HOPE VI Relocation Plan Guide is posted on the HOPE VI web site as a tool to assist you in preparing your Relocation Plan. Do not submit the HOPE VI Relocation Plan Guide; only the certification should be in the application. If applicable, attach a copy of your Section 8 application in accordance with **Section II(E)** of the NOFA. This attachment is not applicable if the targeted project is vacant as of the application due date.

EXHIBIT F: PROGRAM SCHEDULE

Provide a Program Schedule that clearly indicates that you will start demolition activity within six months from the date of Grant Agreement execution and complete the demolition within two years from the date of Grant Agreement execution. Assume a Grant Agreement execution date of September 1, 2003.

EXHIBIT G: GRANT LIMITATIONS WORKSHEET

1.	Demolition. Number of dwelling units approved for demolition:			
	_____	x	$6,000	$ _____
2.	Relocation/Self-Sufficiency. Number of dwelling units approved for demolition that are **occupied** as of the date of the HOPE VI Demolition Application submission:			
	_____	x	$3,000	$ _____
3.	Nondwelling Structures			$ _____
4.	Total allowable cost (1 + 2 + 3)			$ _____
5.	Total funds requested			$ _____

EXHIBIT H: HOPE VI BUDGET

1. Provide your proposed budget on Part I of the HOPE VI Budget Form (HUD-52825-A). A copy of the Budget form can be found in this HOPE VI Application and can be downloaded from the HOPE VI Website.

2. On Part II of the Budget:

   a. Provide a **detailed** itemization of the costs of all activities, including demolition, hazard abatement, site restoration, fees, and administrative costs. See **Section V** of the NOFA for eligible Demolition Grant activities.

   b. Differentiate between costs for dwelling units and nondwelling facilities.

   c. Itemize all costs budgeted for relocation activities.

   Applicants that do not adequately describe their costs on Part II of the Budget will be asked to submit a clarification and their Ordinal will change accordingly.

EXHIBIT I: NONDWELLING STRUCTURES CERTIFICATION

If you are requesting funds for the demolition of nondwelling structures in your budget, those costs must be justified and verified by an engineer or architect licensed by his or her state licensing board who is not an employee of the housing authority or the city. See **Section VI(A)(3)** of the NOFA for examples of nondwelling structures. You must include in your application a completed Nondwelling Structures Cost Certification and the required attachment.

NONDWELLING STRUCTURES COST CERTIFICATION

I hereby certify that:

1. I am licensed as an engineer _____ or architect _____ (check one) by the licensing board for the state in which the public housing project identified below is located.

2. I am not an employee of the applicant public housing authority or unit of local government in which the public housing project identified below is located.

3. Costs to demolish significant nondwelling structures may be incurred in conjunction with the demolition of severely distressed public housing as part of a HOPE VI Demolition Grant Application. Examples of eligible demolition costs related to significant nondwelling structures include, but are not limited to, the demolition of heating plants, community buildings, or streets on the site of the severely distressed project.

4. I have reviewed the attached description and calculation of costs for the demolition of significant nondwelling structures related to the demolition of dwelling units at the site identified below, as requested by the applicant Housing Authority listed below, and affirm that those costs qualify as allowable nondwelling structures costs (as defined in Paragraph 3 above) and are justified and reasonable in light of my assessment of the site of the project and the proposed work to be completed.

Name: _____

Signature: _____
Date

License number: _____ State of Registration: _____

Applicant PHA: _____

Development Name: _____

Required Attachment: Description of proposed demolition of nondwelling structures and itemized listing of costs.

Warning: HUD will prosecute false claims and statements. Conviction may result in the imposition of criminal and civil penalties. (18 U.S.C. 1001, 1010, 1012, 31 U.S.C. 3729, 3802)

HOPE VI Demolition Grant Application Receipt

U.S. Department of Housing and Urban Development

Type or clearly print the Applicant's name and full address in the space below.

(fold line)

HA Code ☐☐---☐☐☐

PHA Fax Number ☐☐☐---☐☐☐---☐☐☐☐

Development Name _____

Amount Requested $ ☐☐,☐☐☐,☐☐☐

To Be Completed by HUD

☐ HUD received your application by the deadline.

Date received (mm/dd/yyyy) _____

Ordinal _____

Application Number _____

☐ Your application has been screened and no deficiencies have been identified.

☐ Your application has been screened and a deficiency has been identified. Please see the attached letter and/or checklist.

☐ HUD did not receive your application by the deadline; therefore, your application will not receive further consideration.

Instructions for the HUD-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

This form must be used by applicants requesting funding from the Department of Housing and Urban Development. This application form HUD-424 incorporates the Assurances and Certifications (HUD-424-B). You may either (1) attach the Assurances and Certifications to the application or (2) renew the certifications that you previously made on behalf of your organization and submitted to HUD if the legal name of your organization has not changed and you were the authorized representative who signed the Assurances and Certifications.

