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

FEDERAL RESERVE SYSTEM

12 CFR Part 268

[Docket No. R–1096]

Rules Regarding Equal Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim Rule with request for comments.

SUMMARY: The Board of Governors of the Federal Reserve System (the Board) has revised and reissued its Rules Regarding Equal Opportunity (rule) in order to continue its practice of conforming that rule as closely as possible to the ''Federal Sector Equal Employment Opportunity,'' regulation of the Equal Employment Opportunity Commission (Commission), which the Commission revised effective November 9, 1999.

The revised Board regulation is issued as an immediately effective interim rule, with opportunity for public comment, to ensure that all complaints currently pending at the Board, and which may in the near future be filed, are processed under procedures consistent with those in the Commission's regulation for agencies subject to its jurisdiction, which was issued following notice and public comment.

DATES: This interim rule is effective January 25, 2001.

Applicability Date: This interim rule is applicable to all Board equal employment opportunity (EEO) complaints pending at any stage of the administrative process as of January 25, 2001.

Comment Date: Submit comments on or before March 26, 2001.

ADDRESSES: Comments should refer to docket number R–1096 and should be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551 or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson also may be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m. and, outside those hours, to the Board's security control room. Both the mailroom and the security control room are accessible from the Eccles Building courtyard entrance, located on 20th Street between Constitution Avenue and C Street, N.W. Members of the public may inspect comments in room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Stephen L. Siciliano, Assistant General Counsel (202–452–3920), or Alicia S. Foster, Counsel (202–452–5289), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Janice Simms (202–872–4984), Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue N.W., Washington, D.C., 20551.

SUPPLEMENTARY INFORMATION: Section 10(4) of the Federal Reserve Act (Act), 12 U.S.C. 244, provides that the ''employment, compensation, leave, and expenses'' of Board employees is governed solely by that Act rather than by the laws governing federal employers generally. See, for example, *In the Matter of the Federal Reserve Board-Applicability of Senior Executive Service,* 58 Comp. Gen. 687 (1979). The Board's EEO regulation ''Rules Regarding Equal Opportunity,'' 12 CFR part 268, adopted under the Federal Reserve Act, requires the Board to maintain a workplace free of discrimination based on race, color, religion, sex, national origin, age, physical or mental disability, or retaliation and, among other things, sets out the procedure applicable to the processing of EEO complaints of discrimination. The Board's EEO regulation is substantially similar to the Commission's regulation ''Federal Sector Equal Employment Opportunity,'' 29 CFR part 1614. Thus, when the Commission has modified its EEO regulation, the Board has followed with an appropriate revision of its EEO regulation. Recently, the Commission has modified 29 CFR part 1614, which changes were effective November 9, 1999, to revise the procedures throughout the complaint process. 64 FR 37644 (July 12, 1999).

In order to incorporate the most recent changes made by the Commission to its regulation, which the Commission has stated apply to all complaints at any stage of the administrative EEO process as of November 9, 1999, the Board is updating part 268. The Board's revised EEO rule incorporates substantially verbatim the Commission's November 9, 1999, amendments to the Commission's EEO regulation.

In addition, although it generally is substantially similar to the Commission's EEO regulation, the Board's regulation, in a number of instances, uses language that differs from the text of the counterpart provision in the Commission's regulation. Except as described below, the interim revised rule conforms the language in the Board's regulation to that in the corresponding provision in the Commission regulation.

To more closely follow the Commission's regulation, the Board's regulation, as a whole, also has been renumbered so that the order and numbering of the provisions follow that of the Commission to the extent possible. This has meant that provisions in the Board's regulation having no counterpart in the Commission's rule, *i.e.,* the section on employment of noncitizens and the subpart prohibiting discrimination in Board programs and activities on the basis of disability, have also been renumbered. The authority and scope section, previously § 268.101, and the definitions section, previously § 268.102, have been moved to §§ 268.1 and 268.2, respectively.

To conform to the Commission's regulation, the definitions in the Board's regulation applicable to particular sections, for example, those concerning class actions and complaints under the Rehabilitation Act, have been moved out of the separate definitions section and into the respective section within the regulation to which the definition corresponds. Also, the internal equal employment designations of authority, which described the particular functions of each Board office to act on complaints, and which were previously contained in § 268.103, have been removed. The internal designations of authority will be revised and published in an internal policy statement, as they concern only the internal administration of the Board. In addition, typographical errors in part 268 have also been

corrected, and outdated citations to other sections in this rule or other Board rules have been revised.

Language in three sections present in the Commission's regulation that currently has no counterpart in the Board's regulation but that has applicability to employment at the Board has been added to the Board's revised regulation. One new section addresses the processing of grievances that cover the same matter as a complaint of discrimination in order to assure that appropriate procedures for these complaints exist. The appropriate paragraph in the corresponding provision of the Commission's regulation has been added to the Board's regulation. The second new section covers mixed cases, which are complaints that raise both a discrimination issue and an issue appealable to the Merit System Protection Board (MSPB). The section differs in language from the language in the corresponding section of the Commission's regulation because only a Board employee who is a preference eligible employee, as defined by the Veterans Preference Act, can file a mixed case complaint with the Board or a mixed case appeal with the MSPB. The section provides that the procedures set forth in the Commission's regulation (set out at 29 CFR 1614.302 to 1614.310) as to the processing of mixed case complaints and mixed case appeals will be applied by the Board to the processing of mixed cases filed by Veterans Preference eligible employees against the Board. The third section that has been added incorporates verbatim the Commission's provision on delegation of authority for equal opportunity functions.

Sections in the Commission's regulation that are not present in the Board's regulation but which do not have applicability to Board employment have not been added. Moreover, the revised regulation does not change certain provisions in the Board regulation that differ from their counterpart in the Commission regulation because these provisions represent areas in which the Commission's authority is inconsistent with the Board's authority under the more specific provisions of the Federal Reserve Act. Thus, the distinctions in the Board's rule regarding the audit and review by the Commission of the Board's EEO Program and how information is submitted to the Commission about the Board's EEO program have been continued. Similarly, the Board's rule retains the authority of the Board with respect to decisions of the Commission.

Finally, revisions have also been made to the provisions of the Board's regulation prohibiting discrimination in Board programs and activities on the basis of disability (designated subpart H in the interim rule) and to provisions addressing employment of noncitizens (§ 268.205 of the interim regulation), both of which are provisions addressing matters that are not administered by the Commission. Citations in the subpart on programs and activities to the EEO processing portion of the Board's regulation have been changed to reflect the revisions. Non-substantive editorial changes have also been made to this subpart. In addition, the definitions applicable to this subpart, which are patterned after the corresponding regulation of the Department of Justice, 28 CFR part 39, prohibiting discrimination in programs and activities on the basis of disability have been moved into this subpart. Thus, this subpart has been renumbered accordingly. As for the section on employment of noncitizens, a citation to the Board's Rules Regarding Availability of Information (12 CFR part 261) has been updated to reflect the appropriate provision of that rule.

Pursuant to the Administrative Procedures Act (APA), 5 U.S.C. 553(d)(3), the Board has determined that it is unnecessary, and would be impracticable, to defer the effective date of this action until after notice and after public comments have been received and considered, although the Board will consider all public comments received and make changes in its procedures based on those comments where appropriate. The Board has determined, pursuant to 5 U.S.C. 553(d)(3), that good cause exists to make this action effective immediately rather than to defer its effective date for 30 days. Further, pursuant to the Congressional Review Act (CRA), 5 U.S.C. 808(2), the Board has determined that it would also be impractical and unnecessary to defer the effective date of this action until the notice and comment period under the CRA has expired.

Under both the APA and the CRA, issuance of this rule as an interim rule is appropriate because the Board will be applying in substance the Commission's regulation, which was adopted by the Commission after notice and full public comment. Further, having an updated regulation in place and in effect regarding equal opportunity will insure that the Board's EEO Programs Office processes all complaints currently pending at the Board, and which may in the near future be filed, under the Board's revised regulation without additional delay. The Board believes that issuance of the regulation as an interim rule should thus help to avoid confusion among management and staff.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601, *et seq.*), the Board certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule governs the Board's dealings with its employees, applicants for employment, and others affected in a like manner.

List of Subjects in 12 CFR Part 268

Administrative practice and procedure, Aged, Civil rights, Equal employment opportunity, Federal buildings and facilities, Federal Reserve System, Government employees, Individuals with disabilities, Religious discrimination, Sex discrimination, Wages.

For the reasons set out in the preamble, the Board revises 12 CFR part 268 to read as follows:

PART 268—RULES REGARDING EQUAL OPPORTUNITY

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268.2 Definitions.

Subpart B—Board Program To Promote Equal Opportunity

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Authority: 12 U.S.C. 244 and 248(i), (k) and (l).

Subpart A—General Provisions and Administration

§ 268.1 Authority, purpose and scope.

(a) *Authority.* The regulations in this part (12 CFR part 268) are issued by the Board of Governors of the Federal Reserve System (Board) under the authority of sections 10(4) and 11(i), (k), and (l) of the Federal Reserve Act (partially codified in 12 U.S.C. 244 and 248(i), (k) and (l)).

(b) *Purpose and scope.* This part sets forth the Board's policy, program and procedures for providing equal opportunity to Board employees and applicants for employment without regard to race, color, religion, sex, national origin, age, or physical or mental disability. It also sets forth the Board's policy, program and procedures for prohibiting discrimination on the basis of physical or mental disability in programs and activities conducted by the Board. It also specifies the circumstances under which the Board will hire or decline to hire persons who are not citizens of the United States, consistent with the Board's operational needs and applicable law.

§ 268.2 Definitions.

The definitions contained in this section shall have the following meanings throughout this part unless otherwise stated.

(a) *Commission or EEOC* means the Equal Employment Opportunity Commission.

(b) *Title VII* means Title VII of the Civil Rights Act (42 U.S.C. 2000e *et seq.*).

Subpart B—Board Program to Promote Equal Opportunity

§ 268.101 General policy for equal opportunity.

(a) It is the policy of the Board to provide equal opportunity in employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, age or disability, and to promote the full realization of equal opportunity in employment through a continuing affirmative program.

(b) No person shall be subject to retaliation for opposing any practice made unlawful by Title VII of the Civil Rights Act (title VII) (42 U.S.C. 2000e *et seq.*), the Age Discrimination in Employment Act (ADEA) (29 U.S.C. 621 *et seq.*), the Equal Pay Act (29 U.S.C. 206(d)), or the Rehabilitation Act (29 U.S.C. 791 *et seq.*) or for participating in any stage of administrative or judicial proceedings under those statutes.

§ 268.102 Board program for equal employment opportunity.

(a) The Board shall maintain a continuing affirmative program to promote equal opportunity and to identify and eliminate discriminatory practices and policies. In support of this program, the Board shall:

(1) Provide sufficient resources to its equal opportunity program to ensure efficient and successful operation;

(2) Provide for the prompt, fair and impartial processing of complaints in accordance with this part and the instructions contained in the Commission's Management Directives;

(3) Conduct a continuing campaign to eradicate every form of prejudice or discrimination from the Board's personnel policies, practices and working conditions;

(4) Communicate the Board's equal employment opportunity policy and program and its employment needs to all sources of job candidates without regard to race, color, religion, sex, national origin, age or disability, and solicit their recruitment assistance on a continuing basis;

(5) Review, evaluate and control managerial and supervisory performance in such a manner as to insure a continuing affirmative application and vigorous enforcement of the policy of equal opportunity, and provide orientation, training and advice to managers and supervisors to assure their understanding and implementation of the equal employment opportunity policy and program;

(6) Take appropriate disciplinary action against employees who engage in discriminatory practices;

(7) Make reasonable accommodation to the religious needs of employees and applicants for employment when those accommodations can be made without undue hardship on the business of the Board;

(8) Make reasonable accommodation to the known physical or mental limitations of qualified applicants and employees with a disability unless the accommodation would impose an undue hardship on the operations of the Board's program;

(9) Reassign, in accordance with § 268.203(g), nonprobationary employees who develop physical or mental limitations that prevent them from performing the essential functions of their positions even with reasonable accommodation;

(10) Provide recognition to employees, supervisors, managers and units demonstrating superior accomplishment in equal employment opportunity;

(11) Establish a system for periodically evaluating the effectiveness of the Board's overall equal employment opportunity effort;

(12) Provide the maximum feasible opportunity to employees to enhance their skills through on-the-job training, work-study programs and other training measures so that they may perform at their highest potential and advance in accordance with their abilities;

(13) Inform its employees and recognized labor organizations of the Board's affirmative equal opportunity policy and program and enlist their cooperation; and

(14) Participate at the community level with other employers, with schools and universities and with other public and private groups in cooperative action to improve employment opportunities and community conditions that affect employability.

(b) In order to implement its program, the Board shall:

(1) Develop the plans, procedures and regulations necessary to carry out its program;

(2) Establish or make available an alternative dispute resolution program. Such program must be available for both the precomplaint process and the formal complaint process.

(3) Appraise its personnel operations at regular intervals to assure their conformity with the Board's program, this part 268 and the instructions contained in the Commission's management directives;

(4) Designate a Director for Equal Employment Opportunity (EEO Programs Director), EEO Officer(s), and such Special Emphasis Program Managers/Coordinators (*e.g.,* People with Disabilities Program, Federal Women's Program and Hispanic Employment Program), clerical and administrative support as may be necessary to carry out the functions described in this part in all organizational units of the Board and at all Board installations. The EEO Programs Director shall be under the immediate supervision of the Chairman.

(5) Make written materials available to all employees and applicants informing them of the variety of equal employment opportunity programs and administrative and judicial remedial procedures available to them and prominently post such written materials in all personnel and EEO offices and throughout the workplace;

(6) Ensure that full cooperation is provided by all Board employees to EEO Counselors and Board EEO personnel in the processing and resolution of pre-complaint matters and complaints within the Board and that full cooperation is provided to the Commission in the course of appeals, including, granting the Commission routine access to personnel records of the Board when required in connection with an investigation;

(7) Publicize to all employees and post at all times the names, business telephone numbers and business addresses of the EEO Counselors (unless the counseling function is centralized, in which case only the telephone number and address need be publicized and posted), a notice of the time limits and necessity of contacting a Counselor before filing a complaint and the telephone numbers and addresses of the EEO Programs Director, EEO Officer(s) and the Special Emphasis Program Managers/Coordinators.

(c) The EEO Programs Director shall be responsible for:

(1) Advising the Board of Governors with respect to the preparation of national and regional equal employment opportunity plans, procedures, regulations, reports and other matters pertaining to the policy in § 268.101 and the Board's program;

(2) Evaluating from time to time the sufficiency of the total Board program for equal employment opportunity and reporting to the Board of Governors with recommendations as to any improvement or correction needed, including remedial or disciplinary action with respect to managerial, supervisory or other employees who have failed in their responsibilities;

(3) When authorized by the Board of Governors, making changes in programs and procedures designed to eliminate discriminatory practices and to improve the Board's program for equal employment opportunity;

(4) Providing for counseling of aggrieved individuals and for the receipt and processing of individual and class complaints of discrimination; and

(5) Assuring that individual complaints are fairly and thoroughly investigated and that final action is taken in a timely manner in accordance with this part.

(d) Directives, instructions, forms and other Commission materials referenced in this part may be obtained in accordance with the provisions of 29 CFR 1610.7.

§ 268.103 Complaints of discrimination covered by this part.

(a) Individual and class complaints of employment discrimination and retaliation prohibited by title VII (discrimination on the basis of race, color, religion, sex and national origin), the ADEA (discrimination on the basis of age when the aggrieved person is at least 40 years of age), the Rehabilitation Act (discrimination on the basis of disability), or the Equal Pay Act (sex-based wage discrimination) shall be processed in accordance with this part. Complaints alleging retaliation prohibited by these statutes are considered to be complaints of discrimination for purposes of this part.

(b) This part applies to all Board employees and applicants for employment at the Board, and to all employment policies or practices affecting Board employees or applicants for employment.

(c) This part does not apply to Equal Pay Act complaints of employees whose services are performed within a foreign country or certain United States territories as provided in 29 USC 213(f).

§ 268.104 Pre-complaint processing.

(a) Aggrieved persons who believe they have been discriminated against on the basis of race, color, religion, sex, national origin, age or disability must consult a Counselor prior to filing a complaint in order to try to informally resolve the matter.

(1) An aggrieved person must initiate contact with a Counselor within 45 days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within 45 days of the effective date of the action.

(2) The Board or the Commission shall extend the 45-day time limit in paragraph (a)(1) of this section when the individual shows that he or she was not notified of the time limits and was not otherwise aware of them, that he or she did not know and reasonably should not have known that the discriminatory matter or personnel action occurred, that despite due diligence he or she was prevented by circumstances beyond his or her control from contacting the counselor within the time limits, or for other reasons considered sufficient by the Board or the Commission.

(b)(1) At the initial counseling session, Counselors must advise individuals in writing of their rights and responsibilities, including the right to request a hearing or an immediate final decision after an investigation by the Board in accordance with § 268.107(f), election rights pursuant to § 268.302, the right to file a notice of intent to sue pursuant to § 268.201(a) and a lawsuit under the ADEA instead of an administrative complaint of age discrimination under this part, the duty to mitigate damages, administrative and court time frames, and that only the claims raised in precomplaint counseling (or issues or claims like or related to issues or claims raised in pre-complaint counseling) may be alleged in a subsequent complaint filed with the Board. Counselors must advise individuals of their duty to keep the Board and the Commission informed of their current address and to serve copies of appeal papers on the Board. The notice required by paragraphs (d) or (e) of this section shall include a notice of the right to file a class complaint. If the aggrieved person informs the Counselor that he or she wishes to file a class complaint, the Counselor shall explain the class complaint procedures and the responsibilities of a class agent.

(2) Counselors shall advise aggrieved persons that, where the Board agrees to offer ADR in the particular case, they may choose between participation in the alternative dispute resolution program and the counseling activities provided for in paragraph (c) of this section.

(c) Counselors shall conduct counseling activities in accordance with instructions contained in Commission Management Directives. When advised

that a complaint has been filed by an aggrieved person, the Counselor shall submit a written report within 15 days to the EEO Programs Director and the aggrieved person concerning the issues discussed and actions taken during counseling.

(d) Unless the aggrieved person agrees to a longer counseling period under paragraph (e) of this section, or the aggrieved person chooses an alternative dispute resolution procedure in accordance with paragraph (b)(2) of this section, the Counselor shall conduct the final interview with the aggrieved person within 30 days of the date the aggrieved person contacted the Board's EEO Programs Office to request counseling. If the matter has not been resolved, the aggrieved person shall be informed in writing by the Counselor, not later than the thirtieth day after contacting the Counselor, of the right to file a discrimination complaint with the Board. This notice shall inform the complainant of the right to file a discrimination complaint within 15 days of receipt of the notice, of the appropriate official with whom to file a complaint and of the complainant's duty to assure that the EEO Programs Director is informed immediately if the complainant retains counsel or a representative.

(e) Prior to the end of the 30-day period, the aggrieved person may agree in writing with the Board to postpone the final interview and extend the counseling period for an additional period of no more than 60 days. If the matter has not been resolved before the conclusion of the agreed extension, the notice described in paragraph (d) of this section shall be issued.

(f) Where the aggrieved person chooses to participate in an alternative dispute resolution procedure in accordance with paragraph (b)(2) of this section, the pre-complaint processing period shall be 90 days. If the claim has not been resolved before the 90th day, the notice described in paragraph (d) of this section shall be issued.

(g) The Counselor shall not attempt in any way to restrain the aggrieved person from filing a complaint. The Counselor shall not reveal the identity of an aggrieved person who consulted the Counselor, except when authorized to do so by the aggrieved person, or until the Board has received a discrimination complaint under this part from that person involving the same matter.

§ 268.105 Individual complaints.

(a) A complaint must be filed with the agency that allegedly discriminated against the complainant.

(b) A complaint must be filed within 15 days of receipt of the notice required by § 268.104(d), (e) or (f).

(c) A complaint must contain a signed statement from the person claiming to be aggrieved or that person's attorney. This statement must be sufficiently precise to identify the aggrieved individual and the Board and to describe generally the action(s) or practice(s) that form the basis of the complaint. The complaint must also contain a telephone number and address where the complainant or the representative can be contacted.

(d) A complainant may amend a complaint at any time prior to the conclusion of the investigation to include issues or claims like or related to those raised in the complaint. After requesting a hearing, a complainant may file a motion with the administrative judge to amend a complaint to include issues or claims like or related to those raised in the complaint.

(e) The Board shall acknowledge receipt of a complaint or an amendment to a complaint in writing and inform the complainant of the date on which the complaint or amendment was filed. The Board shall advise the complainant in the acknowledgment of the EEOC office and its address where a request for a hearing shall be sent. Such acknowledgment shall also advise the complainant that:

(1) The complainant has the right to appeal the final action on or dismissal of a complaint; and

(2) The Board is required to conduct an impartial and appropriate investigation of the complaint within 180 days of the filing of the complaint unless the parties agree in writing to extend the time period. When a complaint has been amended, the Board shall complete its investigation within the earlier of 180 days after the last amendment to the complaint or 360 days after the filing of the original complaint, except that the complainant may request a hearing from an administrative judge on the consolidated complaints any time after 180 days from the date of the first filed complaint.

§ 268.106 Dismissals of complaints.

(a) Prior to a request for a hearing in a case, the Board shall dismiss an entire complaint:

(1) That fails to state a claim under § 268.103 or § 268.105(a), or states the same claim that is pending before or has been decided by the Board or the Commission;

(2) That fails to comply with the applicable time limits contained in §§ 268.104, 268.105 and 268.204(c), unless the Board extends the time limits in accordance with § 268.604(c), or that raises a matter that has not been brought to the attention of a Counselor and is not like or related to a matter that has been brought to the attention of a Counselor;

(3) That is the basis of a pending civil action in a United States District Court in which the complainant is a party provided that at least 180 days have passed since the filing of the administrative complaint, or that was the basis of a civil action decided by a United States District Court in which the complainant was a party;

(4) Where a complainant has raised the matter in an appeal to the Merit Systems Protection Board and § 268.302 indicates that the complainant has elected to pursue the non-EEO process;

(5) That is moot or alleges that a proposal to take a personnel action, or other preliminary step to taking a personnel action, is discriminatory;

(6) Where the complainant cannot be located, provided that reasonable efforts have been made to locate the complainant and the complainant has not responded within 15 days to a notice of proposed dismissal sent to his or her last known address;

(7) Where the Board has provided the complainant with a written request to provide relevant information or otherwise proceed with the complaint, and the complainant has failed to respond to the request within 15 days of its receipt or the complainant's response does not address the Board's request, provided that the request included a notice of the proposed dismissal. Instead of dismissing for failure to cooperate, the complaint may be adjudicated if sufficient information for that purpose is available;

(8) That alleges dissatisfaction with the processing of a previously filed complaint; or

(9) Where the Board, strictly applying the criteria set forth in Commission decisions, finds that the complaint is part of a clear pattern of misuse of the EEO process for a purpose other than the prevention and elimination of employment discrimination. A clear pattern of misuse of the EEO process requires:

(i) Evidence of multiple complaint filings; and

(ii) Allegations that are similar or identical, lack specificity or involve matters previously resolved; or

(iii) Evidence of circumventing other administrative processes, retaliating against the Board's in-house administrative processes or overburdening the EEO complaint system.

(b) Where the Board believes that some but not all of the claims in a complaint should be dismissed for the reasons contained in paragraphs (a)(1) through (9) of this section, the Board shall notify the complainant in writing of its determination, the rationale for that determination and that those claims will not be investigated, and shall place a copy of the notice in the investigative file. A determination under this paragraph is reviewable by an administrative judge if a hearing is requested on the remainder of the complaint, but is not appealable until final action is taken on the remainder of the complaint.

§ 268.107 Investigation of complaints.

(a) The investigation of complaints filed against the Board shall be conducted by the Board.

(b) In accordance with instructions contained in Commission Management Directives, the Board shall develop an impartial and appropriate factual record upon which to make findings on the claims raised by the written complaint. An appropriate factual record is one that allows a reasonable fact finder to draw conclusions as to whether discrimination occurred. The Board may use an exchange of letters or memoranda, interrogatories, investigations, fact-finding conferences or any other fact-finding methods that efficiently and thoroughly address the matters at issue. The Board may incorporate alternative dispute resolution techniques into its investigative efforts in order to promote early resolution of complaints.

(c) The procedures in paragraphs (c)(1) through (3) of this section apply to the investigation of complaints:

(1) The complainant, the Board, and any employee of the Board shall produce such documentary and testimonial evidence as the investigator deems necessary.

(2) Investigators are authorized to administer oaths. Statements of witnesses shall be made under oath or affirmation or, alternatively, by written statement under penalty of perjury.

(3) When the complainant, or the Board or its employees fail without good cause shown to respond fully and in timely fashion to requests for documents, records, comparative data, statistics, affidavits or the attendance of witness(es), the investigator may note in the investigative record that the decisionmaker should, or the Commission on appeal may, in appropriate circumstances:

(i) Draw an adverse inference that the requested information, or the testimony of the requested witness, would have reflected unfavorably on the party refusing to provide the requested information;

(ii) Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;

(iii) Exclude other evidence offered by the party failing to produce the requested information or witness;

(iv) Issue a decision fully or partially in favor of the opposing party; or

(v) Take such other actions as it deems appropriate.

(d) Any investigation will be conducted by investigators with appropriate security clearances.

(e)(1) The Board shall complete its investigation within 180 days of the date of filing of an individual complaint or within the time period contained in an order from the Office of Federal Operations on an appeal from a dismissal pursuant to § 268.106. By written agreement within those time periods, the complainant and the Board may voluntarily extend the time period for not more than an additional 90 days. The Board may unilaterally extend the time period or any period of extension for not more than 30 days where it must sanitize a complaint file that may contain information classified pursuant to Executive Order No. 12356, or successor orders, as secret in the interest of national defense or foreign policy, provided the Board notifies the complainant of the extension.

(2) Confidential supervisory information, as defined in 12 CFR 261.2(c), and other confidential information of the Board may be included in the investigative file by the investigator, the EEO Programs Director, or another appropriate officer of the Board, where such information is relevant to the complaint. Neither the complainant nor the complainant's personal representative may make further disclosure of such information, however, except in compliance with the Board's Rules Regarding Availability of Information, 12 CFR part 261, and where applicable, the Board's Rules Regarding Access to Personal Information under the Privacy Act of 1974, 12 CFR part 261a.

(f) Within 180 days from the filing of the complaint, or where a complaint was amended, within the earlier of 180 days after the last amendment to the complaint or 360 days after the filing of the original complaint, within the time period contained in an order from the Office of Federal Operations on an appeal from a dismissal, or within any period of extension provided for in paragraph (e) of this section, the Board shall provide the complainant with a copy of the investigative file, and shall notify the complainant that, within 30 days of receipt of the investigative file, the complainant has the right to request a hearing and decision from an administrative judge or may request an immediate final decision pursuant to § 268.109(b) from the Board.

(g) Where the complainant has received the notice required in paragraph (f) of this section or at any time after 180 days have elapsed from the filing of the complaint, the complainant may request a hearing by submitting a written request for a hearing directly to the EEOC office indicated in the Board's acknowledgment letter. The complainant shall send a copy of the request for a hearing to the Board's EEO Programs Office. Within 15 days of receipt of the request for a hearing, the Board's EEO Programs Office shall provide a copy of the complaint file to EEOC and, if not previously provided, to the complainant.

§ 268.108 Hearings.

(a) When a complainant requests a hearing, the Commission shall appoint an administrative judge to conduct a hearing in accordance with this section. Upon appointment, the administrative judge shall assume full responsibility for the adjudication of the complaint, including overseeing the development of the record. Any hearing will be conducted by an administrative judge or hearing examiner with appropriate security clearances.

(b) *Dismissals.* Administrative judges may dismiss complaints pursuant to § 268.106, on their own initiative, after notice to the parties, or upon the Board's motion to dismiss a complaint.

(c) *Offer of resolution.* (1) Any time after the filing of the written complaint but not later than the date an administrative judge is appointed to conduct a hearing, the Board may make an offer of resolution to a complainant who is represented by an attorney.

(2) Any time after the parties have received notice that an administrative judge has been appointed to conduct a hearing, but not later than 30 days prior to the hearing, the Board may make an offer of resolution to the complainant, whether represented by an attorney or not.

(3) The offer of resolution shall be in writing and shall include a notice explaining the possible consequences of failing to accept the offer. The Board's offer, to be effective, must include attorney's fees and costs and must specify any non-monetary relief. With regard to monetary relief, the Board may make a lump sum offer covering all

forms of monetary liability, or it may itemize the amounts and types of monetary relief being offered. The complainant shall have 30 days from receipt of the offer of resolution to accept it. If the complainant fails to accept an offer of resolution and the relief awarded in the administrative judge's decision, the Board's final decision, or the Commission's decision on appeal is not more favorable than the offer, then, except where the interest of justice would not be served, the complainant shall not receive payment from the Board of attorney's fees or costs incurred after the expiration of the 30-day acceptance period. An acceptance of an offer must be in writing and will be timely if postmarked or received within the 30-day period. Where a complainant fails to accept an offer of resolution, the Board may make other offers of resolution and either party may seek to negotiate a settlement of the complaint at any time.

(d) *Discovery.* The administrative judge shall notify the parties of the right to seek discovery prior to the hearing and may issue such discovery orders as are appropriate. Unless the parties agree in writing concerning the methods and scope of discovery, the party seeking discovery shall request authorization from the administrative judge prior to commencing discovery. Both parties are entitled to reasonable development of evidence on matters relevant to the issues raised in the complaint, but the administrative judge may limit the quantity and timing of discovery. Evidence may be developed through interrogatories, depositions, and requests for admissions, stipulations or production of documents. It shall be grounds for objection to producing evidence that the information sought by either party is irrelevant, overburdensome, repetitious, or privileged.

(e) *Conduct of hearing.* The Board shall provide for the attendance at a hearing of all employees approved as witnesses by an administrative judge. Attendance at hearings will be limited to persons determined by the administrative judge to have direct knowledge relating to the complaint. Hearings are part of the investigative process and are thus closed to the public. The administrative judge shall have the power to regulate the conduct of a hearing, limit the number of witnesses where testimony would be repetitious, and exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing. The administrative judge shall receive into evidence information or documents relevant to the complaint. Rules of evidence shall not be applied strictly, but the administrative judge shall exclude irrelevant or repetitious evidence. The administrative judge or the Commission may refer to the Disciplinary Committee of the appropriate Bar Association any attorney or, upon reasonable notice and an opportunity to be heard, suspend or disqualify from representing complainants or agencies in EEOC hearings any representative who refuses to follow the orders of an administrative judge, or who otherwise engages in improper conduct.

(f) *Procedures.* (1) The complainant, the Board and any employee of the Board shall produce such documentary and testimonial evidence as the administrative judge deems necessary. The administrative judge shall serve all orders to produce evidence on both parties.

(2) Administrative judges are authorized to administer oaths. Statements of witnesses shall be made under oath or affirmation or, alternatively, by written statement under penalty of perjury.

(3) When the complainant, or the Board, or its employees fail without good cause shown to respond fully and in timely fashion to an order of an administrative judge, or requests for the investigative file, for documents, records, comparative data, statistics, affidavits, or the attendance of witness(es), the administrative judge shall, in appropriate circumstances:

(i) Draw an adverse inference that the requested information, or the testimony of the requested witness, would have reflected unfavorably on the party refusing to provide the requested information;

(ii) Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;

(iii) Exclude other evidence offered by the party failing to produce the requested information or witness;

(iv) Issue a decision fully or partially in favor of the opposing party; or

(v) Take such other actions as appropriate.

(g) *Decisions without hearing.* (1) If a party believes that some or all material facts are not in genuine dispute and there is no genuine issue as to credibility, the party may, at least 15 days prior to the date of the hearing or at such earlier time as required by the administrative judge, file a statement with the administrative judge prior to the hearing setting forth the fact or facts and referring to the parts of the record relied on to support the statement. The statement must demonstrate that there is no genuine issue as to any such material fact. The party shall serve the statement on the opposing party.

(2) The opposing party may file an opposition within 15 days of receipt of the statement in paragraph (g)(1) of this section. The opposition may refer to the record in the case to rebut the statement that a fact is not in dispute or may file an affidavit stating that the party cannot, for reasons stated, present facts to oppose the request. After considering the submissions, the administrative judge may order that discovery be permitted on the fact or facts involved, limit the hearing to the issues remaining in dispute, issue a decision without a hearing or make such other ruling as is appropriate.

(3) If the administrative judge determines upon his or her own initiative that some or all facts are not in genuine dispute, he or she may, after giving notice to the parties and providing them an opportunity to respond in writing within 15 calendar days, issue an order limiting the scope of the hearing or issue a decision without holding a hearing.

(h) *Record of hearing.* The hearing shall be recorded and the Board shall arrange and pay for verbatim transcripts. All documents submitted to, and accepted by, the administrative judge at the hearing shall be made part of the record of the hearing. If the Board submits a document that is accepted, it shall furnish a copy of the document to the complainant. If the complainant submits a document that is accepted, the administrative judge shall make the document available to the Board's representative for reproduction.

(i) *Decisions by administrative judges.* Unless the administrative judge makes a written determination that good cause exists for extending the time for issuing a decision, an administrative judge shall issue a decision on the complaint, and shall order appropriate remedies and relief where discrimination is found, within 180 days of receipt by the administrative judge of the complaint file from the Board. The administrative judge shall send copies of the hearing record, including the transcript, and the decision to the parties. If the Board does not issue a final order within 40 days of receipt of the administrative judge's decision in accordance with § 268.109(a), then the decision of the administrative judge shall become the final action of the Board.

§ 268.109 Final action by the Board.

(a) *Final action by the Board following a decision by an administrative judge.* When an EEOC administrative judge has issued a decision under §§ 268.108(b),

(g), or (i), the Board shall take final action on the complaint by issuing a final order within 40 days of receipt of the hearing file and the administrative judge's decision. The final order shall notify the complainant whether or not the Board will fully implement the decision of the administrative judge and shall contain notice of the complainant's right to appeal to the Equal Employment Opportunity Commission, the right to file a civil action in federal district court, the name of the proper defendant in any such lawsuit and the applicable time limits for appeals and lawsuits. If the final order does not fully implement the decision of the administrative judge, then the Board shall simultaneously file an appeal in accordance with § 268.403 and append a copy of its appeal to the final order. A copy of EEOC Form 573 shall be attached to the final order.

(b) *Final action by the Board in all other circumstances.* When the Board dismisses an entire complaint under § 268.106, receives a request for an immediate final decision or does not receive a reply to the notice issued under § 268.107(f), the Board shall take final action by issuing a final decision. The final decision shall consist of findings by the Board on the merits of each issue in the complaint, or, as appropriate, the rationale for dismissing any claims in the complaint and, when discrimination is found, appropriate remedies and relief in accordance with subpart F of this part. The Board shall issue the final decision within 60 days of receiving notification that a complainant has requested an immediate decision from the Board, or within 60 days of the end of the 30-day period for the complainant to request a hearing or an immediate final decision where the complainant has not requested either a hearing or a decision. The final action shall contain notice of the right to appeal the final action to the Equal Employment Opportunity Commission, the right to file a civil action in federal district court, the name of the proper defendant in any such lawsuit and the applicable time limits for appeals and lawsuits. A copy of EEOC Form 573 shall be attached to the final action. The Board may issue a final decision within 30 days after receiving a decision of the Commission pursuant to § 268.405(c) of this part.

Subpart C—Provisions Applicable to Particular Complaints

§ 268.201 Age Discrimination in Employment Act.

(a) As an alternative to filing a complaint under this part, an aggrieved individual may file a civil action in a United States district court under the ADEA against the Chairman of the Board of Governors after giving the Commission not less than 30 days' notice of the intent to file such an action. Such notice must be filed in writing with EEOC, at P.O. Box 19848, Washington, DC 20036, or by personal delivery or facsimile within 180 days of the occurrence of the alleged unlawful practice.

(b) The Commission may exempt a position from the provisions of the ADEA if the Commission establishes a maximum age requirement for the position on the basis of a determination that age is a bona fide occupational qualification necessary to the performance of the duties of the position.

(c) When an individual has filed an administrative complaint alleging age discrimination that is not a mixed case, administrative remedies will be considered to be exhausted for purposes of filing a civil action:

(1) 180 days after the filing of an individual complaint if the Board has not taken final action and the individual has not filed an appeal or 180 days after the filing of a class complaint if the Board has not issued a final decision;

(2) After final action on an individual or class complaint if the individual has not filed an appeal; or

(3) After the issuance of a final decision by the Commission on an appeal or 180 days after the filing of an appeal, if the Commission has not issued a final decision.

§ 268.202 Equal Pay Act.

Complaints alleging violations of the Equal Pay Act shall be processed under this part.

§ 268.203 Rehabilitation Act.

(a) *Definitions.*—For the purposes of this section:

(1) Individual with a disability is defined as one who:

(i) Has a physical or mental impairment which substantially limits one or more of such person's major life activities;

(ii) Has a record of such an impairment; or

(iii) Is regarded as having such an impairment.

(2) *Physical or mental impairment* means:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, cardiovascular, reproductive, digestive, respiratory, genitourinary, hemic and lymphatic, skin, and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(3) *Major life activities* means functions, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(4) *Has a record of such an impairment* means has a history of, or has been classified (or misclassified) as having, a mental or physical impairment that substantially limits one or more major life activities.

(5) *Is regarded as having such an impairment* means has a physical or mental impairment that does not substantially limit major life activities but is treated by the Board as constituting such a limitation; has a physical or mental impairment that substantially limits major life activities only as a result of the attitude of the Board toward such impairment; or has none of the impairments defined in paragraph (a)(2) of this section but is treated by the Board as having such an impairment.

(6) *Qualified individual with a disability* means with respect to employment, an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the position in question without endangering the health and safety of the individual or others and who:

(i) Meets the experience or education requirements (which may include passing a written test) of the position in question; or

(ii) Meets the criteria for appointment under a Board special program for hiring individuals with a disability.

(b) The Board shall become a model employer of individuals with a disability. The Board shall give full consideration to the hiring, placement, and advancement of qualified individuals with a mental or physical disability. The Board shall not discriminate against a qualified individual with a physical or mental disability.

(c) *Reasonable accommodation.* (1) The Board shall make reasonable accommodation to the known physical or mental limitations of an applicant or employee who is a qualified individual with a disability unless the Board can demonstrate that the accommodation would impose an undue hardship on the operations of its program.

(2) Reasonable accommodation may include, but shall not be limited to:

(i) Making facilities readily accessible to and usable by individuals with a disability; and

(ii) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, the provision of readers and interpreters, and other similar actions.

(3) In determining whether, pursuant to paragraph (c)(1) of this section, an accommodation would impose an undue hardship on the operation of the Board, factors to be considered include:

(i) The overall size of the Board's program with respect to the number of employees, number and type of facilities and size of budget;

(ii) The type of Board operation, including the composition and structure of the Board's work force; and

(iii) The nature and the cost of the accommodation.

(d) *Employment criteria.* (1) The Board shall not make use of any employment test or other selection criterion that screens out or tends to screen out qualified individuals with a disability or any class of individuals with a disability unless:

(i) The Board demonstrates that the test score or other selection criterion is job-related for the position in question and consistent with business necessity; and

(ii) The Board shows that job-related alternative tests or criteria that do not screen out or tend to screen out as many individuals with a disability are unavailable.