Item Number Instructions

1. Please indicate whether your application is for a formal application submission or a preliminary application (pre-application). HUD does not accept pre-applications for programs funded through the SuperNOFA.
2. Enter the date you are submitting your application to HUD.
3. This box will be completed by HUD. When received by HUD, your application will be stamped:
   (a) with a date; and
   (b) with the time received.
4. Leave Blank. This will be completed by the HUD program office receiving your application. When HUD accepts electronic applications for the grant program you are applying for, this number will be computer generated.
5. If your application is to renew or continue an existing grant, provide the existing grant number. If a new award, please leave blank.
6. Leave blank if you have not been provided a HUD ID number or user number. If you are a Public Housing Authority, enter your HUD issued Public Housing Authority ID number.
7. Enter the legal name of your organization applying for HUD funding.
8. Enter the name of the primary unit in your organization, if applicable, which will be responsible for the program.
9. Enter the complete address of your organization.
10. Enter the name, title, telephone number, fax number, and E-mail of the person to contact on matters related to your application.
11. Enter your organization's Employer Identification Number (EIN) as assigned by the Internal Revenue Service or if you are applying as an individual, your Social Security Number.
12. Choose from the list and enter the appropriate letter in the space provided. You must be an eligible applicant to apply for assistance. You must read the program information requirements to determine if you are a type of applicant that is eligible to apply for assistance under the program.
13. Enter the type of application you are submitting for funding consideration.

Check the appropriate box.

- "New" means you are applying for a new grant award.
- "Continuation" means you are requesting an extension of an existing award.
- "Renewal" means you are requesting funding for renewal of an existing grant. e.g. Supportive Housing Program (SHP) or Shelter + Care grant.
- "Revision" means you are submitting a revision prior to the application due date in response to HUD's request for clarification or modification to your initial submission.

14. Pre-filled.
15. Enter the Catalog of Federal Domestic Assistance (CFDA) number and title and, if applicable, component title of the program.
16. Enter a brief description of your program and key activities.
17. Identify the location(s) where your activities will take place. If this is the entire state, enter "Entire State".
18a. Enter the proposed start date.
18b. Enter the proposed end date.
19a. List the Congressional District(s) where your organization is located.
19b. List any Congressional District(s) where your program of activities or project sites will be located.
20. You must complete the funding matrix on page 2 of this form. Enter the following information:

Grant Program: The HUD funding program under which you are applying.

HUD Share: Please check the program requirements. Enter the amount of HUD funds you are requesting in your application.

Applicant Match: Enter the amount of funds or cash equivalent of in-kind contributions you are contributing to your project or program of activities.

Other Federal Share: Enter the amount of other Federal funds for your program of activities.

Instructions for the HUD-424 (Continued)

State Share: Enter the amount of funds or cash equivalent of in-kind services the State is providing to your project or program of activities.
Local/Tribal Share: Enter the amount of funds or cash equivalent of in-kind services your local/tribal government is providing to your project or program of activities.
Other: Enter the amount of other sources of private, non-profit, or other funds or cash equivalent of in-kind services being provided to your project or program of activities.
Program Income: Enter the amount of program income you expect to generate over the life of your award.
Total: Please total all columns and fill in the amounts.
21. You should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 or check your application kit to determine whether the State Intergovernmental Review Process is required.
22. This question applies to your applicant organization, not the person signing as your organization's authorized representative. Categories of debt include disallowed costs that requires repayment to HUD.
23. To be signed by the authorized representative of your organization. A copy of your governing body's authorization for you to sign this application must be available in your organization's office.

Application for Federal Assistance

U.S. Department of Housing and Urban Development

OMB Approval No.2501-0017 (exp. 03/31/2005)

1. Type of Submission
☐ Application ☐ Preapplication

2. Date Submitted	4. HUD Application Number
3. Date and Time Received by HUD	5. Existing Grant Number
	6. Applicant Identification Number

7. Applicant's Legal Name	8. Organizational Unit
9. Address (give city, county, State, and zip code) A. Address: B. City: C. County: D. State: E. Zip Code:	10. Name,title,telephone number,fax number, and e-mail of the person to be contacted on matters involving this application (including area codes) A. Name: B. Title: C. Phone: D. Fax: E. E-mail:
11. Employer Identification Number (EIN) or SSN	12. Type of Applicant (enter appropriate letter in box) ☐ A. State — I. University or College B. County — J. Indian Tribe C. Municipal — K. Tribally Designated Housing Entity (TDHE) D. Township — L. Individual E. Interstate — M. Profit Organization F. Intermunicipal — N. Non-profit G. Special District — O. Public Housing Authority H. Independent School District — P. Other (Specify)
13. Type of Application ☐ New ☐ Continuation ☐ Renewal ☐ Revision If Revision, enter appropriate letters in box(es) ☐ ☐ A. Increase Amount B. Decrease Amount C. Increase Duration D. Decrease Duration E. Other (Specify)	14. Name of Federal Agency **U.S. Department of Housing and Urban Development**
15. Catalog of Federal Domestic Assistance (CFDA) Number 14 --- Title: Component Title:	16. Descriptive Title of Applicant's Program
17. Areas affected by Program (boroughs, cities, counties, States, Indian Reservation, etc.)	