(2) The Board shall select and administer tests concerning employment so as to insure that, when administered to an applicant or employee who has a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's ability to perform the position or type of positions in question rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skill (except where those skills are the factors that the test purports to measure).

(e) *Preemployment inquiries.* (1) Except as provided in paragraphs (e)(2) and (e)(3) of this section, the Board may not conduct a preemployment medical examination and may not make preemployment inquiry of an applicant as to whether the applicant is an individual with a disability or as to the nature or severity of a disability. The Board may, however, make preemployment inquiry into an applicant's ability to meet the essential functions of the job, or the medical qualification requirements if applicable, with or without reasonable accommodation, of the position in question, *i.e.,* the minimum abilities necessary for safe and efficient performance of the duties of the position in question.

(2) Nothing in this section shall prohibit the Board from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, provided that: all entering employees are subjected to such an examination regardless of disability or when the preemployment medical questionnaire used for positions that do not routinely require medical examination indicates a condition for which further examination is required because of the job-related nature of the condition, and the results of such an examination are used only in accordance with the requirements of this part. Nothing in this section shall be construed to prohibit the gathering of preemployment medical information for the purpose of hiring individuals with a disability under a special Board program.

(3) To enable and evaluate affirmative action to hire, place or advance individuals with a disability, the Board may invite applicants for employment to indicate whether and to what extent they are disabled, if:

(i) The Board states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used, that the information requested is intended for use solely in conjunction with affirmative action; and

(ii) The Board states clearly that the information is being requested on a voluntary basis, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(4) Information obtained in accordance with this section as to the medical condition or history of the employee or applicant shall be kept confidential except that:

(i) Managers, selecting officials, and others involved in the selection process or responsible for affirmative action may be informed that the applicant is eligible under a special Board program for hiring individuals with a disability;

(ii) Supervisors and managers may be informed regarding necessary accommodations;

(iii) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment;

(iv) Government officials investigating compliance with laws, regulations, and instructions relevant to equal employment opportunity and affirmative action for individuals with a disability shall be provided information upon request; and

(v) Statistics generated from information obtained may be used to manage, evaluate, and report on equal employment opportunity and affirmative action programs.

(f) *Physical access to buildings.* (1) The Board shall not discriminate against applicants or employees who are qualified individuals with a disability due to the inaccessibility of its facility.

(2) For the purposes of this subpart, a facility shall be deemed accessible if it is in compliance with, the Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*) and the Americans with Disabilities Act of 1990 (42 U.S.C. 12183 and 12204).

(g) *Reassignment.* When a nonprobationary employee becomes unable to perform the essential functions of his or her position even with reasonable accommodation due to a disability, the Board shall offer to reassign the individual to a funded vacant position located in the same commuting area and at the same grade or level, the essential functions of which the individual would be able to perform with reasonable accommodation if necessary unless the Board can demonstrate the reassignment would impose an undue hardship on the operation of the Board's program. In the absence of a position at the same grade or level, an offer of reassignment to a vacant position at the highest available grade or level below the employee's current grade or level shall be required, but availability of such a vacancy shall not affect the employee's entitlement, if any, to disability retirement pursuant to any retirement plan in which the employee is enrolled. If the Board has already posted a notice or announcement seeking applications for a specific vacant position at the time the Board has determined that the nonprobationary employee is unable to perform the essential functions of his or her position even with reasonable accommodation, then the Board does not have an obligation under this section to offer to reassign the individual to that position, but the Board must consider the individual on an equal basis with those who applied for the position.

(h) *Exclusion from definition of ''individual(s) with a disability(ies)''.* (1) The term ''individual with a disability'' shall not include an individual who is currently engaging in the illegal use of drugs, when the Board acts on the basis of such use. The term ''drug'' means a controlled substance, as defined in

schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812). The term ''illegal use of drugs'' means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act, but does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law. This exclusion, however, does not exclude an individual with a disability who:

(i) Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(ii) Is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(iii) Is erroneously regarded as engaging in such use, but is not engaging in such use.

(2) Except that it shall not violate this section for the Board to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraphs (h)(1)(i) and (ii) of this section is no longer engaging in the illegal use of drugs.

(3) *Alcoholism.* The term ''individual with a disability'' does not include an employee who is an alcoholic whose current use of alcohol prevents the employee from performing the duties of his or her job, or whose employment by reason of such current alcohol use, would constitute a direct threat to the property or safety of others. In this regard, alcoholics shall meet the same performance and conduct standards to which all other Board employees must satisfy, even if an unsatisfactory performance is related to the alcoholism of the employee.

(4) *Infectious and communicable diseases.* If an individual with a disability has one of the listed diseases as determined by the Secretary of Health and Human Services under the Americans with Disabilities Act (42 U.S.C. 12113(d)(1)) and works in or applies for a position at the Board in food handling, the Board will seek reasonable accommodation under paragraph (c) of this section to eliminate the risk of transmitting the disease through the handling of food. If the individual with a disability is a nonprobationary employee and a reasonable accommodation cannot be made, the provisions contained in paragraph (g) of this section shall apply.

§ 268.204 Class complaints.

(a) *Definitions.* For the purposes of this section:

(1) *Class* is a group of Board employees, former employees or applicants for employment who, it is alleged, have been or are being adversely affected by a Board personnel management policy or practice that discriminates against the group on the basis of their race, color, religion, sex, national origin, age or disability.

(2) *Class complaint* is a written complaint of discrimination filed on behalf of a class by the agent of the class alleging that:

(i) The class is so numerous that a consolidated complaint of the members of the class is impractical;

(ii) There are questions of fact common to the class;

(iii) The claims of the agent of the class are typical of the claims of the class;

(iv) The agent of the class, or, if represented, the representative, will fairly and adequately protect the interests of the class.

(3) An *agent of the class* is a class member who acts for the class during the processing of the class complaint.

(b) *Pre-complaint processing.* An employee or applicant who wishes to file a class complaint must seek counseling and be counseled in accordance with § 268.104. A complainant may move for class certification at any reasonable point in the process when it becomes apparent that there are class implications to the claim raised in an individual complaint. If a complainant moves for class certification after completing the counseling process contained in § 268.104, no additional counseling is required. The administrative judge shall deny class certification when the complainant has unduly delayed in moving for certification.

(c) *Filing and presentation of a class complaint.* (1) A class complaint must be signed by the agent or representative and must identify the policy or practice adversely affecting the class as well as the specific action or matter affecting the class agent.

(2) The complaint must be filed with the Board not later than 15 days after the agent's receipt of the notice of right to file a class complaint.

(3) The complaint shall be processed promptly; the parties shall cooperate and shall proceed at all times without undue delay.

(d) *Acceptance or dismissal.* (1) Within 30 days of the Board's receipt of a complaint, the Board shall: Designate an agency representative who shall not be one of the individuals referenced in § 268.102(b)(4), and forward the complaint, along with a copy of the Counselor's report and any other information pertaining to timeliness or other relevant circumstances related to the complaint, to the Commission. The Commission shall assign the complaint to an administrative judge or complaints examiner with a proper security clearance when necessary. The administrative judge may require the complainant or the Board to submit additional information relevant to the complaint.

(2) The administrative judge may dismiss the complaint, or any portion, for any of the reasons listed in § 268.106 or because it does not meet the prerequisites of a class complaint under § 268.204(a)(2).

(3) If an allegation is not included in the Counselor's report, the administrative judge shall afford the agent 15 days to state whether the matter was discussed with the Counselor and, if not, explain why it was not discussed. If the explanation is not satisfactory, the administrative judge shall dismiss the allegation. If the explanation is satisfactory, the administrative judge shall refer the allegation to the Board for further counseling of the agent. After counseling, the allegation shall be consolidated with the class complaint.

(4) If an allegation lacks specificity and detail, the administrative judge shall afford the agent 15 days to provide specific and detailed information. The administrative judge shall dismiss the complaint if the agent fails to provide such information within the specified time period. If the information provided contains new allegations outside the scope of the complaint, the administrative judge shall advise the agent how to proceed on an individual or class basis concerning these allegations.

(5) The administrative judge shall extend the time limits for filing a complaint and for consulting with a Counselor in accordance with the time limit extension provisions contained in §§ 268.104(a)(2) and 268.604.

(6) When appropriate, the administrative judge may decide that a class be divided into subclasses and that each subclass be treated as a class, and the provisions of this section then shall be construed and applied accordingly.

(7) The administrative judge shall transmit his or her decision to accept or dismiss a complaint to the Board and the agent. The Board shall take final action by issuing a final order within 40 days of receipt of the hearing record and administrative judge's decision. The final order shall notify the agent

whether or not the Board will implement the decision of the administrative judge. If the final order does not implement the decision of the administrative judge, the Board shall simultaneously appeal the administrative judge's decision in accordance with § 268.403 and append a copy of the appeal to the final order. A dismissal of a class complaint shall inform the agent either that the complaint is being filed on that date as an individual complaint of discrimination and will be processed under subpart B of this part or that the complaint is also dismissed as an individual complaint in accordance with § 268.106. In addition, it shall inform the agent of the right to appeal the dismissal of the class complaint to the Equal Employment Opportunity Commission or to file a civil action and shall include EEOC Form 573, Notice of Appeal/Petition.

(e) *Notification.* (1) Within 15 days of receiving notice that the administrative judge has accepted a class complaint or a reasonable time frame specified by the administrative judge, the Board shall use reasonable means, such as delivery, mailing to last known address or distribution, to notify all class members of the acceptance of the class complaint.

(2) Such notice shall contain:

(i) An identification of the Board as the named agency, its location, and the date of acceptance of the complaint;

(ii) A description of the issues accepted as part of the class complaint;

(iii) An explanation of the binding nature of the final decision or resolution of the class complaint on class members; and

(iv) The name, address and telephone number of the class representative.

(f) *Obtaining evidence concerning the complaint.* (1) The administrative judge shall notify the agent and the Board's representative of the time period that will be allowed both parties to prepare their cases. This time period will include at least 60 days and may be extended by the administrative judge upon the request of either party. Both parties are entitled to reasonable development of evidence on matters relevant to the issues raised in the complaint. Evidence may be developed through interrogatories, depositions, and requests for admissions, stipulations or production of documents. It shall be grounds for objection to producing evidence that the information sought by either party is irrelevant, overburdensome, repetitious, or privileged.

(2) If mutual cooperation fails, either party may request the administrative judge to rule on a request to develop evidence. If a party fails without good cause shown to respond fully and in timely fashion to a request made or approved by the administrative judge for documents, records, comparative data, statistics or affidavits, and the information is solely in the control of one party, such failure may, in appropriate circumstances, cause the administrative judge:

(i) To draw an adverse inference that the requested information would have reflected unfavorably on the party refusing to provide the requested information;

(ii) To consider the matters to which the requested information pertains to be established in favor of the opposing party;

(iii) To exclude other evidence offered by the party failing to produce the requested information;

(iv) To recommend that a decision be entered in favor of the opposing party; or (v) To take such other actions as the administrative judge deems appropriate.

(3) During the period for development of evidence, the administrative judge may, in his or her discretion, direct that an investigation of facts relevant to the class complaint or any portion be conducted by an agency certified by the Commission.

(4) Both parties shall furnish to the administrative judge copies of all materials that they wish to be examined and such other material as may be requested.

(g) *Opportunity for resolution of the complaint.* (1) The administrative judge shall furnish the agent and the Board's representative a copy of all materials obtained concerning the complaint and provide opportunity for the agent to discuss the materials with the Board's representative and attempt resolution of the complaint.

(2) The complaint may be resolved by agreement of the Board and the agent at any time pursuant to the notice and approval procedure contained in paragraph (g)(4) of this section.

(3) If the complaint is resolved, the terms of the resolution shall be reduced to writing and signed by the agent and the Board.

(4) Notice of the resolution shall be given to all class members in the same manner as notification of the acceptance of the class complaint and to the administrative judge. It shall state the relief, if any, to be granted by the Board and the name and address of the EEOC administrative judge assigned to the case. It shall state that within 30 days of the date of the notice of resolution, any member of the class may petition the administrative judge to vacate the resolution because it benefits only the class agent, or is otherwise not fair, adequate and reasonable to the class as a whole. The administrative judge shall review the notice of resolution and consider any petitions to vacate filed. If the administrative judge finds that the proposed resolution is not fair, adequate and reasonable to the class as a whole, the administrative judge shall issue a decision vacating the agreement and may replace the original class agent with a petitioner or some other class member who is eligible to be the class agent during further processing of the class complaint. The decision shall inform the former class agent or the petitioner of the right to appeal the decision to the Equal Employment Opportunity Commission and include EEOC Form 573, Notice of Appeal/Petition. If the administrative judge finds that the resolution is fair, adequate and reasonable to the class as a whole, the resolution shall bind all members of the class.

(h) *Hearing.* On expiration of the period allowed for preparation of the case, the administrative judge shall set a date for hearing. The hearing shall be conducted in accordance with § 268.108(a) through (f).

(i) *Report of findings and recommendations.* (1) The administrative judge shall transmit to the Board a report of findings and recommendations on the complaint, including a recommended decision, systemic relief for the class and any individual relief, where appropriate, with regard to the personnel action or matter that gave rise to the complaint.

(2) If the administrative judge finds no class relief appropriate, he or she shall determine if a finding of individual discrimination is warranted and, if so, shall recommend appropriate relief.

(3) The administrative judge shall notify the agent of the date on which the report of findings and recommendations was forwarded to the Board.

(j) *Board decision.* (1) Within 60 days of receipt of the report of findings and recommendations issued under § 268.204(i), the Board shall issue a final decision, which shall accept, reject, or modify the findings and recommendations of the administrative judge.

(2) The final decision of the Board shall be in writing and shall be transmitted to the agent by certified mail, return receipt requested, along with a copy of the report of findings and recommendations of the administrative judge.

(3) When the Board's final decision is to reject or modify the findings and recommendations of the administrative

judge, the decision shall contain specific reasons for the Board's action.

(4) If the Board has not issued a final decision within 60 days of its receipt of the administrative judge's report of findings and recommendations, those findings and recommendations shall become the final decision. The Board shall transmit the final decision to the agent within five days of the expiration of the 60-day period.

(5) The final decision of the Board shall require any relief authorized by law and determined to be necessary or desirable to resolve the issue of discrimination.

(6) The final decision on a class complaint shall, subject to subpart E of this part, be binding on all members of the class and the Board.

(7) The final decision shall inform the agent of the right to appeal or to file a civil action in accordance with subpart E of this part and of the applicable time limits.

(k) *Notification of decision.* The Board shall notify class members of the final decision and relief awarded, if any, through the same media employed to give notice of the existence of the class complaint. The notice, where appropriate, shall include information concerning the rights of class members to seek individual relief, and of the procedures to be followed. Notice shall be given by the Board within 10 days of the transmittal of its final decision to the agent.

(l) *Relief for individual class members.* (1) When discrimination is found, the Board must eliminate or modify the employment policy or practice out of which the complaint arose and provide individual relief, including an award of attorney's fees and costs, to the agent in accordance with § 268.501.

(2) When class-wide discrimination is not found, but it is found that the class agent is a victim of discrimination, § 268.501 shall apply. The Board shall also, within 60 days of the issuance of the final decision finding no class-wide discrimination, issue the acknowledgment of receipt of an individual complaint as required by § 268.105(d) and process in accordance with the provisions of subpart B of this part, each individual complaint that was subsumed into the class complaint.

(3) When discrimination is found in the final decision and a class member believes that he or she is entitled to individual relief, the class member may file a written claim with the Board or the Board's EEO Programs Director within 30 days of receipt of notification by the Board of its final decision. Administrative judges shall retain jurisdiction over the complaint in order to resolve any disputed claims by class members. The claim must include a specific, detailed showing that the claimant is a class member who was affected by the discriminatory policy or practice, and that this discriminatory action took place within the period of time for which the Board found class-wide discrimination in its final decision. Where a finding of discrimination against a class has been made, there shall be a presumption of discrimination as to each member of the class. The Board must show by clear and convincing evidence that any class member is not entitled to relief. The administrative judge may hold a hearing or otherwise supplement the record on a claim filed by a class member. The Board or the Commission may find class-wide discrimination and order remedial action for any policy or practice in existence within 45 days of the agent's initial contact with the Counselor. Relief otherwise consistent with this Part may be ordered for the time the policy or practice was in effect. The Board shall issue a final decision on each such claim within 90 days of filing. Such decision must include a notice of the right to file an appeal or a civil action in accordance with subpart E of this part and the applicable time limits.

§ 268.205 Employment of noncitizens.

(a) *Definitions.* The definitions contained in this paragraph (a) shall apply only to this section.

(1) *Intending citizen* means a citizen or national of the United States, or a noncitizen who:

(i) Is a protected individual as defined in 8 U.S.C. 1324b(a)(3); and

(ii) Has evidenced an intention to become a United States citizen.

(2) *Noncitizen* means any person who is not a citizen of the United States.

(3) *Sensitive information* means:

(i)(A) Information that is classified for national security purposes under Executive Order No. 12356 (3 CFR, 1982 Comp., p. 166), including any amendments or superseding orders that the President of the United States may issue from time to time;

(B) Information that consists of confidential supervisory information of the Board, as defined in 12 CFR 261.2(c); or

(C) Information the disclosure or premature disclosure of which to unauthorized persons may be reasonably likely to impair the formulation or implementation of monetary policy, or cause unnecessary or unwarranted disturbances in securities or other financial markets, such that access to such information must be limited to persons who are loyal to the United States.

(ii) For purposes of paragraph (a)(3)(i)(C) of this section, information may not be deemed sensitive information merely because it would be exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) but sensitive information must be information the unauthorized disclosure or premature disclosure of which may be reasonably likely to impair important functions or operations of the Board.

(4) *Sensitive position* means any position of employment in which the employee will be required to have access to sensitive information.

(b) *Prohibitions*—(1) *Unauthorized aliens.* The Board shall not hire any person unless that person is able to satisfy the requirements of Section 101 of the Immigration Reform and Control Act of 1986.

(2) *Employment in sensitive positions.* The Board shall not hire any person to a sensitive position unless such person is a citizen of the United States or, if a noncitizen, is an intending citizen.

(3) *Preference.* Consistent with the Immigration Reform and Control Act of 1986, and other applicable law, applicants for employment at the Board who are citizens of the United States shall be preferred over equally qualified applicants who are not United States citizens.

(c) *Exception.* The prohibition of paragraph (b)(2) of this section does not apply to hiring for positions for which a security clearance is required under Executive Order No. 10450, including any subsequent amendments or superseding orders that the President of the United States may issue from time to time, where the noncitizen either has or can obtain the necessary security clearance. Any offer of employment authorized by this paragraph (c) shall be contingent upon receipt of the required security clearance in the manner prescribed by law.

(d) *Applicability.* This section applies to employment in all positions at the Board and to employment by Federal Reserve Banks of examiners who must be appointed, or selected and approved by the Board pursuant to 12 U.S.C. 325, 326, 338, or 625.

Subpart D—Related Processes

§ 268.301 Negotiated grievance procedure.

When an employee of the Board, which is not an agency subject to 5 U.S.C. 7121(d), is covered by a negotiated grievance procedure, allegations of discrimination shall be processed as complaints under this part, except that the time limits for

processing the complaint contained in § 268.105 and for appeal to the Commission contained in § 268.402 may be held in abeyance during processing of a grievance covering the same matter as the complaint if the Board notifies the complainant in writing that the complaint will be held in abeyance pursuant to this section.

§ 268.302 Mixed case complaints.