18a. Proposed Program start date	18b. Proposed Program end date	19a. Congressional Districts of Applicant	19b. Congressional Districts of Program

20. Estimated Funding: **Applicant must complete the Funding Matrix on Page 2.**

21. 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
☐ Program has not been selected by State for review.

22. Is the Applicant delinquent on any Federal debt? ☐ No
☐ Yes If "Yes," explain below or attach an explanation.

Funding Matrix

The applicant must provide the funding matrix shown below, listing each program for which HUD funding is being requested, and complete the certifications.

Grant Program*	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income	Total
Grand Totals									

* For FHIPs, show both initiative and component

Certifications

I certify, to the best of my knowledge and belief, that no Federal appropriated funds have been paid, or will be paid, by or on behalf of the applicant, 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 this Federal grant or its extension, renewal, amendment or modification. If funds other than Federal appropriated funds have or will be paid for influencing or attempting to influence the persons listed above, I shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying. I certify that I shall require all sub awards at all tiers (including sub-grants and contracts) to similarly certify and disclose accordingly.

Federally recognized Indian Tribes and tribally designated housing entities (TDHEs) established by Federally-recognized Indian tribes as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but State-recognized Indian tribes and TDHEs established under State law are not excluded from the statute's coverage.

This application incorporates the Assurances and Certifications (HUD-424B) attached to this application or renews and incorporates for the funding you are seeking the Assurances and Certifications currently on file with HUD. To the best of my knowledge and belief, all information in this application is true and correct and constitutes material representation of fact upon which HUD may rely in awarding the agreement.

23. Signature of Authorized Official	Name (printed)
Title	Date (mm/dd/yyyy)

Applicant Assurances and Certifications	U.S. Department of Housing and Urban Development	OMB Approval No. 2501-0017 (exp. 03/31/2005)

Instructions for the HUD-424-B Assurances and Certifications

As part of your application for HUD funding, you, as the official authorized to sign on behalf of your organization or an an individual must provide the following assurances and certifications. By signing this form, you are stating that to the best of your knowledge and belief, all assertions are true and correct.

As the duly authorized representative of the applicant, I certify that the applicant [Insert below the Name and title of the Authorized Representative, name of Organization and the date of signature]:

Name:_____, Title:_____

Organization:_____, Date:_____.

1. Has the legal authority to apply for Federal assistance, has the institutional, managerial and financial capability (including funds to pay the non-Federal share of program costs) to plan, manage and complete the program as described in the application and the governing body has duly authorized the submission of the application, including these assurances and certifications, and authorized me as the official representative of the applicant to act in connection with the application and to provide any additional information as may be required.

2. Will administer the grant in compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)) and implementing regulations (24 CFR Part 1), which provide that no person in the United States shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance **OR** if the applicant is a Federally recognized Indian tribe or its tribally designated housing entity, is subject to the Indian Civil Rights Act (25 U.S.C. 1301-1303).

3. Will administer the grant in compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, and implementing regulations at 24 CFR Part 8, and the Age Discrimination Act of 1975 (42 U.S.C. 6101-07), as amended, and implementing regulations at 24 CFR Part 146 which together provide that no person in the United States shall, on the grounds of disability or age, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance; except if the grant program authorizes or limits participation to designated populations, then the applicant will comply with the nondiscrimination requirements within the designated population.

4. Will comply with the Fair Housing Act (42 U.S.C. 3601-19), as amended, and the implementing regulations at 24 CFR Part 100, which prohibit discrimination in housing on the basis of race, color, religion, sex, disability, familial status, or national origin; except an applicant which is an Indian tribe or its instrumentality which is excluded by statute from coverage does not make this certification; and further except if the grant program authorizes or limits participation to designated populations, then the applicant will comply with the nondiscrimination requirements within the designated population.

5. Will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601) and implementing regulations at 49 CFR Part 24 and 24 CFR 42, Subpart A.

6. Will comply with the environmental requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and related Federal authorities prior to the commitment or expenditure of funds for property acquisition and physical development activities subject to implementing regulations at 24 CFR parts 50 or 58.

7. 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 applicant's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about --

(1) The dangers of drug abuse in the workplace;

(2) The applicant'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 in 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;

Applicant Assurances and Certifications (Continued)	**U.S. Department of Housing and Urban Development**	OMB Approval No. 2501-0017 (exp. 03/31/2005)

(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 has worked, 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 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).

(h). The applicant may insert in the space provided below the site(s) for the performance of work or may provide this information in connection with each application.

(i). Place of Performance (street address, city, county, state, zip code)

8. In accordance with 24 CFR Part 24, and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three year period preceding this proposal, been convicted of or had a civil judgement 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; 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 otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in the preceding paragraph of this certification; and

(d) Where the applicant is unable to certify to any of the statements in this certification, an explanation shall be attached.

(e) Will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transaction, " provided by the HUD without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

These certifications and assurances are material representations of the fact upon which HUD can rely when awarding a grant. If it is later determined that I, the applicant, knowingly made an erroneous certifications or assurance, I may be subject to criminal prosecution. HUD may also terminate the grant and take other available remedies.

HOPE VI Budget
Part I: Summary

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0208 (exp. 12/31/2004)

Public Reporting Burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This information is necessary to provide details on the funds requested by Housing Authorities. The form displays the amount requested, broken down by budget line item, with each use explained on Part II. The requested information will be reviewed by HUD to determine if the amount requested is reasonable and whether the required percentages of capital and supportive services funds are met. Responses to the collection are required by the appropriation under which the HOPE VI grant was funded. The information collected does not lend itself to confidentiality.

HUD may not conduct or sponsor, and a person is not required to respond to collection of information unless it displays a currently valid OMB control number.

PHA Name	HOPE VI Grant Number
	☐ Original HOPE VI Budget ☐ Revised HOPE VI Budget ☐ Predevelopment Budget

Line No.	Summary by Budget Line Item	Capital Costs	Supportive Services Costs	Total Funds Requested	HUD Approved Funds
1	Total Non-HOPE VI Funds				
2	1408 Management Improvements				
3	1410 Administration				
4	1430 Fees and Costs				
5	1440 Site Acquisition				
6	1450 Site Improvement				
7	1460 Dwelling Structures				
8	1465 Dwelling Equipment—Nonexpendable				
9	1470 Nondwelling Structures				
10	1475 Nondwelling Equipment				
11	1485 Demolition				
12	1495 Relocation Cost				
13	**Amount of HOPE VI Grant** (Sum of lines 2-12)				

Signature of PHA Executive Director

Date (mm/dd/yyyy)

HUD Certification: In approving this budget and providing assistance to a specific housing development(s), I hereby certify that the assistance will not be more than is necessary to make the assisted activity feasible after taking into account assistance from other government sources (24 CFR 12.50).

Signature of Authorized HUD Official

Date (mm/dd/yyyy)

HA Name	HOPE VI Budget **Part II: Supporting Pages**

Work Item Number 1	Budget Line Item Number 2	Statement of Need 3	Description of Proposed/Approved Action and Method of Accomplishment 4	Individual Project Number 5	Total Funds Requested 6	HUD-Approved Funds 7

Instructions for Preparation of Form HUD-52825-A,

HOPE VI Budget Submission:

When requested by HUD, prepare a separate form HUD-52825-A (Parts I and II) for the HOPE VI program, describing the activities which are planned to be undertaken with the HOPE VI funds. Submit the original and two copies (or any lesser number of copies as specified by HUD) of this form to the HUD Field Office. On an as-needed basis, submit a revised form when the HUD-established threshold requires prior HUD approval to revise the HOPE VI Budget.

Part I: Summary

HA Name - Enter the name of the Housing Authority (HA).

HOPE VI Grant Number - Enter the unique HOPE VI Grant number assigned by HUD upon grant approval.

FFY of Grant Approval - Enter the Federal Fiscal Year (FFY) in which the HOPE VI grant is being approved/was approved. (last 2 digits of HOPE VI Grant Number).

Type of Submission - Check the appropriate box and indicate whether the submission is the Original HOPE VI Budget or a Revised HOPE VI Budget (and revision number).

Total Funds Approved:

Line 1 - Enter the amount rounded to the nearest ten dollars, for all work that will be undertaken from non-HOPE VI funds. Enter zero if no work will be undertaken from non-HOPE VI funds.

Lines 2 through 12 - For each line, enter the appropriate amount rounded to the nearest ten dollars, or zero if no work will be undertaken in a particular HOPE VI budget line item.

Line 13 - Amount of HOPE VI Grant - Enter the sum of lines 2 through 12.

Part II: Supporting Pages

1. **Work Item Number** - Number each work item sequentially.
2. **Budget Line Item Number** - Enter the appropriated HOPE VI budget line item which corresponds to the work item described.
3. **Statement of Need**
4. **Description of Proposed/Approved Action and Method of Accomplishment** - For each HOPE VI budget line item listed, provide a statement of need and a description of all work items (physical or management, as applicable) that will be funded with HOPE VI funds, including management improvements, supportive services, administrative costs, equipment, etc. Enter the quantity of the work as a percentage or whole number, Describe administrative costs in sufficient detail to clearly identify items.
5. **Individual Project Number** - Enter the abbreviated (e.g., VA-36-1) of the development where the work items will be undertaken.
6. **Total Funds Requested** - For each work item and HA-wide activity described, enter the total funds requested. Where appropriate, add a reasonable contingency amount to each work item and indicate the percentage.