A *mixed case complaint* is a complaint of employment discrimination filed with the Board based on race, color, religion, sex, national origin, age or disability related to or stemming from an action that can be appealed to the Merit System Protection Board (MSPB). The complaint may contain only an allegation of employment discrimination or it may contain additional allegations that the MSPB has jurisdiction to address. A *mixed case appeal* is an appeal filed with the MSPB that alleges that an appealable Board action was effected, in whole or in part, because of discrimination on the basis of race, color, religion, sex, national origin, disability or age. Only a Board employee who is a preference eligible employee as defined by the Veterans Preference Act can file a mixed case complaint with the Board or a mixed case appeal with the MSPB. A mixed case complaint or mixed case appeal may only be filed for action(s) over which the MSPB has jurisdiction. The Board will apply 29 CFR 1614.302 through 1614.310 to the processing of a mixed case complaint or mixed case appeal.

Subpart E—Appeals to the Equal Employment Opportunity Commission

§ 268.401 Appeals to the Equal Employment Opportunity Commission.

(a) A complainant may appeal the Board's final action or dismissal of a complaint.

(b) The Board may appeal as provided in § 268.109(a).

(c) A class agent or the Board may appeal an administrative judge's decision accepting or dismissing all or part of a class complaint; a class agent may appeal a final decision on a class complaint; a class member may appeal a final decision on a claim for individual relief under a class complaint; and a class member, a class agent or the Board may appeal a final decision on a petition pursuant to § 268.204(g)(4).

(d) A complainant, agent of the class or individual class claimant may appeal to the Commission the Board's alleged noncompliance with a settlement agreement or final decision in accordance with § 268.504.

§ 268.402 Time limits for appeals to the Equal Employment Opportunity Commission.

(a) Appeals described in § 268.401 (a) and (c) must be filed within 30 days of receipt of the dismissal, final action or decision. Appeals described in § 268.401(b) must be filed within 40 days of receipt of the hearing file and decision. Where a complainant has notified the Board's EEO Programs Director of alleged noncompliance with a settlement agreement in accordance with § 268.504, the complainant may file an appeal 35 days after service of the allegations of noncompliance, but no later than 30 days after receipt of the Board's determination.

(b) If the complainant is represented by an attorney of record, then the 30-day time period provided in paragraph (a) of this section within which to appeal shall be calculated from the receipt of the required document by the attorney. In all other instances, the time within which to appeal shall be calculated from the receipt of the required document by the complainant.

§ 268.403 How to appeal.

(a) The complainant, the Board, agent or individual class claimant (hereinafter appellant) must file an appeal with the Director, Office of Federal Operations, Equal Employment Opportunity Commission, at P.O. Box 19848, Washington, DC 20036, or by personal delivery or facsimile. The appellant should use EEOC Form 573, Notice of Appeal/Petition, and should indicate what is being appealed.

(b) The appellant shall furnish a copy of the appeal to the opposing party at the same time it is filed with the Commission. In or attached to the appeal to the Commission, the appellant must certify the date and method by which service was made on the opposing party.

(c) If an appellant does not file an appeal within the time limits of this subpart, the appeal shall be dismissed by the Commission as untimely.

(d) Any statement or brief on behalf of a complainant in support of the appeal must be submitted to the Office of Federal Operations within 30 days of filing the notice of appeal. Any statement or brief on behalf of the Board in support of its appeal must be submitted to the Office of Federal Operations within 20 days of filing the notice of appeal. The Office of Federal Operations will accept statements or briefs in support of an appeal by facsimile transmittal, provided they are no more than 10 pages long.

(e) The Board must submit the complaint file to the Office of Federal Operations within 30 days of initial notification that the complainant has filed an appeal or within 30 days of submission of an appeal by the Board.

(f) Any statement or brief in opposition to an appeal must be submitted to the Commission and served on the opposing party within 30 days of receipt of the statement or brief supporting the appeal, or, if no statement or brief supporting the appeal is filed, within 60 days of receipt of the appeal. The Office of Federal Operations will accept statements or briefs in opposition to an appeal by facsimile provided they are no more than 10 pages long.

§ 268.404 Appellate Procedure.

(a) On behalf of the Commission, the Office of Federal Operations shall review the complaint file and all written statements and briefs from either party. The Commission may supplement the record by an exchange of letters or memoranda, investigation, remand to the Board or other procedures.

(b) If the Office of Federal Operations requests information from one or both of the parties to supplement the record, each party providing information shall send a copy of the information to the other party.

(c) When either party to an appeal fails without good cause shown to comply with the requirements of this section or to respond fully and in timely fashion to requests for information, the Office of Federal Operations shall, in appropriate circumstances:

(1) Draw an adverse inference that the requested information would have reflected unfavorably on the party refusing to provide the requested information;

(2) Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;

(3) Issue a decision fully or partially in favor of the opposing party; or

(4) Take such other actions as appropriate.

§ 268.405 Decisions on appeals.

(a) The Office of Federal Operations, on behalf of the Commission, shall issue a written decision setting forth its reasons for the decision. The Commission shall dismiss appeals in accordance with §§ 268.106, 268.403(c) and 268.408. The decision on an appeal from the Board's final action shall be based on a de novo review, except that the review of the factual findings in a

decision by an administrative judge issued pursuant to § 268.108(i) shall be based on a substantial evidence standard of review. If the decision contains a finding of discrimination, appropriate remedy(ies) shall be included and, where appropriate, the entitlement to interest, attorney's fees or costs shall be indicated. The decision shall reflect the date of its issuance, inform the complainant of his or her civil action rights, and be transmitted to the complainant and the Board by first class mail.

(b) A decision issued under paragraph (a) of this section is final, subject to paragraph (c) of this section, within the meaning of § 268.406 unless the Commission reconsiders the case. A party may request reconsideration within 30 days of receipt of a decision of the Commission, which the Commission in its discretion may grant, if the party demonstrates that:

(1) The appellate decision involved a clearly erroneous interpretation of material fact or law; or

(2) The decision will have a substantial impact on the policies, practices or operations of the Board.

(c) The Board, within 30 days of receiving the decision of the Commission, shall issue a final decision based upon that decision.

§ 268.406 Civil action: Title VII, Age Discrimination in Employment Act and Rehabilitation Act.

A complainant who has filed an individual complaint, an agent who has filed a class complaint or a claimant who has filed a claim for individual relief pursuant to a class complaint is authorized under title VII, the ADEA and the Rehabilitation Act to file a civil action in an appropriate United States District Court:

(a) Within 90 days of receipt of the final action on an individual or class complaint if no appeal has been filed;

(b) After 180 days from the date of filing an individual or class complaint if an appeal has not been filed and final action has not been taken;

(c) Within 90 days of receipt of the Commission's final decision on an appeal; or

(d) After 180 days from the date of filing an appeal with the Commission if there has been no final decision by the Commission.

§ 268.407 Civil action: Equal Pay Act.

A complainant is authorized under section 16(b) of the Fair Labor Standards Act (29 U.S.C. 216(b)) to file a civil action in a court of competent jurisdiction within two years or, if the violation is willful, three years of the date of the alleged violation of the Equal Pay Act regardless of whether he or she pursued any administrative complaint processing. Recovery of back wages is limited to two years prior to the date of filing suit, or to three years if the violation is deemed willful; liquidated damages in an equal amount may also be awarded. The filing of a complaint or appeal under this part shall not toll the time for filing a civil action.

§ 268.408 Effect of filing a civil action.

Filing a civil action under §§ 268.406 or 268.407 shall terminate Commission processing of the appeal. If private suit is filed subsequent to the filing of an appeal, the parties are requested to notify the Commission in writing.

Subpart F—Remedies and Enforcement

§ 268.501 Remedies and relief.

(a) When the Board, or the Commission, in an individual case of discrimination, finds that an applicant or an employee has been discriminated against, the Board shall provide full relief which shall include the following elements in appropriate circumstances:

(1) Notification to all employees of the Board in the affected facility of their right to be free of unlawful discrimination and assurance that the particular types of discrimination found will not recur;

(2) Commitment that corrective, curative or preventive action will be taken, or measures adopted, to ensure that violations of the law similar to those found unlawful will not recur;

(3) An unconditional offer to each identified victim of discrimination of placement in the position the person would have occupied but for the discrimination suffered by that person, or a substantially equivalent position;

(4) Payment to each identified victim of discrimination on a make whole basis for any loss of earnings the person may have suffered as a result of the discrimination; and

(5) Commitment that the Board shall cease from engaging in the specific unlawful employment practice found in the case.

(b) *Relief for an applicant.* (1)(i) When the Board, or the Commission, finds that an applicant for employment has been discriminated against, the Board shall offer the applicant the position that the applicant would have occupied absent discrimination or, if justified by the circumstances, a substantially equivalent position unless clear and convincing evidence indicates that the applicant would not have been selected even absent the discrimination. The offer shall be made in writing. The individual shall have 15 days from receipt of the offer within which to accept or decline the offer. Failure to accept the offer within the 15-day period will be considered a declination of the offer, unless the individual can show that circumstances beyond his or her control prevented a response within the time limit.

(ii) If the offer is accepted, appointment shall be retroactive to the date the applicant would have been hired. Back pay, computed in the manner prescribed in 5 CFR 550.805, shall be awarded from the date the individual would have entered on duty until the date the individual actually enters on duty unless clear and convincing evidence indicates that the applicant would not have been selected even absent discrimination. Interest on back pay shall be included in the back pay computation where sovereign immunity has been waived. The individual shall be deemed to have performed service for the Board during this period for all purposes except for meeting service requirements for completion of a required probationary or trial period.

(iii) If the offer of employment is declined, the Board shall award the individual a sum equal to the back pay he or she would have received, computed in the manner prescribed in 5 CFR 550.805, from the date he or she would have been appointed until the date the offer was declined, subject to the limitation of paragraph (b)(3) of this section. Interest on back pay shall be included in the back pay computation. The Board shall inform the applicant, in its offer of employment, of the right to this award in the event the offer is declined.

(2) When the Board, or the Commission, finds that discrimination existed at the time the applicant was considered for employment but also finds by clear and convincing evidence that the applicant would not have been hired even absent discrimination, the Board shall nevertheless take all steps necessary to eliminate the discriminatory practice and ensure it does not recur.

(3) Back pay under this paragraph (b) for complaints under title VII or the Rehabilitation Act may not extend from a date earlier than two years prior to the date on which the complaint was initially filed by the applicant.

(c) *Relief for an employee.* When the Board, or the Commission, finds that an employee of the Board was discriminated against, the Board shall provide relief, which shall include, but

need not be limited to, one or more of the following actions:

(1) Nondiscriminatory placement, with back pay computed in the manner prescribed in 5 CFR 550.805, unless clear and convincing evidence contained in the record demonstrates that the personnel action would have been taken even absent the discrimination. Interest on back pay shall be included in the back pay computation where sovereign immunity has been waived. The back pay liability under title VII or the Rehabilitation Act is limited to two years prior to the date the discrimination complaint was filed.

(2) If clear and convincing evidence indicates that, although discrimination existed at the time the personnel action was taken, the personnel action would have been taken even absent discrimination, the Board shall nevertheless eliminate any discriminatory practice and ensure it does not recur.

(3) Cancellation of an unwarranted personnel action and restoration of the employee.

(4) Expunction from the Board's records of any adverse materials relating to the discriminatory employment practice.

(5) Full opportunity to participate in the employee benefit denied (e.g., training, preferential work assignments, overtime scheduling).

(d) The Board has the burden of proving by a preponderance of the evidence that the complainant has failed to mitigate his or her damages.

(e) *Attorney's fees or costs*—(1) *Awards of attorney's fees or costs.* The provisions of this paragraph relating to the award of attorney's fees or costs shall apply to allegations of discrimination prohibited by title VII and the Rehabilitation Act. In a decision or final action, the Board, administrative judge, or Commission may award the applicant or employee reasonable attorney's fees (including expert witness fees) and other costs incurred in the processing of the complaint.

(i) A finding of discrimination raises a presumption of entitlement to an award of attorney's fees.

(ii) Any award of attorney's fees or costs shall be paid by the Board.

(iii) Attorney's fees are allowable only for the services of members of the Bar and law clerks, paralegals or law students under the supervision of members of the Bar, except that no award is allowable for the services of any employee of the Federal Government.

(iv) Attorney's fees shall be paid for services performed by an attorney after the filing of a written complaint, provided that the attorney provides reasonable notice of representation to the Board, administrative judge or Commission, except that fees are allowable for a reasonable period of time prior to the notification of representation for any services performed in reaching a determination to represent the complainant. The Board is not required to pay attorney's fees for services performed during the pre-complaint process, except that fees are allowable when the Commission affirms on appeal an administrative judge's decision finding discrimination after the Board takes final action by not implementing an administrative judge's decision. Written submissions to the Board that are signed by the representative shall be deemed to constitute notice of representation.

(2) *Amount of awards.* (i) When the Board, administrative judge or the Commission determines an entitlement to attorney's fees or costs, the complainant's attorney shall submit a verified statement of attorney's fees (including expert witness fees) and other costs, as appropriate, to the Board or administrative judge within 30 days of receipt of the decision and shall submit a copy of the statement to the Board. A statement of attorney's fees and costs shall be accompanied by an affidavit executed by the attorney of record itemizing the attorney's charges for legal services. The Board may respond to a statement of attorney's fees and costs within 30 days of its receipt. The verified statement, accompanying affidavit and any Board response shall be made a part of the complaint file.

(ii)(A) The Board or administrative judge shall issue a decision determining the amount of attorney's fees or costs due within 60 days of receipt of the statement and affidavit. The decision shall include a notice of right to appeal to the EEOC along with EEOC Form 573, Notice of Appeal/Petition and shall include the specific reasons for determining the amount of the award.

(B) The amount of attorney's fees shall be calculated using the following standards: The starting point shall be the number of hours reasonably expended multiplied by a reasonable hourly rate. There is a strong presumption that this amount represents the reasonable fee. In limited circumstances, this amount may be reduced or increased in consideration of the degree of success, quality of representation, and long delay cause by the Board.

(C) The costs that may be awarded are those authorized by 28 U.S.C. 1920 to include: Fees of the reporter for all or any of the stenographic transcript necessarily obtained for use in the case; fees and disbursements for printing and witnesses; and fees for exemplification and copies necessarily obtained for use in the case.

(iii) Witness fees shall be awarded in accordance with the provisions of 28 U.S.C. 1821, except that no award shall be made for a Federal employee who is in a duty status when made available as a witness.

§ 268.502 Compliance with final Commission decisions.

(a) Relief ordered in a final Commission decision, if accepted pursuant to § 268.405(c) as a final decision, or not acted upon the Board within the time periods of § 268.405(c), is mandatory and binding on the Board except as provided in this section. Failure to implement ordered relief shall be subject to judicial enforcement as specified in § 268.503(f).

(b) Notwithstanding paragraph (a) of this section, when the Board requests reconsideration and the case involves removal, separation, or a suspension continuing beyond the date of the request for reconsideration, and when the decision orders retroactive restoration, the Board shall comply with the decision to the extent of the temporary or conditional restoration of the employee to duty status in the position specified by the Commission, pending the outcome of the Board's request for reconsideration.

(1) Service under the temporary or conditional restoration provisions of this paragraph (b) shall be credited toward the completion of a probationary or trial period or the completion of the service requirement for career tenure, if the Commission upholds its decision after reconsideration.

(2) When the Board requests reconsideration, it may delay the payment of any amounts ordered to be paid to the complainant until after the request for reconsideration is resolved. If the Board delays payment of any amount pending the outcome of the request to reconsider and the resolution of the request requires the Board to make the payment, then the Board shall pay interest from the date of the original appellate decision until payment is made.

(3) The Board shall notify the Commission and the employee in writing at the same time it requests reconsideration that the relief it provides is temporary or conditional and, if applicable, that it will delay the payment of any amounts owed but will pay interest as specified in paragraph (b)(2) of this section. Failure of the

Board to provide notification will result in the dismissal of the Board's request.

(c) When no request for reconsideration is filed or when a request for reconsideration is denied, the Board shall provide the relief ordered and there is no further right to delay implementation of the ordered relief. The relief shall be provided in full not later than 60 days after receipt of the final decision unless otherwise ordered in the decision.

§ 268.503 Enforcement of final EEOC decisions.

(a) *Petition for enforcement.* A complainant may petition the Commission for enforcement of a decision issued under the Commission's appellate jurisdiction. The petition shall be submitted to the Office of Federal Operations. The petition shall specifically set forth the reasons that lead the complainant to believe that the Board is not complying with the decision.

(b) *Compliance.* On behalf of the Commission, the Office of Federal Operations shall take all necessary action to ascertain whether the Board is implementing the decision of the Commission. If the Board is found not to be in compliance with the decision, efforts shall be undertaken to obtain compliance.

(c) *Clarification.* On behalf of the Commission, the Office of Federal Operations may, on its own motion or in response to a petition for enforcement or in connection with a timely request for reconsideration, issue a clarification of a prior decision. A clarification cannot change the result of a prior decision or enlarge or diminish the relief ordered but may further explain the meaning or intent of the prior decision.

(d) *Referral to the Commission.* Where the Director, Office of Federal Operations, is unable to obtain satisfactory compliance with the final decision, the Director shall submit appropriate findings and recommendations for enforcement to the Commission, or, as directed by the Commission, refer the matter to another appropriate agency.

(e) *Commission notice to show cause.* The Commission may issue a notice to the Chairman of the Board to show cause why there is noncompliance. Such notice may request the Chairman of the Board or a representative to appear before the Commission or to respond to the notice in writing with adequate evidence of compliance or with compelling reasons for noncompliance.

(f) *Notification to complainant of completion of administrative efforts.* Where the Commission has determined that the Board is not complying with a prior decision, or where the Board has failed or refused to submit any required report of compliance, the Commission shall notify the complainant the right to file a civil action for enforcement of the decision pursuant to title VII, the ADEA, the Equal Pay Act or the Rehabilitation Act and to seek judicial review of the Board's refusal to implement the ordered relief pursuant to the Administrative Procedures Act, 5 U.S.C. 701 *et seq.*, and the mandamus statute, 28 U.S.C. 1361, or to commence *de novo* proceedings pursuant to the appropriate statutes.

§ 268.504 Compliance with settlement agreements and final actions.

(a) Any settlement agreement knowingly and voluntarily agreed to by the parties, reached at any stage of the complaint process, shall be binding on both parties. Final action that has not been the subject of an appeal or a civil action shall be binding on the Board. If the complainant believes that the Board has failed to comply with the terms of a settlement agreement or decision, the complainant shall notify the Board's EEO Programs Director, in writing, of the alleged noncompliance within 30 days of when the complainant knew or should have known of the alleged noncompliance. The complainant may request that the terms of the settlement agreement be specifically implemented or, alternatively, that the complaint be reinstated for further processing from the point processing ceased.

(b) The Board shall resolve the matter and respond to the complainant, in writing. If the Board has not responded to the complainant, in writing, or if the complainant is not satisfied with the Board's attempt to resolve the matter, the complainant may appeal to the Commission for a determination as to whether the Board has complied with the terms of the settlement agreement or decision. The complainant may file such an appeal 35 days after he or she has served the Board with the allegations of noncompliance, but must file an appeal within 30 days of his or her receipt of the Board's determination. The complainant must serve a copy of the appeal on the Board and the Board may submit a response to the Commission within 30 days of receiving notice of the appeal.

(c) Prior to rendering its determination, the Commission may request that the parties submit whatever additional information or documentation it deems necessary or may direct that an investigation or hearing on the matter be conducted. If the Commission determines that the Board is not in compliance and the noncompliance is not attributable to acts or conduct of the complainant, it may order such compliance or it may order that the complaint be reinstated for further processing from the point processing ceased. Allegations that subsequent acts of discrimination violate a settlement agreement shall be processed as separate complaints under §§ 268.105 or 268.204, as appropriate, rather than under this section.

§ 268.505 Interim relief.

(a)(1) When the Board appeals and the case involves removal, separation, or suspension continuing beyond the date of the appeal, and when the administrative judge orders retroactive restoration, the Board shall comply with the decision to the extent of the temporary or conditional restoration of the employee to duty status in the position specified in the decision, pending the outcome of the Board appeal. The employee may decline the offer of interim relief.