[FR Doc. 03–8174 Filed 4–3–03; 8:45 am]
BILLING CODE 4210–33–C

Federal Register

Friday,
April 4, 2003

Part VI

Environmental Protection Agency

40 CFR Parts 9 and 46
Fellowships; Interim Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 46

[FRL–7476–2]

RIN 2030–AA77

Fellowships

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: This rule revises EPA's current fellowship regulation to provide greater flexibility and clarify requirements in order to aid in the administration and monitoring of the EPA fellowships. EPA's fellowship programs provide financial assistance to individuals to further their education in environmental fields, such as environmental engineering and science. EPA is also amending certain approved information collection requirements.

DATES: This regulation is effective May 5, 2003, and applies to fellowship agreements awarded after May 5, 2003. Comments on this interim final rule must be submitted by June 3, 2003.

ADDRESSES: Comments must be submitted to W. Scott McMoran, Office of Grants and Debarment (3903R), United States Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: W. Scott McMoran at (202) 564–5376.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Entities eligible to receive the environmental fellowships listed in 40 CFR part 46 are regulated by this rule. Regulated categories and entities include:

Category	Regulated entities
Persons	Individuals.
Institutions of Higher Education.	Colleges and Universities.

Only individuals may apply for fellowships under this regulation. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. Comments and Record

The record of this interim final rule includes a copy of the previous version of this rule. It is available for inspection from 9 a.m. to 4 p.m. (eastern time), Monday through Friday, excluding legal holidays, by contacting the person listed in the **ADDRESSES** section.

Comments on this interim final rule must be submitted by June 3, 2003, to the person listed in the **ADDRESSES** section.

III. Background

EPA last updated its fellowship regulation (40 CFR part 46) on October 18, 1984. Since that time, EPA's legal authorities, practices and policies have changed, and, as a result, the regulation is out of date. Also, the General Accounting Office reviewed the EPA fellowship program and found that, in order to award fellowships in compliance with the regulation, the agency was relying on approved exceptions from the regulation. For these reasons, EPA is revising the regulation to update and clarify requirements. In particular, we have:

- Generally eliminated references to EPA's Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations regulation (40 CFR part 30). Fellowships are awards made to individuals and that regulation applies to organizations (*see* 40 CFR 30.1).
- Added new provisions based on part 30 to assure the regulation addresses all appropriate requirements, including: § 46.125 which authorizes EPA to approve exceptions from this regulation, where necessary; § 46.130 which makes clear that fellows are subject to the government-wide suspension and debarment program; § 46.145 which requires fellows to fly on American Carriers when involved in foreign travel under fellowships; § 46.210 and § 46.215 which provide termination and enforcement provisions; and § 46.220 which establishes a dispute process for fellowships. We also added § 46.205 which establishes requirements for handling intangible property such as documents and computer software developed under a fellowship. It incorporates the intangible property provisions of part 30 (40 CFR 30.36) rather than repeating them. That rule is complex and its form would not change if it were included in this rule, so there was no reason to repeat it.
- Eliminated monetary limits on the amount EPA can award for benefits. The amounts that will be awarded for various purposes under fellowships will be determined by the EPA program offices making the awards.
- Revised the list of EPA's statutes (§ 46.105) under which EPA awards fellowships to bring it up to date.
- Deleted the definitions of full time fellow and part time fellow. We will rely on the policy of the institution involved to make that determination.
- Added a requirement that fellows annually submit copies of transcripts and publications (§ 46.175(b)), when required by the fellowship agreement.

In compliance with the Paperwork Reduction Act, EPA is also amending 40 CFR part 9 to add the list of currently approved information collection request numbers related to information collected under the Fellowships regulation (40 CFR part 46).

Statutory and Regulatory Reviews

Regulatory Flexibility Act

This interim final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which notice and comment rulemaking is required under the Administrative Procedure Act (APA) or any another statute. Grant award and administration matters, such as this rule, are explicitly exempt from the notice and comment requirements of the APA (5 U.S.C. 553(a)(1)). Nor is this rule required to undergo notice and comment rulemaking under any other statute.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, 2 U.S.C. 1501 *et seq.*, 109 Stat. 48 (1995), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. This regulation contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, or tribal governments or the private sector. The UMRA excludes from the definitions of ''Federal intergovernmental mandate'' and ''Federal private sector mandates'' duties that arise from conditions of Federal assistance.

National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), EPA is required to use voluntary consensus standards in its

regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. Where available and potentially applicable voluntary consensus standards are not used, the Act requires EPA to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

This rule does not involve any technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

Executive Order 13045—Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045 applies to any rule that is determined to be: (1) ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 because the fellowship award authority does not meet any of the criteria. As such, this action will not require submission to the Office of Management and Budget (OMB) for review.

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

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.

Paperwork Reduction Act

In keeping with the requirements of the Paperwork Reduction Act (PRA), as amended, 44 U.S.C. 3501 *et seq.*, the information collection requirements contained in this rule have been approved by OMB under information collection request number 0938.06 (OMB Control Number 2030–0020) and Quality Assurance Specifications and Requirements information request number 0866.05 (OMB Control Number 2080–0033). This rule does not contain any collection of information requirements beyond those already approved. Since this action imposes no new or additional information collection, reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, no information request has been or will be submitted to the Office of Management and Budget for review. We are revising 40 CFR part 9 to reflect these requirements.

Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), 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 interim final rule does not have tribal implications. It 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. This rule applies to individuals and any individual may apply for an EPA fellowship. Thus, Executive Order 13175 does not apply to this rule.

Executive Order 13132—Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), 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.''

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

This interim final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the

requirements of section 6 of the Executive Order do not apply to this rule. Further, because this rule regulates the use of Federal financial assistance, it will not impose substantial direct compliance costs on States.

Congressional Review Act

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). This rule will be effective May 5, 2003.

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 46

Environmental protection, Grant programs-education, Grant programs-environmental protection, Reporting and recordkeeping requirements, Scholarships and fellowships.

Dated: March 27, 2003.

Christine Todd Whitman,

Administrator.

■ For the reasons set out in the preamble, 40 CFR part 9 is amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1 the table is amended by adding a new heading and new entries in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control no.
* * * * *	
Fellowships	
46.155	2030–0004
46.170(a)	2030–0020
46.185(a)	2030–0020
46.190(a) and (b)	2030–0020
46.200(a)	2030–0020
46.230(a)	2030–0020
* * * * *	

■ 3. For the reasons set forth in the preamble, 40 CFR part 46 is revised to read as follows:

PART 46—FELLOWSHIPS

Sec.

Authority: Section 103(b)(5) of the Clean Air Act, as amended (42 U.S.C. 7403(b)(5)); sections 104(b)(5) and (g)(3)(B) of the Clean Water Act, as amended (33 U.S.C. 1254(b)(5) and (g)(3)(B)); section 1442 of the Safe Drinking Water Act, as amended (42 U.S.C. 300j–1); section 8001 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6981); section 10 of the Toxic Substances Control Act, as amended (15 U.S.C. 2609); section 20 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136r); sections 104(k)(6)and 311 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9604(k)(6) and 42 U.S.C. 9660).

PART 46—FELLOWSHIPS

Subpart A—General

§ 46.100 Purpose.

This part establishes the requirements for all Environmental Protection Agency (EPA) fellowship awards.

§ 46.105 Authority.

EPA is authorized to award fellowships under the statutes listed in this section. EPA is not required to award fellowships under all of the listed authorities, but does so at its discretion.

(a) Section 103(b)(5) of the Clean Air Act, as amended (42 U.S.C. 7403(b)(5));

(b) Section 104(b)(5) and (g)(3)(B) of the Clean Water Act, as amended (33 U.S.C. 1254(b)(5) and (g)(3)(B));

(c) Section 1442 of the Safe Drinking Water Act, as amended (42 U.S.C. 300j–1);

(d) Section 8001 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6981);

(e) Section 10 of the Toxic Substances Control Act, as amended (15 U.S.C. 2609);

(f) Section 20 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136r); and

(g) Sections 104(k)(6) and 311 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9604(k)(6) and 42 U.S.C. 9660).

§ 46.110 Objectives.

EPA awards fellowships to help individuals participate in academic and professional educational opportunities in fields related to pollution control and environmental protection. Fellowships provide support for undergraduate and graduate students, including staff of state, local or Tribal agencies responsible for environmental pollution control and environmental protection.

§ 46.115 Types of fellowships.

In general, EPA may award you one of two kinds of fellowships.

(a) The first are fellowships to students who are selected on the basis of EPA requests for applications and program announcements. These fellowships may assist you with the costs of academic and professional career studies in pollution control and environmental protection in fields such as science, engineering, technology, social science, and specialty areas supporting environmental protection efforts.

(b) The second are fellowships awarded to current or prospective employees of state, local and Tribal environmental pollution control or regulatory agencies who are nominated to receive fellowships by their agency. These fellowships may assist you with the costs of academic and professional career studies in pollution control and environmental protection in fields such as science, engineering, technology, social science, and specialty areas supporting environmental protection efforts.

§ 46.120 Definition.

Fellow: You are a fellow if you receive an EPA fellowship award.

§ 46.125 Exceptions.

The Director, Grants Administration Division, may approve exceptions from this part on a case-by-case or class basis.

§ 46.130 Debarment and suspension.

EPA will not award you a fellowship if you are debarred, suspended or otherwise excluded from participation in federal programs. Names of individuals who are excluded are included on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs maintained and distributed by the General Services Administration.

Subpart B—Applying for Fellowships

§ 46.135 Eligibility.

If you wish to apply for an EPA fellowship, you must be:

(a) A citizen of the United States, its territories, or possessions, or lawfully admitted to the United States for permanent residence;

(b) Accepted by or an applicant to an accredited educational institution for academic credit in an educational program directly related to pollution control or environmental protection; and

(c) If you are applying for a fellowship offered specifically to employees or prospective employees of state, local and Tribal organizations, you must be nominated by the head of the state, local or Tribal agency, or designee, based on the need for academic and professional career study to enhance your skills related to the needs of the organization.

§ 46.140 Benefits.