(2) Service under the temporary or conditional restoration provisions of paragraph (a)(1) of this section shall be credited toward the completion of a probationary or trial period, eligibility for a within-grade increase, or the completion of the service requirement for career tenure, if the Commission upholds the decision on appeal. Such service shall not be credited toward the completion of any applicable probationary or trial period or the completion of the service requirement for career tenure if the Commission reverses the decision on appeal.

(3) When the Board appeals, it may delay the payment of any amount, other than prospective pay and benefits, ordered to be paid to the complainant until after the appeal is resolved. If the Board delays payment of any amount pending the outcome of the appeal and the resolution of the appeal requires the Board to make the payment, then the Board shall pay interest from the date of the original decision until payment is made.

(4) The Board shall notify the Commission and the employee in writing at the same time it appeals that the relief it provides is temporary or conditional and, if applicable, that it will delay the payment of any amounts owed but will pay interest as specified in paragraph (b)(2) of this section. Failure of the Board to provide notification will result in the dismissal of the Board's appeal.

(5) The Board may, by notice to the complainant, decline to return the complainant to his or her place of employment if it determines that the return or presence of the complainant will be unduly disruptive to the work environment. However, prospective pay and benefits must be provided. The determination not to return the complainant to his or her place of employment is not reviewable. A grant of interim relief does not insulate a complainant from subsequent disciplinary or adverse action.

(b) If the Board files an appeal and has not provided required interim relief, the complainant may request dismissal of the Board's appeal. Any such request must be filed with the Office of Federal Operations within 25 days of the date of service of the Board's appeal. A copy of the request must be served on the Board at the same time it is filed with EEOC. The Board may respond with evidence and argument to the complainant's request to dismiss within 15 days of the date of service of the request.

Subpart G—Matters of General Applicability

§ 268.601 EEO group statistics.

(a) The Board shall establish a system to collect and maintain accurate employment information on the race, national origin, sex and disability(ies) of its employees.

(b) Data on race, national origin and sex shall be collected by voluntary self-identification. If an employee does not voluntarily provide the requested information, the Board shall advise the employee of the importance of the data and of the Board's obligation to report it. If the employee still refuses to provide the information, the Board must make a visual identification and inform the employee of the data it will be reporting. If the Board believes that information provided by an employee is inaccurate, the Board shall advise the employee about the solely statistical purpose for which the data is being collected, the need for accuracy, the Board's recognition of the sensitivity of the information and the existence of procedures to prevent its unauthorized disclosure. If, thereafter, the employee declines to change the apparently inaccurate self identification, the Board must accept it.

(c) Subject to applicable law, the information collected under paragraph (b) of this section shall be disclosed only in the form of gross statistics. The Board shall not collect or maintain any information on the race, national origin or sex of individual employees except in accordance with applicable law and when an automated data processing system is used in accordance with standards and requirements prescribed by the Commission to insure individual privacy and the separation of that information from personnel records.

(d) The Board's system is subject to the following controls:

(1) Only those categories of race and national origin prescribed by the Commission may be used;

(2) Only the specific procedures for the collection and maintenance of data that are prescribed or approved by the Commission may be used.

(e) The Board may use the data only in studies and analyses which contribute affirmatively to achieving the objectives of the Board's equal employment opportunity program. The Board shall not establish a quota for the employment of persons on the basis of race, color, religion, sex, or national origin.

(f) Data on disabilities shall also be collected by voluntary self-identification. If an employee does not voluntarily provide the requested information, the Board shall advise the employee of the importance of the data and of the Board's obligation to report it. If an employee who has been appointed pursuant to a special Board program for hiring individuals with a disability still refuses to provide the requested information, the Board must identify the employee's disability based upon the records supporting the appointment. If any other employee still refuses to provide the requested information or provides information that the Board believes to be inaccurate, the Board should report the employee's disability status as unknown.

(g) The Board shall report to the Commission on employment by race, national origin, sex, and disability in the form and at such times as the Board and Commission shall agree.

§ 268.602 Reports to the Commission.

(a) The Board shall report to the Commission information concerning pre-complaint counseling and the status, processing, and disposition of complaints under this part at such times and in such manner as the Board and Commission shall agree.

(b) The Board shall advise the Commission whenever it is served with a Federal court complaint based upon a complaint that is pending on appeal at the Commission.

(c) The Board shall submit annually for the review and approval of the Commission written equal employment opportunity plans of action. Plans shall be submitted in the format prescribed by the Commission and shall include, but not be limited to:

(1) Provision for the establishment of training and education programs designed to provide maximum opportunity for employees to advance so as to perform at their highest potential;

(2) Description of the qualifications, in terms of training and experience relating to equal employment opportunity, of the principal and operating officials concerned with administration of the Board's equal employment opportunity program; and

(3) Description of the allocation of personnel and resources proposed by the Board to carry out its equal employment opportunity program.

§ 268.603 Voluntary settlement attempts.

The Board shall make reasonable efforts to voluntarily settle complaints of discrimination as early as possible in, and throughout, the administrative processing of complaints, including the pre-complaint counseling stage. Any settlement reached shall be in writing and signed by both parties and shall identify the claims resolved.

§ 268.604 Filing and computation of time.

(a) All time periods in this part that are stated in terms of days are calendar days unless otherwise stated.

(b) A document shall be deemed timely if it is received or postmarked before the expiration of the applicable filing period, or, in the absence of a legible postmark, if it is received by mail within five days of the expiration of the applicable filing period.

(c) The time limits in this part are subject to waiver, estoppel and equitable tolling.

(d) The first day counted shall be the day after the event from which the time period begins to run and the last day of the period shall be included, unless it falls on a Saturday, Sunday or Federal holiday, in which case the period shall be extended to include the next business day.

§ 268.605 Representation and official time.

(a) At any stage in the processing of a complaint, including the counseling stage under § 268.104, the complainant shall have the right to be accompanied, represented, and advised by a representative of complainant's choice.

(b) If the complainant is an employee of the Board, he or she shall have a reasonable amount of official time, if otherwise on duty, to prepare the complaint and to respond to Board and EEOC requests for information. If the complainant is an employee of the Board and he designates another

employee of the Board as his or her representative, the representative shall have a reasonable amount of official time, if otherwise on duty, to prepare the complaint and respond to Board and EEOC requests for information. The Board is not obligated to change work schedules, incur overtime wages, or pay travel expenses to facilitate the choice of a specific representative or to allow the complainant and representative to confer. The complainant and the representative, if employed by the Board and otherwise in a pay status, shall be on official time, regardless of their tour of duty, when their presence is authorized or required by the Board or the Commission during the investigation, informal adjustment, or hearing on the complaint.

(c) In cases where the representation of a complainant or the Board would conflict with the official or collateral duties of the representative, the Commission or the Board may, after giving the representative an opportunity to respond, disqualify the representative.

(d) Unless the complainant states otherwise in writing, after the Board has received written notice of the name, address and telephone number of a representative for the complainant, all official correspondence shall be with the representative with copies to the complainant. When the complainant designates an attorney as representative, service of all official correspondence shall be made on the attorney and the complainant, but time frames for receipt of material shall be computed from the time of receipt by the attorney. The complainant must serve all official correspondence on the designated representative of the Board.

(e) The complainant shall at all times be responsible for proceeding with the complaint whether or not he or she has designated a representative.

(f) Witnesses who are Board employees shall be in a duty status when their presence is authorized or required by Commission or Board officials in connection with a complaint.

§ 268.606 Joint processing and consolidation of complaints.

Complaints of discrimination filed by two or more complainants consisting of substantially similar allegations of discrimination or relating to the same matter may be consolidated by the Board or the Commission for joint processing after appropriate notification to the parties. Two or more complaints of discrimination filed by the same complainant shall be consolidated by the Board for joint processing after appropriate notification to the complainant. When a complaint has been consolidated with one or more earlier filed complaints, the Board shall complete its investigation within the earlier of 180 days after the filing of the last complaint or 360 days after the filing of the original complaint, except that the complainant may request a hearing from an administrative judge on the consolidated complaints any time after 180 days from the date of the first filed complaint. Administrative judges or the Commission may, in their discretion, consolidate two or more complaints of discrimination filed by the same complainant.

§ 268.607 Delegation of authority.

The Board of Governors may delegate authority under this part, to one or more designees.

Subpart H—Prohibition Against Discrimination in Board Programs and Activities Because of Physical or Mental Disability

§ 268.701 Purpose and application.

(a) *Purpose.* The purpose of this subpart H is to prohibit discrimination on the basis of a disability in programs or activities conducted by the Board.

(b) *Application.* (1) This subpart H applies to all programs and activities conducted by the Board. Such programs and activities include:

(i) Holding open meetings of the Board or other meetings or public hearings at the Board's office in Washington, DC;

(ii) Responding to inquiries, filing complaints, or applying for employment at the Board's office;

(iii) Making available the Board's library facilities; and

(iv) Any other lawful interaction with the Board or its staff in any official matter with people who are not employees of the Board.

(2) This subpart H does not apply to Federal Reserve Banks or to financial institutions or other companies supervised or regulated by the Board.

§ 268.702 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Auxiliary aids* means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Board. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

(b) *Complete complaint* means a written statement that contains the complainant's name and address and describes the Board's alleged discriminatory action in sufficient detail to inform the Board of the nature and date of the alleged violation. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

(c) *Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

(d) *Person with a disability* means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) Physical or mental impairment includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one of more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) Major life activities includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) Is regarded as having an impairment means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Board as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (d)(1) of this section but is treated by Board as having such an impairment.

(e) *Qualified person with a disability* means—

(1) With respect to any Board program or activity under which a person is required to perform services or to achieve a level of accomplishment, a person with a disability who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the Board can demonstrate would result in a fundamental alteration in its nature; or

(2) With respect to any other program or activity, a person with a disability who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(3) Qualified individual with a disability is defined for purposes of employment in § 268.203(a)(6) of this part, which is made applicable to this subpart by § 268.705.

§ 268.703 Notice.

The Board shall make available to employees, applicants for employment, participants, beneficiaries, and other interested persons information regarding the provisions of this subpart and its applicability to the programs and activities conducted by the Board, and make this information available to them in such manner as the Board finds necessary to apprise such persons of the protections against discrimination assured them by this subpart.

§ 268.704 General prohibitions against discrimination.

(a) No qualified individual with a disability shall, on the basis of a disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity conducted by the Board.

(b)(1) The Board, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of a disability:

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that provided to others;

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with a disability or to any class of individuals with a disability than is provided to others unless such action is necessary to provide qualified individuals with a disability with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The Board may not deny a qualified individual with a disability the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The Board may not, directly or through contractual or other arrangements, utilize criteria or methods of administration, the purpose or effect of which would:

(i) Subject qualified individuals with a disability to discrimination on the basis of a disability; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with a disability.

(4) The Board may not, in determining the site or location of a facility, make selections the purpose or effect of which would:

(i) Exclude individuals with a disability from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the Board; or

(ii) Defeat or substantially impair the accomplishment of the objectives or a program or activity with respect to individuals with a disability.

(5) The Board, in the selection of procurement contractors, may not use criteria that subject qualified individuals with a disability to discrimination on the basis of a disability.

(6) The Board may not administer a licensing or certification program in a manner that subjects qualified individuals with a disability to discrimination on the basis of a disability, nor may the Board establish requirements for the programs and activities of licensees or certified entities that subject qualified individuals with a disability to discrimination on the basis of a disability. However, the programs and activities of entities that are licensed or certified by the Board are not, themselves, covered by this subpart.

(c) The exclusion of individuals who do not have a disability from the benefits of a program limited by Federal statute or Board order to individuals with a disability or the exclusion of a specific class of individuals with a disability from a program limited by Federal statute or Board order to a different class of individuals with a disability is not prohibited by this subpart.

(d) The Board shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with a disability.

§ 268.705 Employment.

No qualified individual with a disability shall, on the basis of a disability, be subjected to discrimination in employment under any program or activity conducted by the Board. The definitions, requirements and procedures of § 268.203 of this part shall apply to discrimination in employment in federally conducted programs or activities.

§ 268.706 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 268.707 of this subpart, no qualified individual with a disability shall, because the Board's facilities are inaccessible to or unusable by individuals with a disability, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Board.

§ 268.707 Program accessibility: Existing facilities.

(a) *General.* The Board shall operate each program or activity so that the program or activity, when viewed in its

entirety, is readily accessible to and usable by individuals with a disability. This paragraph (a) does not:

(1) Necessarily require the Board to make each of its existing facilities accessible to and usable by individuals with a disability; or

(2) Require the Board to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where the Board believes that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Board has the burden of proving that compliance with this paragraph (a) would result in such alterations or burdens. The decision that compliance would result in such alterations or burdens shall be made by the Board of Governors or their designee after considering all Board resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the Board shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with a disability receive the benefits and services of the program or activity.

(b) *Methods.* The Board may comply with the requirements of this subpart H through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to individuals with a disability, home visits, delivery of service at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with a disability. The Board is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. In choosing among available methods for meeting the requirements of this section, the Board shall give priority to those methods that offer programs and activities to qualified individuals with a disability in the most integrated setting appropriate.

(c) *Time period for compliance.* The Board shall comply with any obligations established under this section as expeditiously as possible.

§ 268.708 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Board shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with a disability.

§ 268.709 Communications.

(a) The Board shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The Board shall furnish appropriate auxiliary aids where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Board.

(i) In determining what type of auxiliary aid is necessary, the Board shall give primary consideration to the requests of the individual with a disability.

(ii) The Board need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the Board communicates with employees and others by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The Board shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The Board shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the Board to take any action that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where the Board believes that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Board has the burden of proving that compliance with § 268.709 would result in such alterations or burdens. The determination that compliance would result in such alteration or burdens must be made by the Board of Governors or their designee after considering all Board resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the Board shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with a disability receive the benefits and services of the program or activity.

§ 268.710 Compliance procedures.

(a) *Applicability.* Except as provided in paragraph (b) of this section, this section, rather than subpart B and § 268.203 of this part, applies to all allegations of discrimination on the basis of a disability in programs or activities conducted by the Board.

(b) *Employment complaints.* The Board shall process complaints alleging discrimination in employment on the basis of a disability in accordance with subparts A through G of this part.

(c) *Responsible official.* The EEO Programs Director shall be responsible for coordinating implementation of this section.

(d) *Filing the complaint*—(1) *Who may file.* Any person who believes that he or she has been subjected to discrimination prohibited by this subpart may, personally or by his or her authorized representative, file a complaint of discrimination with the EEO Programs Director.

(2) *Confidentiality.* The EEO Programs Director shall not reveal the identity of any person submitting a complaint, except when authorized to do so in writing by the complainant, and except to the extent necessary to carry out the purposes of this subpart, including the conduct of any investigation, hearing, or proceeding under this subpart.

(3) *When to file.* Complaints shall be filed within 180 days of the alleged act of discrimination. The EEO Programs Director may extend this time limit for good cause shown. For the purpose of determining when a complaint is timely filed under this paragraph (d), a complaint mailed to the Board shall be deemed filed on the date it is postmarked. Any other complaint shall be deemed filed on the date it is received by the Board.

(4) *How to file.* Complaints may be delivered or mailed to the Administrative Governor, the Staff Director for Management, the EEO Programs Director, the Federal Women's Program Manager, the Hispanic Program

Coordinator, or the Disabled Persons Program Coordinator. Complaints should be sent to the EEO Programs Director, Board of Governors of the Federal Reserve System, 20th and C Street NW., Washington, DC 20551. If any Board official other than the EEO Programs Director receives a complaint, he or she shall forward the complaint to the EEO Programs Director.

(e) *Acceptance of complaint.* (1) The EEO Programs Director shall accept a complete complaint that is filed in accordance with paragraph (d) of this section and over which the Board has jurisdiction. The EEO Programs Director shall notify the complainant of receipt and acceptance of the complaint.

(2) If the EEO Programs Director receives a complaint that is not complete, he or she shall notify the complainant, within 30 days of receipt of the incomplete complaint, that additional information is needed. If the complainant fails to complete the complaint within 30 days of receipt of this notice, the EEO Programs Director shall dismiss the complaint without prejudice.

(3) If the EEO Programs Director receives a complaint over which the Board does not have jurisdiction, the EEO Programs Director shall notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) *Investigation/conciliation.* (1) Within 180 days of the receipt of a complete complaint, the EEO Programs Director shall complete the investigation of the complaint, attempt informal resolution of the complaint, and if no informal resolution is achieved, the EEO Programs Director shall forward the investigative report to the Staff Director for Management.

(2) The EEO Programs Director may request Board employees to cooperate in the investigation and attempted resolution of complaints. Employees who are requested by the EEO Programs Director to participate in any investigation under this section shall do so as part of their official duties and during the course of regular duty hours.

(3) The EEO Programs Director shall furnish the complainant with a copy of the investigative report promptly after completion of the investigation and provide the complainant with an opportunity for informal resolution of the complaint.

(4) If a complaint is resolved informally, the terms of the agreement shall be reduced to writing and made a part of the complaint file, with a copy of the agreement provided to the complainant. The written agreement may include a finding on the issue of discrimination and shall describe any corrective action to which the complainant has agreed.

(g) *Letter of findings.* (1) If an informal resolution of the complaint is not reached, the EEO Programs Director shall transmit the complaint file to the Staff Director for Management. The Staff Director for Management shall, within 180 days of the receipt of the complete complaint by the EEO Programs Director, notify the complainant of the results of the investigation in a letter sent by certified mail, return receipt requested, containing:

(i) Findings of fact and conclusions of law;

(ii) A description of a remedy for each violation found;

(iii) A notice of right of the complainant to appeal the letter of findings under paragraph (k) of this section; and

(iv) A notice of right of the complainant to request a hearing.

(2) If the complainant does not file a notice of appeal or does not request a hearing within the times prescribed in paragraph (h)(1) and (j)(1) of this section, the EEO Programs Director shall certify that the letter of findings under this paragraph (g) is the final decision of the Board at the expiration of those times.

(h) *Filing an appeal.* (1) Notice of appeal, with or without a request for hearing, shall be filed by the complainant with the EEO Programs Director within 30 days of receipt from the Staff Director for Management of the letter of findings required by paragraph (g) of this section.

(2) If the complainant does not request a hearing, the EEO Programs Director shall notify the Board of Governors of the appeal by the complainant and that a decision must be made under paragraph (k) of this section.

(i) *Acceptance of appeal.* The EEO Programs Director shall accept and process any timely appeal. A complainant may appeal to the Administrative Governor from a decision by the EEO Programs Director that an appeal is untimely. This appeal shall be filed within 15 calendar days of receipt of the decision from the EEO Programs Director.

(j) *Hearing.* (1) Notice of a request for a hearing, with or without a request for an appeal, shall be filed by the complainant with the EEO Programs Director within 30 days of receipt from the Staff Director for Management of the letter of findings required by paragraph (g) of this section. Upon a timely request for a hearing, the EEO Programs Director shall request that the Board of Governors, or its designee, appoint an administrative law judge to conduct the hearing. The administrative law judge shall issue a notice to the complainant and the Board specifying the date, time, and place of the scheduled hearing. The hearing shall be commenced no earlier than 15 calendar days after the notice is issued and no later than 60 days after the request for a hearing is filed, unless all parties agree to a different date.

(2) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557. The administrative law judge shall have the duty to conduct a fair hearing, to take all necessary actions to avoid delay, and to maintain order. He or she shall have all powers necessary to these ends, including (but not limited to) the power to:

(i) Arrange and change the dates, times, and places of hearings and prehearing conferences and to issue notice thereof;

(ii) Hold conferences to settle, simplify, or determine the issues in a hearing, or to consider other matters that may aid in the expeditious disposition of the hearing;

(iii) Require parties to state their positions in writing with respect to the various issues in the hearing and to exchange such statements with all other parties;

(iv) Examine witnesses and direct witnesses to testify;

(v) Receive, rule on, exclude, or limit evidence;

(vi) Rule on procedural items pending before him or her; and

(vii) Take any action permitted to the administrative law judge as authorized by this subpart G or by the provisions of the Administrative Procedures Act (5 U.S.C. 554–557).