EPA fellowships may include funds to help you pay such things as:

(a) A part, or all, of your tuition and fees, as determined appropriate by EPA.

(b) An expense allowance for books, supplies, and equipment (equipment is an item with a unit acquisition cost of more than $5,000) as determined appropriate by EPA. You may use this allowance for expenses that are necessary for your education, such as the cost of health insurance, supplies, and travel to conduct research and attend technical meetings relating to the fellowship. You may acquire equipment only with EPA's written approval and there will be very few instances where the purchase of equipment is authorized (see § 46.225.)

(c) A stipend determined by the EPA program office based on EPA's resources and your course load.

§ 46.145 International travel and work.

(a) You may use fellowship funds for travel to or work in a foreign country only if the travel or work is approved by the EPA Office of International Activities (OIA). You will be notified of OIA approval in the fellowship award or in a letter from the EPA project officer or the award official.

(b) If you travel to or from a foreign country and the travel cost is paid under the fellowship agreement, you must comply with the Fly America Act. In accordance with that Act, you must travel on U.S. air carriers certificated under 49 U.S.C. 1371, to the extent that such carriers provide service, even if the foreign air carrier costs less than the American air carrier.

§ 46.150 Request for applications.

EPA generally requests fellowship applications through electronic and printed announcements or other means designed to inform potential applicants.

§ 46.155 Submission of applications.

The request for applications or program announcement will advise you how to file an application and what information you must include. You must submit applications for fellowships on EPA's ''Fellowship Application'' (EPA Form 5770–2) or in any other form EPA designates. EPA will provide instructions for completing the application. You must submit the original and two copies of the application unless the instructions require otherwise. Alternatively, EPA may allow you to submit applications electronically. It is also likely that EPA will require you to submit undergraduate and graduate transcripts to the office identified in the request for applications or program announcement.

§ 46.160 Evaluation of applications.

EPA will evaluate your application based on criteria identified in the request for applications or program announcement. Evaluation criteria may include:

(a) The relevance of your proposed studies to EPA's mission.

(b) Your potential for success, as reflected by your academic record, letters of reference, and any other available information.

(c) The availability of EPA funds.

§ 46.165 Notification.

If EPA does not select you to receive a fellowship, we generally will notify you within 60 days after final selections are made. If you are a successful applicant, EPA will send you a fellowship agreement in accordance with § 46.170.

Subpart C—Award

§ 46.170 Fellowship agreement.

(a) The ''Fellowship Agreement'' (EPA Form 5770–8) is the written agreement, including amendments, between EPA and you. The fellowship agreement will state the amount of Federal funds awarded and the terms and conditions governing the fellowship.

(b) The EPA award official may approve any pre-award costs you incurred, if determined appropriate by the award official. You incur pre-award costs at your own risk (see also § 46.195).

§ 46.175 Terms and conditions.

(a) If EPA awards you a fellowship on the basis of a nomination by your current or prospective state, local or Tribal government employer, by accepting the fellowship agreement you agree to remain in the employment of the state, local, or Tribal employer for twice the period of the fellowship. If you fail to meet this obligation, EPA may, after consultation with your employer or prospective employer, require you to repay the amount of the fellowship.

(b) You must submit a copy of your transcript to the EPA project officer after the completion of each year of the fellowship, if required by the fellowship agreement. You must also submit copies of any publications and other products from the research, if required.

(c) EPA may require you to provide various performance reports under your fellowship, but we will not require reports more frequently than quarterly. At the end of the fellowship, you must submit a final report and other documentation, if required in the fellowship agreement.

§ 46.180 Acceptance of fellowship award.

You must accept your fellowship by signing and returning the EPA award form (EPA Form 5770–8) to the EPA award official within three weeks after receipt, or within an extension of time approved by the award official. If you do not sign and return the Fellowship

agreement to the award official or request an extension of the acceptance time within three calendar weeks after receiving the agreement, the award official may void the agreement. EPA will not pay for costs incurred under voided agreements.

Subpart D—During the Fellowship

§ 46.185 Activation notice.

(a) Each fellowship includes a ''Fellowship Activation Notice'' (EPA Form 5770–7). You must complete, sign, and obtain other appropriate signatures on the Activation Notice when the program supported by the fellowship agreement begins. In certain instances, *e.g.*, if your program of study is at an EPA facility, the EPA project officer may sign as sponsor on the Activation Notice. You must submit the Activation Notice to the award official.

(b) If you do not submit the Activation Notice (EPA Form 5770–7) within 90 days after the date of the award, the award official may initiate action to terminate the fellowship agreement in accordance with § 46.210.

§ 46.190 Fellowship agreement amendments.

(a) If you need to make any of the changes listed in paragraphs (a)(1) thorough (3) of this section, you must notify the project officer and receive a formal amendment (EPA Form 5770–8) approving the changes. You must sign and return one copy of each amendment to the award official. If you make the change before you receive the amendment, you do so at your own risk. Changes that require formal amendments are:

(1) A change in the amount of the fellowship;

(2) A change in the academic institution you attend; or

(3) A change in the duration of your fellowship.

(b) You must obtain the EPA project officer's written approval of changes in the field of study or approved research project.

(c) You do not need EPA approval of minor changes that are consistent with the objective of the fellowship agreement. Minor changes do not, however, obligate EPA to provide additional funds for any costs you incur in excess of the fellowship agreement amount.

§ 46.195 Project period.

Based on the ''Date Fellow Will Enter on Duty'' which you enter on the Activation Notice (see § 46.185(a)), EPA will establish the project period for the fellowship. If you incur costs before the date of the fellowship award, the date on the Activation Notice must reflect that fact (see also § 46.170(b)).

§ 46.200 Payment.

EPA will not make payments under a fellowship agreement until the award official receives the signed ''Fellowship Activation Notice'' (EPA Form 5770–7) as required by § 46.185. Unless the fellowship provides another payment process, EPA makes payments as follows:

(a) EPA pays tuition and fees directly to the educational institution.

(b) EPA pays any stipend directly to you on a monthly or other basis approved by the project officer and included in the fellowship agreement.

(c) EPA pays any book or other expense allowance to you or to the educational institution, as specified in the fellowship agreement. If EPA pays your expense allowance to the educational institution, the institution may deduct not more than two percent of the expense allowance as a handling fee.

§ 46.205 Intangible property.

In general, if you develop intangible property under a fellowship agreement (*e.g.,* copyrighted software), EPA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so. EPA's requirements for dealing with such intangible property are found at 40 CFR 30.36 of EPA's Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.

§ 46.210 Termination.

(a) EPA may terminate your fellowship agreement in whole or in part in accordance with the following:

(1) If you fail to submit the ''Fellowship Activation Notice'' as required by § 46.185.

(2) If you fail to comply with the terms and conditions of the fellowship agreement.

(b) You may voluntarily terminate your fellowship by sending the award official written notification setting forth the reasons for termination and the effective date. In that case, the EPA project officer may discuss the terms of the termination with you, and EPA may send you a letter or other document which states any termination conditions.

(c) Costs resulting from obligations you incur after termination of an award are not allowable unless EPA expressly authorizes them in the notice of termination or subsequently approves them. Costs after termination which are necessary and not reasonably avoidable are allowable if:

(1) The cost results from obligations which you properly incurred before the effective date of termination, were not in anticipation of the termination, and are noncancellable; and

(2) The cost would be allowable if the award expired normally.

§ 46.215 Enforcement.

(a) You must use fellowship funds for the purposes stated in the fellowship agreement. If you fail to comply with the terms and conditions of an award, EPA may take one or more of the following actions, as appropriate:

(1) Temporarily withhold or suspend payments pending your correction of the deficiency or pending other enforcement by EPA;

(2) Disallow all or part of the cost of the activity or action not in compliance;

(3) Wholly or partly terminate the fellowship agreement in accordance with § 46.210(a);

(4) Withhold the award of additional funds under the fellowship; or

(5) Take other remedies that may be legally available.

(b) In taking an enforcement action, EPA will provide you an opportunity for hearing, appeal, or other administrative proceeding to which you are entitled under any statute or regulation applicable to the action involved, including § 46.220.

(c) The enforcement remedies identified in this section, including withholding of payment and termination, do not preclude debarment and suspension action under Executive Orders 12549 and 12689 and EPA's implementing regulations (40 CFR part 32).

§ 46.220 Disputes.

(a) If you and the EPA award official or project officer have a disagreement, you should make reasonable efforts to resolve it at that level.

(b) If you cannot reach agreement, an EPA disputes decision official will provide a written final decision. The EPA disputes decision official is the individual designated by the award official to resolve disputes concerning assistance agreements. The dispute procedures outlined at 40 CFR part 31, subpart F, will apply.

Subpart E—After the Fellowship

§ 46.225 Equipment.

(a) If EPA authorizes you to purchase equipment (see § 46.140(b)) and the equipment retains a fair market value of

more than $5,000, you must request disposition instructions from the EPA project officer when you no longer need it for the work under the fellowship.

(b) If you purchase an item with an acquisition cost of $5,000 or less, the item belongs to you.

§ 46.230 Closeout procedures.

(a) You must submit the ''EPA Fellowship Completion of Studies Notice'' (EPA Form 5770–9) signed by your sponsor or department head of the educational institution when the project period ends. In certain instances, *e.g.*, your program of study is at an EPA facility, the EPA project officer may sign as sponsor on the Completion of Studies Notice. You may request an extension to submit the form if you need it.

(b) You must retain all records related to your fellowship agreement for three years after the completion date you insert on the ''Completion of Studies Notice'' (EPA Form 5770–9).

(c) EPA, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, has the right of timely and unrestricted access to your documents, papers, or other records related to your fellowship, in order to make audits, examinations, excerpts, transcripts and copies of such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

[FR Doc. 03–8153 Filed 4–3–03; 8:45 am]

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