(3) Technical rules of evidence shall not apply to hearings conducted pursuant to this paragraph (j), but rules or principles designed to assure production of credible evidence and to subject testimony to cross-examination shall be applied by the administrative law judge wherever reasonably necessary. The administrative law judge may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties, and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record.

(4) The costs and expenses for the conduct of a hearing shall be allocated as follows:

(i) Employees of the Board shall, upon the request of the administrative law judge, be made available to participate in the hearing and shall be on official duty status for this purpose. They shall not receive witness fees.

(ii) Employees of other Federal agencies called to testify at a hearing, at the request of the administrative law judge and with the approval of the employing agency, shall be on official duty status during any absence from normal duties caused by their testimony, and shall not receive witness fees.

(iii) The fees and expenses of other persons called to testify at a hearing shall be paid by the party requesting their appearance.

(iv) The administrative law judge may require the Board to pay travel expenses necessary for the complainant to attend the hearing.

(v) The Board shall pay the required expenses and charges for the administrative law judge and court reporter.

(vi) All other expenses shall be paid by the parties incurring them.

(5) The administrative law judge shall submit in writing recommended findings of fact, conclusions of law, and remedies to the complainant and the EEO Programs Director within 30 days, after the receipt of the hearing transcripts, or within 30 days after the conclusion of the hearing if no transcripts are made. This time limit may be extended with the permission of the EEO Programs Director.

(6) Within 15 calendar days after receipt of the recommended decision of the administrative law judge, the complainant may file exceptions to the recommended decision with the EEO Programs Director. On behalf of the Board, the EEO Programs Director may, within 15 calendar days after receipt of the recommended decision of the administrative law judge, take exception to the recommended decision of the administrative law judge and shall notify the complainant in writing of the Board's exception. Thereafter, the complainant shall have 10 calendar days to file reply exceptions with the EEO Programs Director. The EEO Programs Director shall retain copies of the exceptions and replies to the Board's exception for consideration by the Board. After the expiration of the time to reply, the recommended decision shall be ripe for a decision under paragraph (k) of this section.

(k) *Decision.* (1) The EEO Programs Director shall notify the Board of Governors when a complaint is ripe for decision under this paragraph (k). At the request of any member of the Board of Governors made within 3 business days of such notice, the Board of Governors shall make the decision on the complaint. If no such request is made, the Administrative Governor, or the Staff Director for Management if he or she is delegated the authority to do so, shall make the decision on the complaint. The decision shall be made based on information in the investigative record and, if a hearing is held, on the hearing record. The decision shall be made within 60 days of the receipt by the EEO Programs Director of the notice of appeal and investigative record pursuant to paragraph (h)(1) of this section or 60 days following the end of the period for filing reply exceptions set forth in paragraph (j)(6) of this section, whichever is applicable. If the decision-maker under this paragraph (k) determines that additional information is needed from any party, the decision-maker shall request the information and provide the other party or parties an opportunity to respond to that information. The decision-maker shall have 60 days from receipt of the additional information to render the decision on the appeal. The decision-maker shall transmit the decision by letter to all parties. The decision shall set forth the findings, any remedial actions required, and the reasons for the decision. If the decision is based on a hearing record, the decision-maker shall consider the recommended decision of the administrative law judge and render a final decision based on the entire record. The decision-maker may also remand the hearing record to the administrative law judge for a fuller development of the record.

(2) The Board shall take any action required under the terms of the decision promptly. The decision-maker may require periodic compliance reports specifying:

(i) The manner in which compliance with the provisions of the decision has been achieved;

(ii) The reasons any action required by the final Board decision has not been taken; and

(iii) The steps being taken to ensure full compliance.

(3) The decision-maker may retain responsibility for resolving disputes that arise between parties over interpretation of the final Board decision, or for specific adjudicatory decisions arising out of implementation.

By order of the Board of Governors of the Federal Reserve System, January 9, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–1073 Filed 1–24–01; 8:45 am]

BILLING CODE 6210–01–P

Proposed Rules

Federal Register
Vol. 66, No. 17
Thursday, January 25, 2001

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 COMMUNICATIONS COMMISSION

47 CFR Parts 36, 54, 61, 64, 65, and 69

[CC Docket Nos. 96–45, 98–77, 98–166, and 00–256; FCC 00–448]

Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule.

SUMMARY: In this document, the Commission seeks comment on a petition for rulemaking submitted by the Multi-Association Group (MAG). The Petition sets forth an interstate access reform and universal service supported proposal for incumbent local exchange carriers subject to rate-of-return regulation. The MAG offers its plan as a comprehensive solution to regulatory issues facing non-price cap carriers.

DATES: Comments are due on or before February 26, 2001. Reply comments are due on or before March 12, 2001. Written comments by the public on the proposed and/or modified information collections discussed in this Further Notice of Proposed Rulemaking are due on or before February 26, 2001. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before March 26, 2001.

ADDRESSES: All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Edward C. Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to vhuth@omb.eop.gov. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to Wanda Haris, Competitive Pricing Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Room 5–A452, Washington, DC 20554. Parties who choose to file by paper and comment on the universal service aspect of the MAG plan should also submit one paper copy of the comments to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: William Scher, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in CC Docket Nos. 96–45, 98–77, 98–166, and 00–256 released on January 5, 2001. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, S.W., Washington, DC, 20554.

This NPRM contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

Paperwork Reduction Act

The NPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection(s) contained in this NPRM, as required by the PRA, Public Law 104–13. Public and agency comments on the proposed and/or modified information collections discussed in this Notice of Proposed Rulemaking are due on or before February 26, 2001. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before March 26, 2001.

Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: None.

Title: Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers.

Form No.: N/A.

Type of Review: Proposed New collections.

Respondents: Business or other for-profit.

Title	No. of respondents	Est. time per response	Total annual burden
1. Tariff Filing	65	2	130
2. Annual Data Filings:			
a. Special Access Rate Reporting	64	1	64
b. Filing the Effective Per Line Support and a Geographic Description And Map	1501*	2	2502
3. Periodic Data Filings:			

Title	No. of respondents	Est. time per response	Total annual burden
a. Reporting of Mergers & Acquisitions	20	80	1600
b. Filing of Low-end Adjustments With NECA	4	20	80

*Based on the number of study areas.
Total Annual Burden: 4376.
Cost to Respondents: $0.

Needs and Uses: The Commission is seeking comment on a proposal filed by a Multi-Association Group (MAG). The MAG plan proposes to reform the interstate access charge structure for non-price cap carriers, to establish explicit interstate access universal service support for non-price cap carriers that will be sustainable in an increasingly competitive marketplace, and to require interexchange carriers to offer their services that are available in other areas in the non-price cap carriers' service areas. Affected carriers may be required to file tariffs and to make periodic and annual data filings. The information will be used to determine compliance with Commission rules and eligibility for interstate access universal service support.

Synopsis of NPRM

I. Introduction

1. In this NPRM, we seek comment on a Petition for Rulemaking submitted by the MAG. The Petition sets forth an interstate access reform and universal service support proposal for incumbent local exchange carriers (LECs) subject to rate-of-return regulation (rate-of-return or non-price cap carriers). It is designed to be implemented over a five-year period beginning on July 1, 2001.

2. The MAG offers its plan as a comprehensive solution to regulatory issues facing non-price cap carriers, and asks that the Commission adopt the plan without modification as an integrated package. The MAG plan is modeled in some respects on the CALLS plan adopted for price cap carriers. The MAG plan would increase the recovery of common line costs through flat, non-traffic sensitive charges. For carriers that elect a transition to a new form of incentive-based regulation, it provides for reduced per-minute access rates, and a new, explicit interstate access universal service subsidy to make up for any shortfall in carriers' revenues. The MAG plan also proposes to eliminate the current funding caps on high-cost loop support for rural carriers. The MAG believes its plan would have many benefits, including a more efficient access rate structure, more explicit universal service support, and new incentives for carriers to increase efficiency and invest in new technologies.

3. The specifics of the MAG plan are set forth in the Petition, in particular Exhibits 1 (Detailed Description) and 3 (Proposed Rules).

II. Issues for Comment

4. The MAG offers its plan as a comprehensive solution to regulatory issues facing non-price cap carriers, and asks that the Commission adopt the plan without modification as an integrated package. We seek comment on whether we should adopt the MAG plan in its entirety, as requested by the MAG members. We also seek comment on whether, in the event that we do not adopt the MAG plan in its entirety, there are specific aspects of the proposal that we should adopt or incorporate into any of our captioned proceedings. In addition, we seek comment on the impact, if any, of the MAG plan on other pending proceedings before the Commission. We also seek comment on the process through which the Commission should evaluate the MAG plan. In particular, we ask how we may best address the concerns that may be raised by parties who are not members of the MAG.

5. We invite interested parties from all industry segments, including competitive LECs, IXCs, and wireless providers, as well as consumer groups and state commissions, to submit comments on the MAG plan. Parties should comment on the public policy implications of the MAG plan and/or particular aspects of the plan, including its potential effects on the competition and universal service goals of the 1996 Act, and whether and how it would promote consumer welfare. What would the net impact of the MAG proposal be on non-price cap carrier revenues? Parties also should address how small business entities, including small incumbent LECs and new entrants, will be affected by the MAG plan. We briefly discuss several of the major issues raised by the MAG plan that we encourage interested parties specifically to address in their comments.

6. *Access Rate Structure.* We seek comment on the access rate structure aspects of the MAG plan. Are the proposed reforms, which in some respects are modeled on the CALLS plan adopted for price cap carriers, appropriate for non-price cap carriers? Are they likely to achieve the competitive and consumer benefits anticipated by the MAG members? Is continued maintenance of lower SLC caps for non-price cap carriers than for price cap carriers consistent with section 254 of the 1996 Act? Is a two-path scheme necessary to accommodate diversity among non-price cap carriers? Would the potential regulatory complexity of this two-tiered approach have practical or administrative consequences? Would the MAG plan benefit all non-price cap carriers, regardless of size and/or operating conditions? Are larger carriers with relatively low costs more likely than small carriers to elect Path A? If so, would the result be inflation of Path B access rates? What are the characteristics of companies that are likely to elect Path B? Is it appropriate as a legal or policy matter to restrict RAS to Path A carriers? Would it be appropriate to close out our rate-of-return proceeding and keep the rate of return at its current level of 11.25 percent for Path B carriers? We invite parties to comment on these and any other issues related to the MAG plan's proposed reform of the interstate access rate structure for non-price cap carriers.

7. *Universal Service Support.* Unlike the CALLS plan, the MAG plan does not estimate the amount of implicit support in access rates, or place a ceiling on the proposed new access subsidy, RAS. Is it appropriate to cap interstate access support for price cap carriers but not for non-price cap carriers? To what extent is RAS likely to increase the size of the universal service fund, and how will RAS support levels change over time? What impact will such increases have on consumers? Is the increase likely to be offset by decreases in access rates and charges resulting from implementation of the MAG plan? Should RAS be available to support special access services, which have not been defined as supported services by the Commission? If the Commission creates RAS as a residual support mechanism, should LTS be retained as a separate interstate access subsidy? Should we adopt a provision similar to

that included in the *CALLS Order* for recovery of universal service contributions through a separate rate element or line item?

8. *Incentive-Based Regulation.* Would the MAG incentive-based approach create appropriate economic incentives for operating efficiency and investment? Is it likely to encourage long term investment? Is it likely to encourage investment in high-speed infrastructure? Is the proposed ability of carriers to fix or adjust RPL at any time likely to reinforce ''lumpy'' investment patterns (significant investment in a single year, rather than a steady flow of investment), and/or encourage cost inflation? How would consumers benefit from any of the efficiency gains that incentive-based regulation is expected to produce?

9. In addition, to what extent is the MAG incentive-based approach likely to increase non-price cap carrier revenues? Does an inflation factor equal to the GDP Price Index accurately reflect changes in costs per line experienced by the carriers that can be expected to select Path A? Should an X-factor or consumer productivity dividend be included in RPL? Is a low-end adjustment necessary where carriers retain the option to remain under rate-of-return regulation, and at what level should it be set? How would the Commission evaluate the validity of low-end adjustment showings if carriers are no longer required to report cost data annually? What are the costs and benefits of permitting carriers to elect on a study area basis when to convert to incentive-based regulation and whether to continue pooling? Is the five-year transition period proposed by the MAG an appropriate transition period to incentive-based regulation? We invite commenters to address these issues and any others when discussing the incentive-based regulation proposals in the MAG plan.

10. *Advanced Services.* One goal of the MAG plan is to promote the deployment of advanced services to rural areas, a goal shared by the Commission. We seek comment on the validity of the MAG's premise that universal service funding caps and regulatory uncertainty have diminished non-price cap carriers' incentives to invest in new technologies. Does the MAG plan represent the best means of promoting the deployment of advanced services in rural areas, or are there alternative means that would better accomplish this goal? Does the MAG plan require the use of universal service funding to support advanced services or infrastructure capable of providing advanced services?

11. *Mergers and Acquisitions.* Is elimination of the all-or-nothing rule, as proposed in the MAG plan, warranted? Cost shifting concerns prompted the Commission to adopt the rule in 1993; do these concerns remain valid today? Likewise, is the proposed elimination of the freeze of study areas for non-price cap carriers warranted? Does the MAG plan adequately address gaming concerns that would arise if § 54.305 of the Commission's rules were eliminated? Are there alternative ways to address the underlying concerns raised by the MAG that limits on universal service support discourage non-price cap carriers in rural areas from acquiring and upgrading telephone exchanges? We invite the Joint Board to comment on the universal service implications of these MAG proposals.

12. *Geographic Rate Averaging and Rate Integration.* We seek comment on the proposed pricing rules in the MAG plan that would be applicable to IXCs. Among other things, we invite parties to address whether all IXC minimum monthly charges should be prohibited, or whether IXCs should only be required to offer at least one calling plan without such charges. In addition, how would the Commission ensure that IXCs comply with the MAG's proposed requirements, given the fact that the Commission does not regulate the rates of IXCs?

III. Procedural Issues

A. Ex Parte Presentations

13. This is a permit but disclose rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules.

B. Initial Regulatory Flexibility Act

14. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the proposals in this NPRM. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this NPRM, and should have a separate and distinct heading designating them as responses to the IRFA. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA) in accordance with the RFA. In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Rules

15. The Commission has initiated this proceeding to consider interstate access charge and universal service reforms for rate-of-return carriers proposed by the MAG. The MAG plan would raise SLCs for all rate-of-return carriers to the price cap carriers' SLC caps and permit deaveraging of the SLCs. The plan would also extend the Lifeline program to cover the increased SLCs and eliminate the cap on high cost loop support and the corporate operations expense limitation. In other respects, the plan would permit rate-of-return carriers to continue under the current access charge and universal service regulatory regimes, or elect the alternatives available in the MAG plan. The MAG plan would also require IXCs to pass through to customers savings realized from reduced access rates and to offer the same optional calling plans to rural and urban customers alike.

16. Rate-of-return carriers electing the alternative regulatory approach proposed by the MAG plan would commence a five-year transition plan for interstate access charges and universal service funding. The MAG plan would, for example: establish an ''incentive'' method for compensating NECA pool members electing the incentive approach based on inflation-adjusted, revenue per line amounts; reduce per minute access charges to $0.016; establish low-end earnings levels; consolidate the two NECA pools into one pool; provide for certain pricing flexibility if a non-price cap carrier elects to remove one or more study areas from the NECA pool; and make certain of the options, including participation in the NECA pool, available on a study-area basis. The plan also establishes procedures for introducing new services and for the treatment of mergers and acquisitions. The plan would also establish an additional, explicit universal service subsidy for non-price cap carriers electing the incentive approach of the MAG plan (known as rate averaging support), make universal service support payments portable, and permit carriers to deaverage the universal service support into three zones per wire center. Settlements with non-price cap carriers would be handled by NECA whether a carrier elected to convert to incentive-based regulation under Path A of the MAG plan or remain under rate-of-return regulation. A rate-of-return carrier could elect to tariff its offerings for one or more study areas itself, which would give it additional pricing flexibility, but would

require it to forgo any rate averaging support.

2. Legal Basis

17. This rulemaking action is supported by sections 4(i), 4(j), 201–205, 254, and 403 of the Communications Act of 1934, as amended.

3. Description and Estimate of the Number of Small Entities to Which the NPRM Will Apply

18. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines ''small entity'' as having the same meaning as the term ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA.

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

20. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition for small providers of local exchange services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent Telecommunications Industry Revenue data, 1,348 incumbent carriers reported that they were engaged in the provision of local exchange services. We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of local exchange carriers that would qualify as small business concerns under the SBA's definition. Of this number, 13 entities are price cap carriers that would not be subject to the rules, if adopted. Consequently, we estimate that fewer than 1,335 providers of local exchange service are small entities or small incumbent local exchange carriers that may be affected by the proposed rules.

21. *Competitive Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition of small providers of local exchange service. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of competitive LECs nationwide of which the Commission is aware appears to be the data that the Commission collects annually in connection with the Telecommunications Relay Service (TRS). According to the Commission's most recent data, 129 companies reported that they were engaged in the provision of either competitive access provider services or competitive LEC services. The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of competitive LECs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that fewer than 129 providers of local exchange service are small entities or small competitive LECs that may be affected by these proposals.

22. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent *Carrier Locator* data, 738 carriers reported that their primary telecommunications service activity was the provision of interexchange services. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are less than 738 small entity IXCs that may be affected by the proposed rules.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

23. The MAG plan is a proposal submitted by four associations representing rate-of-return carriers. Under the MAG proposal, all rate-of-return LECs would be required to modify their access tariffs to comply with the new SLC caps, which may be deaveraged. Rate-of-return LECs selecting Path A must adjust their traffic sensitive rates (carrier common line, local switching, transport, and transport interconnection charge) to comply with the composite access rate or CAR target. Rate-of-return carriers electing incentive-based regulation for one or more study areas must establish revenue per line or RPL compensation amounts that will be inflation-adjusted annually, after which they will not be required to file cost data with NECA. The MAG proposes that Path A carriers with study areas participating in the pool's switched traffic sensitive tariff, but not in the special access tariff, must provide the special access rates of those study areas to NECA by March 1 prior to the annual filing to support NECA's calculation of pool transport rates. The MAG plan also proposes that rate-of-return carriers choosing to deaverage their universal service support file the effective per-line support amount for each universal service zone and a geographic description and map of each such zone with the Commission, the relevant state regulatory agency, and USAC. Rate-of-return carriers would be required to notify the Commission and the affected state regulatory commission before incorporating acquired telephone exchanges or lines into existing study areas, rather than having to file a waiver to do so, as is currently required. The MAG plan proposes that Path A carriers under incentive-based regulation and participating in the NECA pool be required to perform a twelve-month cost study of the acquired lines within eighteen months of the acquisition. Finally, the plan would permit a Path A carrier subject to incentive-based regulation (whether in or out of the NECA pool) to file a cost study with NECA seeking a low-end adjustment if its earnings fall below 10.75 percent (if five or fewer study areas are served) or 10.25 percent (if more than five study

areas are served). It is not clear whether, on balance, the proposals will increase or decrease rate-of-return carriers' administrative burdens.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

24. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

25. The proposals in the MAG plan could have varying positive or negative impacts on rate-of-return carriers, including any such small carriers. Because most of the changes are actually elective options, a small entity should be able to assess the impacts as part of its decision-making process. The alternative to consideration of adopting the MAG proposal at this time would be to continue in effect the existing access charge and universal service fund rules applicable to these small carriers, or adopting a portion, or a modified version, of the MAG plan. Public comments are welcomed on modifications of the MAG proposal that would reduce any potential impacts on small entities. Specifically, suggestions are sought on different compliance or reporting requirements that take into account the resources of small entities; clarification, consolidation, or simplification of compliance and reporting requirements for small entities that would be subject to the rules; and whether waiver or forbearance from the rules for small entities is feasible or appropriate. Comments should be supported by specific economic analysis.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

26. None.

IV. Comment Filing Procedures

27. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before February 26, 2001 and reply comments on or before March 12, 2001. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

28. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

29. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

30. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Wanda Harris, Competitive Pricing Division, 445 12th Street, SW., Washington, DC 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number, in this case CC Docket No. 00–256, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20037.

31. Parties who choose to file by paper and comment on universal service aspects of the MAG plan also should submit one paper copy of the comments to Sheryl Todd, Accounting Policy Division, 445 12th Street, SW., Room 5–B540, Washington, DC 20554.

32. Written comments by the public on the proposed and/or modified information collections are due on or before February 26, 2001. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before March 26, 2001. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Edward Springer, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW., Washington, DC 20503.

V. Ordering Clauses

33. Pursuant to the authority contained in sections 4(i), 4(j), 201–205, 254, and 403 of the Communications Act of 1934, as amended, this Notice of Proposed Rulemaking is adopted.

34. It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 36

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

47 CFR Part 61

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

47 CFR Part 65

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Proposed Rules

For the reasons set forth in the preamble, the Federal Communications Commission proposes to amend 47 CFR Parts 36, 54, 61, 64, 65, and 69 as follows:

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

Subpart F—Universal Service Fund

1. The authority citation for part 36 continues to read as follows:

Authority: 47 U.S.C. Secs. 151, 154(i) and (j), 205, 221(c), 254, 403 and 410.

2. In § 36.601, add the following sentence to the end of paragraph (c) to read as follows:

§ 36.601 General.

* * * * *

(c) The indexed cap on the Universal Service Fund as described in this subsection shall no longer apply as of July 1, 2001. The Administrator shall recalculate the Universal Service Fund without such cap as of July 1, 2001.

3. In § 36.621, revise paragraph (a)(4) introductory text to read as follows:

§ 36.621 Study area total unseparated loop cost.

(a) * * *

(4) Corporate Operations Expenses, Operating Taxes and the benefits and rent portions of operating expenses, as reported in § 36.611(e) attributable to investment in C&WF Category 1.3 and COE Category 4.13. This amount is calculated by multiplying the total amount of these expenses and taxes by the ratio of the unseparated gross exchange plant investment in C&WF Category 1.3 and COE Category 4.13, as reported in 36.611(a), to the unseparated gross telecommunications plant investment, as reported in § 36.611(f). Total Corporate Operations Expense, for purposes of calculating universal service support payments, beginning July 1, 2001 shall be the actual average monthly per-line Corporate Operations Expense.

* * * * *

4. In § 36.622, add paragraphs (d) and (e) to read as follows:

§ 36.622 National and study area average unseparated loop costs.

* * * * *

(d) Beginning July 1, 2001, the National Average Unseparated Loop Cost per Working Loop shall be calculated pursuant to § 36.621 and § 36.622(a), without any of the caps formerly required in this part.

(e) The National Exchange Carrier Association shall calculate support for loop-related costs on a per-loop basis for study areas of Path A LECs, as defined in § 61.3 of this chapter, that elect Path A incentive regulation for such study areas initially by adjusting such support as calculated for each such study area for the year prior to such election to reflect the annual percentage change in the GDP Price Index (GDP–PI), the estimate of the Chain-Type Price Index for Gross Domestic Product published by the United States Department of Commerce, and dividing such adjusted support by the study area's number of loops for the prior year reported pursuant to § 36.611. After election of incentive regulation for a study area, a Path A LEC may provide the Administrator with data updated to the date of such election, and the Administrator will adjust support for loop-related costs based on such data coincident with its time schedule. For each year subsequent to the year of election, the Administrator shall calculate per-line support for loop-related costs annually by adjusting the previous year's level of support to reflect the annual percentage change in the GDP–PI. The Administrator shall calculate the total annual support for loop-related costs for each such study area under incentive regulation by multiplying the adjusted per-loop support by the number of loops in that study area reported pursuant to § 36.611.

5. The definition of *''Study area''* in Part 36, Appendix-Glossary, is revised to read as follows:

* * * * *

Study area. Study area boundaries shall be frozen as they are on November 15, 1984, except that Path A LECs and Path B LECs, as defined in § 61.3, may alter study area boundaries when they acquire exchanges or lines from another telephone company, including a company subject to price cap regulation, so long as they notify the Common Carrier Bureau and the affected state regulatory commission or commissions of their intent to do so 30 days before the completion of such transaction. In such transaction with a Path A LEC or Path B LEC, the study area boundaries of a company subject to price cap regulation shall be adjusted accordingly.

* * * * *

PART 54—UNIVERSAL SERVICE

Subpart A—General Information

6. In § 54.5, add the following definitions in alphabetical order to read as follows:

§ 54.5 Terms and definitions.

* * * * *

Path A incentive regulation. ''Path A incentive regulation'' is the form of regulation established in § 61.62 of this chapter.

Path A LEC. A ''Path A LEC'' is an ILEC as defined in § 61.3 of this chapter.

Subpart D—Universal Service Support for High Cost Areas

7. Add a new paragraph (g) to § 54.301 to read as follows:

§ 54.301 Local switching support.

* * * * *

(g) The Administrator shall calculate local switching support on a per-line basis for study areas of Path A LECs that elect Path A incentive regulation for such study areas initially by adjusting the local switching support for each such study area for the year prior to such election to reflect the annual percentage change in the Department of Commerce's Gross Domestic Product—Chained Price Index (GDP–PI) and by dividing such adjusted support by its number of working loops for the prior year. After election of incentive regulation for a study area, a Path A LEC may provide the Administrator with data updated to the date of such election, and the Administrator will adjust local switching support based on such data coincident with its time schedule. For each year subsequent to the year of election, the Administrator shall calculate per-line local switching support annually by adjusting the previous year's level of support to reflect the annual percentage change in the GDP–PI. The Administrator shall calculate the total annual local switching support for each such study area under incentive regulation by multiplying the adjusted per-line local switching support by the number of working loops in that study area reported pursuant to § 36.611.

8. In § 54.303, paragraph (a) is revised and paragraph (b)(5) is added to read as follows:

§ 54.303 Long term support.

(a) Beginning July 1, 2001, an eligible telecommunications carrier that

participates in the association pool shall receive Long Term Support.

* * * * *

(b) * * *

(5) The Administrator shall calculate Long Term Support on a per-line basis for study areas of Path A LECs that elect incentive regulation for such study areas initially by adjusting the Long Term Support for each such study area for the year prior to such election to reflect the annual percentage change in the GDP–PI and dividing such adjusted amount by its number of working loops for the prior year. For each year subsequent to the year of election, the Administrator shall calculate per-line Long Term Support annually by adjusting the previous year's level of support to reflect the annual percentage change in the GDP–PI. The Administrator shall calculate the total annual Long Term Support for each such study area under incentive regulation by multiplying the adjusted per-line Long Term Support by the number of working loops in that study area reported pursuant to § 36.611 of this chapter.

9. In § 54.305, add a sentence at the end of the section to read as follows:

§ 54.305 Sale or transfer of exchanges.

* * * This section shall not apply to non-price cap LECs as defined in § 61.3 of this chapter.

10. In § 54.307, paragraph (a)(1) is revised to read as follows:

§ 54.307 Support to a competitive eligible telecommunications carrier.

(a) * * *

(1) A competitive eligible telecommunications carrier shall receive support for each line it serves based on the support the ILEC receives for each line. A Path A LEC's per-line support for purposes of this section shall be the effective per-line support per zone calculated in § 54.321(b).

* * * * *

11. Add §§ 54.319 and 54.321 to subpart F to read as follows:

§ 54.319 Rate averaging support.

(a) Beginning July 1, 2001, Path A LECs with study areas that participate in the pool administered by the association as of July 1, 2001 shall receive Rate Averaging Support (RAS).

(b) The Association shall calculate RAS as described in this paragraph.

(1) The common line component of RAS will be calculated as the difference between the pool's projected common line revenue requirement for Path A LECs and the sum of revenues of Path A LECs from end user common line charges and carrier common line (CCL) charges described in part 69 of this chapter of these rules and Long Term Support (LTS) of Path A LECs. The common line component of RAS will be distributed among study areas of Path A LECs subject to incentive regulation based on the difference between their individual common line revenue requirements and the sum of their individual revenues from end user common line charges and CCL charges that are consistent with the targeted CAR and their individual LTS.

(2) The traffic sensitive switched component of RAS will be calculated as the difference between the pool's projected traffic sensitive switched revenue requirement for Path A LECs and the sum of Path A LECs' projected revenues from the traffic sensitive elements that constitute the CAR as defined in § 69.130 and local switching support (LSS) of Path A LECs. The traffic sensitive component of the RAS will be distributed among Path A study areas based on the difference between their individual traffic sensitive switched revenue requirements and the sum of their individual revenues from the traffic sensitive elements that constitute the CAR as defined in § 69.130 and their individual LSS.

(3) The special access component of RAS will be calculated based on identifying the difference between projected special access revenue requirements and special access billed revenues for all those study areas of Path A LECs participating in the pool and subject to incentive regulation with revenue retention ratios greater than one. This component of the RAS would be distributed only to Path A study areas with revenue retention ratios greater than one based on their base year individual revenue retention ratios.

(c) The Association will calculate RAS annually, but the Association may adjust RAS on a monthly basis to reflect any delay in reporting of actual lines and billed revenues to bring Path A incentive settlements and revenues into balance beginning with periods after June 30, 2006.

(d) Path B LECs and non-pooling Path A LECs as defined in § 61.3 of this chapter are not eligible to receive RAS.

§ 54.321 Adjustments to per-line universal service support; disaggregation.

(a) The Administrator shall increase per-line universal service support as calculated in this part and in part 36 to reflect any expansion in the supported services listed in § 54.101 or if the Commission or Congress acts to stimulate the deployment of new services, adjust such support to reflect costs that Path A LECs and Path B LECs incur in complying with new state or federal regulations as the Commission shall permit by rule or order, which, subject to further order of the Commission, include but are not limited to regulations concerning number portability, the Communications Assistance in Law Enforcement Act, the completion of the amortization of depreciation reserve deficiencies, changes in the Uniform System of Accounts requirements made pursuant to § 32.16 of this chapter, changes in the Separations Manual, state and federal tax law changes, and changes in rules governing affiliate transactions and cost allocation; and adjust such support to reflect changes in Lifeline support per § 54.403.

(b) Within each study area, a Path A LEC or Path B LEC may define up to three zones per wire center and allocate to each a different percentage of the total universal service support per line provided to that study area under this part and part 36 of this chapter. Universal service support for purposes of this calculation section shall include Rate Averaging Support, if any, as calculated in § 54.319. Such allocation must be reasonably related to such LEC's costs of providing service in the various zones, and must remain in effect for at least four years. For each such zone, such LEC will calculate the effective per-line support amount within each zone by dividing the percentage of the study area's total universal service support allocated to that zone by the total number of lines within that zone. Such LEC must file the effective per-line support amount for each zone, together with a geographic description and map of each such zone, with the Commission, the Administrator, and the public utility commission of the state in which the study area is located.

(c) If a Path A LEC that participates in the pool administered by the Association and is under incentive regulation acquires or merges with an exchange or study area, for the first eighteen months after the date of the transaction, the universal service support for the acquired lines will be set at the average support of all Path A study areas in the pool under incentive regulation. The acquiring LEC must perform a cost study of the acquired lines for a consecutive twelve-month period within the first eighteen months after acquisition, and the support for the acquired lines will be calculated according to the cost study. If the acquired lines are included in an existing study area of the acquiring LEC, the LECs would receive an automatic waiver from the price cap rules of parts 61 and 69 of this chapter so that

individual exchanges from price cap companies may convert to incentive regulation.

PART 61—TARIFFS

Subpart A—General

12. In § 61.3, add the following definitions in alphabetical order to read as follows:

§ 61.3 Definitions.

* * * * *

(aaa) *Non-price cap LEC.* An incumbent Local Exchange Carrier for which price cap regulation is not mandatory and does not apply.

* * * * *

(bbb) *Path A.* A method of regulation provided in §§ 61.60 through 61.62.

(ccc) *Path A incentive regulation.* A method of regulation of Path A LECs provided in § 61.62.

(ddd) *Path A incentive study area.* A study area for which a Path A LEC has elected Path A incentive regulation.

(eee) *Path A LEC.* A non-price cap LEC that chooses Path A pursuant to § 61.60.

(fff) *Path A transition period.* The period from July 1, 2001, through June 30, 2006.

(ggg) *Path B.* A method of regulation provided in § 61.60(d).

(hhh) *Path B LEC.* A non-price cap LEC that chooses Path B pursuant to § 61.60.

* * * * *

(iii) *Revenue per line (RPL).* A settlement method used in Path A incentive regulation calculated pursuant to § 61.62(a)(1)(B).

* * * * *

Subpart E—General Rules for Dominant Carriers

§ 61.39 [Amended]

13. Amend § 61.39(b)(4)(ii) by removing the phrase ''carrier common line pool'' and adding in its place ''pool administered by the National Exchange Carrier Association.''

14. In § 61.41(c), add paragraph (c)(4) to read as follows:

§ 61.41 Price cap requirements generally.

* * * * *

(c) * * *

(4) Notwithstanding the provisions of § 61.42(c)(1) and (c)(2), when a Path A LEC or Path B LEC, as defined in § 61.3, acquires lines, exchanges or study areas from a telephone company subject to price cap regulation, or acquires, is acquired by, merges with, or otherwise becomes affiliated with a telephone company subject to price cap regulation, the Path A LEC or Path B LEC may retain its status as a Path A LEC or Path B LEC or become subject to price cap regulation in accordance with § 69.3(i) and the requirements referenced in that section.

15. Add §§ 61.60 and 61.62 to subpart E to read as follows:

* * * * *

§ 61.60 Regulation of non-price cap LECs.

(a) As of July 1, 2001, non-price cap LECs will be subject to either Path A or Path B as described in this section and § 61.62.

(b) Non-price cap LECs must notify the Commission no later than March 1, 2001, whether they elect to be Path A LECs or Path B LECs as of July 1, 2001. Such LECs must make this election on a per-operating company basis.

(c) *Path A.*—(1) *During the Path A transition period.*

(i) Except as otherwise expressly provided in the Commission's rules, during the Path A transition period, Path A LECs will continue under the regulations in place for them prior to July 1, 2001. During the Path A transition period, a Path A LEC that is a non-price cap LEC may choose for any of its study areas to recover revenues within the Association's single pool described in § 69.603 of this chapter on the same basis that the study area did prior to July 1, 2001. However, at any time during the Path A transition period, a Path A LEC may choose to move one or more of its study areas to Path A incentive regulation as defined in § 61.62.

(ii) If a Path A LEC's study area is settling with the pool at the start of the plan on a cost basis, it may continue during the Path A transition period to settle with the pool based on its reported costs.

(iii) A Path A LEC currently operating on an average schedule basis may choose for one or more of its study areas to remain regulated on that basis during the transition period. That study area will continue to settle with the pool based on average schedule settlement formulas. Path A LECs under average schedule rules may elect Path A incentive regulation within the pool on a per-study-area basis at any time during the Path A transition period. Path A LECs with average schedule study areas could also elect to convert to cost at any time during the transition period on a per-study area basis, consistent with current rules, as long as they have not moved to incentive regulation.

(iv) For all Path A LECs within the pool, there will be per-study area tariff election options during the Path A transition period. For switched access services, a Path A LEC may elect by study area to participate in the common line tariff only or the common line and traffic sensitive tariffs. Special access tariff participation is optional.

(2) *Post-transition period.* At the conclusion of the Path A transition period, all study areas of all Path A LECs not already subject to Path A incentive regulation will become Path A incentive study areas.

(d) *Path B.* (1) Except as otherwise expressly provided in the Commission's rules, Path B LECs will continue under the regulations in place for them prior to July 1, 2001. The authorized rate of return as of July 1, 2000 remains in effect for Path B LECs that continue under rate-of-return regulation.

(2) During the Path A transition period, a Path B LEC may elect to become a Path A LEC. After such election and until the end of the Path A transition period, such LEC, like other Path A LECs, may choose on a per-study-area basis to be subject to Path A incentive regulation pursuant to §§ 61.60 through 61.62. After expiration of the Path A transition period, all of the study areas of such Path A LEC will become subject to incentive regulation pursuant to such subsections.

(3) After expiration of the Path A transition period, Path B LECs that have not become Path A LECs may only be subject to Path A incentive regulation upon application for and grant of a waiver of this subsection by the Common Carrier Bureau of the Commission.

(4) Path B LECs may elect to file interstate access rates on a per-study area basis outside the Association tariffing and pooling process consistent with the tariff election options in effect prior to July 1, 2001.

§ 61.62 Path A Incentive Regulation.

(a) *During the Path A transition period.*—(1) *Study areas participating in the Association pool.*

(i) A study area of a Path A LEC participating in the Association pool and electing Path A incentive regulation during the Path A transition period will receive monthly settlement payments, including explicit universal service support, from the pool that equal the product of its revenue per line (RPL) for that year and its actual average monthly access line count. Pool settlements will be based on the pool's realized rate of return.

(ii) The Association shall calculate the RPL as the revenue requirement or settlement amount received per average monthly line count in the base year prior to the study area's conversion to incentive regulation, adjusted initially for inflation to reflect the annual

percentage change in the GDP Price Index (GDP–PI). During the transition period, the pool settlements for study areas under incentive regulation will be based on the study area's RPL requirement, but adjusted for the pool's realized rate of return. The RPL will be adjusted annually for inflation to reflect the annual percentage change in the GDP–PI. A Path A LEC may also provide information to the Association to permit it to update the RPL on a prospective basis to reflect updated cost study or revenue requirement data up to the point when the study area converted to Path A incentive regulation. *Example:* A study area in the Association pool elects Path A incentive regulation as of July 1, 2001, the start of the path A transition period. The revenue figures that the Association will use for calculating the RPL for that study area will be based on a 1999 cost study or average schedule revenue requirement data, adjusted for inflation to reflect the GDP Price Index (GDP–PI). On July 1, 2002, the RPL may be adjusted for inflation and to include updated 2000 cost study or settlement data. On July 1, 2003, the RPL will be adjusted for inflation, and it may be updated to include a half-year of updated 2001 cost study or settlement data. In all subsequent years, the RPL will be adjusted annually to include inflation only. Alternatively, a Path A LEC may notify the Association to set an RPL for a study area based on the latest data available at the time that the study area converts to Path A incentive regulation, with no further cost study or settlement updates. The Association then would adjust the RPL only for inflation.

(iii) Special access settlements for study areas subject to Path A incentive regulation that participate in the pool will be the product of a retention ratio, *i.e.,* a factor by which a pool participant keeps a percentage of the revenue that it bills, and billed revenues. A retention ratio equal to the base year's retention ratio (adjusted for rate changes) will apply.

(iv) Exchanges acquired by pool participants may enter the pool. If a Path A LEC in the pool and under incentive regulation acquires or merges with an exchange or study area, for the first eighteen months after the date of the transaction, the RPL for the acquired lines will be set at the average RPL of all Path A study areas in the pool under incentive regulation. The acquiring LEC must perform a cost study of the acquired lines for a consecutive twelve-month period within the first eighteen months after acquisition, and the RPL for the acquired lines will be calculated according to the cost study. If the acquired lines are included in an existing study area of the acquiring LEC, the RPL for that study area will be the weighted average of the RPLs of the acquiring study area and the acquired lines. If the acquired lines will be in a separate study area, the RPL for that study area is calculated separately from the RPLs of the acquiring LEC's existing study areas.

(2) *Study areas not participating in the Association pool.*

(i) Path A LECs may elect to file interstate access rates on a per-study area basis outside the Association tariffing and pooling process. Once a study area exits the Association pool, it cannot return, absent a waiver of this and other applicable rules, except that if pool participants acquire lines or study areas outside the pool, the acquired lines may reenter the pool.

(ii) Path A LECs that elect the non-pooling option for one or more of their tariff options will file and administer their own interstate access tariffs for those tariff options. Interstate access charge rate elements will be those in the applicable sections of part 69 of this chapter. End User Common Line Charges must be set, and apply, pursuant to § 69.104 of this chapter. Non-pooling Path A LECs on Path A incentive regulation will establish all other switched access rate elements based on the applicable RPL consistent with paragraph (a)(1)(ii) of this section. Such rates may initially include universal service revenues including rate averaging support (RAS) as defined in § 54.319 of this chapter lost by exiting the pool, but RAS will not apply in subsequent years for study areas outside the pool. Once the initial rates are established, they can be de-averaged so long as such de-averaging does not increase the RPL. Path A LECs will establish special access rates for study areas outside the pool on a market basis. Deaveraging, term and volume discounts and contract pricing are permitted for such special access services. Such LECs may introduce new interstate access services subject to the tariff filing requirements of subpart F of part 61. A low end adjustment is available to non-pooling study areas subject to Path A incentive regulation per § 61.62(c)(3).

(b) *After the Path A transition period.*—(1) *Study areas participating in the Association pool.* After the Path A transition period ends, all study areas of Path A LECs that participate in the pool will receive settlements calculated by the Association as the product of the study area's RPL and actual line counts. For special access, settlements will be based on the applicable retention ratio, multiplied by billed revenues. The Association will make any adjustments needed to bring the available pool revenues and settlement claims into balance for Path A LECs once actual data is available. This adjustment amount will be included in the RAS of § 54.319 of this chapter on a monthly basis, to reflect any lag in the reporting of access lines and revenues. The low-end adjustment of § 61.60(c) will continue to be available.

(2) *Study areas not participating in the Association pool.* Path A LECs that elect the non-pooling option for one or more of their study areas will file and administer their own interstate access tariffs consistent with paragraph (a)(2) of this chapter. The low end adjustment of § 61.62(c) will continue to be available.

(c) *Path A low end adjustment.*—(1) *Five or fewer study areas subject to incentive regulation in the pool.* A Path A LEC with five or fewer study areas that are subject to Path A incentive regulation and are within the pool may apply for a low end adjustment at the end of a tariff period for any of its study areas in the pool if the interstate access rate of return for the prior year for a study area or study areas is below the authorized level of 11.25% by more than 50 basis points (*i.e.*, the return is less than 10.75%). Such LEC must apply to the Association for the adjustment. Such application must include a cost study demonstrating that the study area or areas earned less than 10.75% for a given year. Upon such a showing, the LEC will receive payments in twelve equal installments over the following year to bring the prior year's earnings for the study area or areas up to 10.75%. The Association will adjust the RAS, as defined in § 54.319 of this chapter, accordingly. Except in special circumstances, these payments will terminate at the end of the twelve-month period following the year in which the study area underearned. Any claim for an adjustment in a subsequent year would have to be supported by a new cost study. The accounting for these payments will provide that such payments will not increase the LEC's earnings for the period in which they are received. Any claim for a low end adjustment for a year subsequent to that for which an adjustment already has been made will exclude currently paid low end adjustment revenues.

(2) *More than five study areas subject to incentive regulation in the pool.* A Path A LEC with more than five study areas that are in the pool and subject to incentive regulation may apply for a low end adjustment for any of its study areas in the pool at the end of a tariff period

if the interstate access rate of return for the prior year for the study area or areas is below the authorized level of 11.25% by more than 100 basis points (*i.e.*, the return is less than 10.25%). Such LEC must apply to the Association for the adjustment. Such application must include a cost study demonstrating that the study area or areas earned less than 10.25% for a given year. Upon such a showing, the LEC will receive payments in twelve equal installments over the following year to bring the prior year's earnings of the study area or areas up to 10.25%. The Association will adjust the RAS, as defined in § 54.319 of this chapter, accordingly. Except in special circumstances, these payments would terminate at the end of the twelve-month period following the year in which the study area underearned. Any claim for an adjustment in a subsequent year would have to be supported by a new cost study. The accounting for these payments will provide that such payments will not increase the LEC's earnings for the period in which they are received. Any claim for a low end adjustment for a year subsequent to that for which an adjustment already has been made will exclude currently paid low end adjustment revenues.

(3) *Path A LECs with five or fewer study areas subject to incentive regulation outside the pool.* A Path A LEC with five or fewer study areas that do not participate in the pool and are subject to incentive regulation may apply at the end of a tariff period to the Commission for a low end adjustment to its rates if the interstate access rate of return for the prior year for its interstate tariff filing entity is below the authorized level of 11.25% by more than 50 basis points (*i.e.*, the return is less than 10.75%). Such application must include a cost study demonstrating that the study areas collectively earned less than 10.25% for a given year. Upon approval of such adjustment, the tariff filing entity will adjust its rates prospectively for twelve months to permit its interstate tariff filing entity to realize an interstate return of 10.25%. Except in special circumstances, this adjustment would terminate at the end of the twelve-month period following the year in which the tariff filing entity underearned. Any claim for an adjustment in a subsequent year would have to be supported by a new cost study. The accounting for this adjustment must provide that such adjustment will not increase the LEC's earnings for the period in which it is made. Any claim for a low end adjustment for a year subsequent to that for which an adjustment already has been made will exclude current low end adjustment revenues.

(4) *More than five study areas subject to incentive regulation outside the pool.* A Path A LEC with more than five study areas that are outside the pool and subject to incentive regulation may apply to the Commission for a low end adjustment to its rates at the end of a tariff period if the interstate rate of return for the prior year for its interstate tariff filing entity is below the authorized level of 11.25% by more than 100 basis points (*i.e.*, the return is less than 10.25%). Such application must include a cost study demonstrating that the study areas collectively earned less than 10.25% for a given year. Upon such a showing, the tariff filing entity will adjust its rates prospectively for twelve months to bring its prior year's earnings up to 10.25%. Except in special circumstances, this adjustment would terminate at the end of the twelve-month period following the year in which the tariff filing entity underearned. Any claim for an adjustment in a subsequent year would have to be supported by a new cost study. The accounting for this adjustment will provide that such adjustment will not increase the LEC's earnings for the period in which it is made. Any claim for a low end adjustment for a year subsequent to that for which an adjustment already has been made will exclude current low end adjustment revenues.

(d) *Adjustments for new regulatory requirements.* When new state or federal requirements as in § 54.321(a)(2) of this chapter apply to Path A LECs with study areas subject to Path A incentive regulation in the pool, the Association is authorized to prospectively adjust the RPL for these study areas within 90 days of the effective dates of such requirements in order to permit recovery of the costs of complying with them.

PART 64—[AMENDED]

Subpart R—Geographic Rate Averaging and Rate Integration

16. In § 64.1801, paragraph (c) is added to read as follows:

§ 64.1801 Geographic rate averaging and rate integration.

* * * * *

(c) Providers of interstate interexchange telecommunications services must offer customers in rural and high-cost areas of the United States the same optional calling plans, including discount or volume-based plans, that are available to their customers in urban areas. Providers of interstate interexchange telecommunications services in rural and high-cost areas of the United States are prohibited from imposing minimum monthly charges on their residential customers. Providers of interstate interexchange telecommunications services in rural and high-cost areas of the United States must pass through to long distance customers the savings that IXCs realize from lower access rates charged by Path A LECs and Path B LECs.

PART 65—[AMENDED]

Subpart F—Maximum Allowable Rates of Return

§ 65.702 [Amended]

17. In § 65.702, revise paragraph (b) by removing the phrase ''pool or pools'' and add in its place where ever it exists the word ''pools.''

PART 69—[AMENDED]

Subpart A—General

18. In § 69.2, add the following definitions in alphabetical order to read as follows:

§ 69.2 Definitions.

* * * * *

(WW) *Non-price cap LEC.* This term means the same as in § 61.3 of this chapter.

* * * * *

(XX) *Path A incentive study area.* This term means the same as in § 61.3 of this chapter.

(YY) *Path A LEC.* This term means the same as in § 61.3 of this chapter.

(ZZ) *Path A transition period.* This term means the same as in § 61.3 of this chapter.

* * * * *

19. In § 69.3, paragraph (e)(9) is revised and paragraph (g) is amended by removing the phrase ''Association pool'' and by adding the phrase ''Association common line pool.''

§ 69.3 Filing of access service tariffs.

* * * * *

(e) * * *

* * * * *

(9) At the start of the Path A transition period defined in § 61.3 of this chapter, non-price cap LECs that elect to file their own tariffs outside the Association pool for one or more of their study areas effective July 1, 2001, shall notify the Association no later than March 1, 2001 that such study areas will no longer participate in Association tariffs. After the start of the Path A transition period, non-price cap LECs that elect to file their own tariffs outside the Association

pool for one or more of their study areas effective July 1, 2002 or thereafter, shall notify the Association no later than March 1 prior to the annual tariff filing that such study areas will no longer participate in Association tariffs. During the Path A transition period, a non-price cap LEC within the Association pool may elect to participate in the pool's common line tariff only or the common line and traffic sensitive tariffs. After the Path A transition period ends, non-price cap LECs may elect for their study areas to participate in the Association pool's common line and traffic sensitive tariffs. The exercise of such options shall be effective July 1 of each year beginning in 2001, and such LECs must notify the Association of their decision regarding such options according to the schedule established earlier in this paragraph (e)(9). Path A LECs have the option to file special access tariffs outside the pool.

* * * * *

Subpart B—Computation of Charges

20. In § 69.101, revise the paragraph to read as follows:

§ 69.101 General.

Except as provided in § 69.1 and subpart C of this part, charges for each access element shall be computed and assessed as provided in this subpart. For general rules governing the calculation of charges for Path A LECs and Path B LECs, see §§ 69.130 through 69.136.

21. Section 69.104 is revised to read as follows:

§ 69.104 End user common line charge for non-price cap LECs and Path A incentive study areas.

(a) This section is applicable only to non-price cap LECs. A charge that is expressed in dollars and cents per line per month shall be assessed upon end users that subscribe to local exchange telephone service or Centrex service to the extent they do not pay carrier common line charges. A charge that is expressed in dollars and cents per line per month shall be assessed upon providers of public telephones. Such charge shall be assessed for each line between the premises of an end user, or public telephone location, and a Class 5 office that is or may be used for local exchange service transmissions.

(b) Beginning July 1, 2001, the maximum end user common line charges for all residential and single-line business lines shall be no higher than the maximum amounts for end user common line charges of price cap carriers stated in § 69.152 (d)(1)(ii)(A) through (d)(1)(ii)(D) (the ''stated amounts''), so long as those amounts are reasonably comparable to the end user common line charges that price cap LECs actually charge pursuant to § 69.152. Assuming such comparability, the end user common line charge for residential and single business lines will change to $5.00 per month on July 1, 2001, and annually change consistent with the stated amounts thereafter. There is no separate end user carrier common line charge for non-primary residence lines. End user common line charges for multi-line business lines and for each subscriber line associated with a public telephone will change from $6.00 per line to $9.20 per line in equal increments over the period from July 1, 2001 to July 1, 2003. End user common line charges for Centrex lines may be assessed based on a per-line charge that is 1/9 of the multi-line business end user common line charge. However, if a Centrex customer has fewer than nine lines, the monthly end user charge for those lines shall be the end user common line charge for one multi-line business.

(c) The End User Common Line charge for each residential local exchange service subscriber line shall be the same as such charge for each single-line business local exchange service subscriber line.

(d) A line shall be deemed to be a residential subscriber line if the subscriber pays a rate for such line that is described as a residential rate in the local exchange service tariff. Effective July 1, 2001, for purposes of this section, ''residential subscriber line'' includes residential lines that a non-price cap LEC provides to a competitive LEC that resells the line and on which access charges may be assessed.

(e) A line shall be deemed to be a single-line business subscriber line if the subscriber pays a rate that is not described as a residential rate in the local exchange service tariff and does not obtain more than one such line from a particular telephone company.

(f) No charge shall be assessed for any WATS access line.

(g) A non-price cap LEC shall assess no more than one End User Common Line charge as calculated under the applicable method under this section for Basic Rate Interface integrated services digital network (ISDN) service. No more than five End User Common Line charges shall be assessed as calculated under this section for Primary Rate Interface ISDN service.

(h) In the event that a non-price cap LEC charges less than the maximum End User Common Line charge for any subscriber lines, it may not recover the difference between the amount collected and the maximum from carrier common line charges or RAS as defined in § 54.319 of this chapter.

(i) End User Common Line Charge De-Averaging. Beginning on July 1, 2001, non-price cap LECs may geographically de-average End User Common Line charges into up to three geographic zones per wire center, so long as no multi-line business End User Common Line charge is set lower than the lowest residential End User Common Line charge. Such LECs must file their End User Common Line Charges for each zone, together with a geographic description and map of each such zone, with the Commission. If such LECs participate in the pool, the Association will impute revenues from End User Common Line Charges as if they had been set at the maximum amount.

22. In § 69.114 paragraphs (a) through (d) are redesignated as paragraphs (b) through (e) and a new paragraph (a) is added to read as follows:

§ 69.114 Special access services.

(a) The Association will tariff special access services for Path A and Path B study areas participating in the pool. Path A LECs may also elect to tariff their special access services outside the Association pool. Pricing flexibility for individual rates, such as term and volume discounts, will be available. The Association will have the flexibility to develop other price structures that would align study area prices and costs more closely.

* * * * *

23. Add §§ 69.130, 69.132, 69.134 and 69.136 to subpart B to read as follows:

§ 69.130 Composite access rate.

(a) Association access tariffs for non-price cap LECs or access tariffs filed directly with the Commission by such entities shall include all applicable per-minute switched access rate elements in this subpart B.

(b) The Association shall calculate a Composite Access Rate (''CAR'') for the Association pool that is the weighted aggregate of the per-minute switched access rates of the Path A LECs' study areas that participate in the pool at any time. During the Path A transition period, as defined in § 61.3 of this chapter, NECA will adjust the CAR annually according to the following schedule: As of July 1, 2001, the CAR will equal 2.2 cents per minute. As of July 1, 2002, the CAR will equal 1.8 cents per minute. As of July 1, 2003, and thereafter, the CAR will equal 1.6 cents per minute.

§ 69.132 New access services for non-price cap LECs and Path A incentive study areas.

New access services of non-price cap LECs shall be introduced at prevailing market rates. Such services either shall be administered by the Association on behalf of LECs that are pool participants or introduced outside the pool by non-price cap LECs that do not participate in the pool.

§ 69.134 Rates for certain access elements of Path A LECs.

Notwithstanding other sections of this subpart B:

(a) For Path A LECs that participate in the Association pool, the Association may set charges for the access rate elements included in the CAR to recover the revenue requirement that remains after revenues are received from the end user common line charges, carrier common line charges, long term support (LTS), local switching support (LSS), and rate averaging support (RAS) of such LECs. The Association shall set charges for such rate elements in a flexible manner to develop price structures that would align such charges and costs more closely.

(b) Path A LECs with study areas participating in the pool's switched traffic sensitive tariff but not in the special access tariff must provide the special access rates of those study areas to the Association by March 1 prior to the annual filing to support Association calculation of pool transport rates.

§ 69.136 Rates for certain access elements of Path B LECs.

For Path B LECs, the Association will calculate a total revenue requirement for average schedule and cost companies. The end user common line charges of Path B LECs will be the same as those for Path A LECs. Association calculations of rates for the access elements of Path B LECs will follow §§ 69.104 through 69.129 in effect as of July 1, 2000, recognizing the explicit support flows from Long Term Support and local switching support.

Subpart G—Exchange Carrier Association

24. Add a new paragraph (c) to § 69.603 to read as follows:

§ 69.603 Association functions.

* * * * *

(c) As of July 1, 2001, the Association shall convert its pooling system to a single pool for Path A LECs and Path B LECs, as defined in § 61.3 of this chapter. The authorized rate of return for the pool shall be that in effect as of July 1, 2000. The Association is authorized to evaluate the operation of the pool during the Path A transition period, as defined in § 61.3 of this chapter, and, as of the end of that period, is authorized to replace the single pool with two or more pools, including but not limited to separate pools for Path A LECs and Path B LECs, upon 60 days prior notice to the Commission.

* * * * *

25. In § 69.605, paragraphs (a) and (e) are revised to read as follows:

§ 69.605 Reporting and distribution of pool access revenues.

(a) Access revenues and cost data shall be reported by participants in association tariffs to the association for computation of monthly pool revenues distributions in accordance with this subpart. Notwithstanding the foregoing, Path A LECs with Path A incentive study areas as defined in § 61.3 are not required to report cost data to the Association for those study areas.

* * * * *

(e) The Association may update average schedule formulas for changes in costs or demands over the five-year period using changes in relative cost data of similarly-sized study areas that settle on a cost basis. The Association also may make structural modifications to the design of the average schedule formulas, to reflect changes in the mix of service offerings, changes in network design, or changes in operating practices.

[FR Doc. 01–2126 Filed 1–24–01; 8:45 am]

BILLING CODE 6712–01–U

Notices

Federal Register

Vol. 66, No. 17

Thursday, January 25, 2001

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.

U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections 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 burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Submit comments on or before March 26, 2001.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov.*

SUPPLEMENTARY INFORMATION:

OMB No.: OMB 0412–0542.

Form No.: AID 1558–2.

Title: Request for Advance or Reimbursement.

Type of Review: Renewal of Information Collection.

PURPOSE: The purpose of this information collection is to assure that American Schools and Hospitals Abroad (ASHA) grasnt recipients are permitted to obtain advances or reimbursements for expenditures that are authorized by the grant agreement. The information is used by (a) ASHA to monitor grant implementation relative to financial matters, (b) the Office of Financial Management (FM) to track disbursements and expenditures, and (c) the Department of the Treasury to effect payments.

Annual Reporting Burden:

Respondents: 70.

Total annual responses: 400.

Total annual hours requested: 17,866 hours.

Dated: January 16, 2001.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 01–2306 Filed 1–24–01; 8:45 am]

BILLING CODE 6116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections 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 burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Submit comments on or before March 26, 2001.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau of Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC, 20523, (202) 712–1365 or via e-mail bjohnson@usaid.gov.

SUPPLEMENTARY INFORMATION:

OMB No.: 0412–0543.

Form Nos.: AID 1558–1 and AID 1558–1A.

Title: Financial Status Report (Form 268 and 269 Worksheet).

Type of Review: Renewal of Information Collection.

Purpose: The purpose of this information collection is to assure that ASHA grant recipients are accountable for expenditures incurred under the grant agreement for only those items authorized by the agreement. The information is used by ASHA to monitor the expenditures under each authorized line item and calculate the monetary gain or loss realized during the life of the grant.

Annual Reporting Burden:

Respondents: 70.

Total annual responses: 400.

Total annual hours requested: 50,296 hours.

Dated: January 16, 2001.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 01–2307 Filed 1–24–01; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Opal Creek Scenic Recreation Area (SRA) Advisory Council; Notice of Meeting

AGENCY: Forest Service.

SUMMARY: An Opal Creek Scenic Recreation Area Advisory Council meeting will convene in Stayton, Oregon on Monday, February 12, 2001. The meeting is scheduled to begin at 6:00 p.m., and will conclude at approximately 8:30 p.m. The meeting will be held in the South Room of the Stayton Community Center located on 400 West Virginia Street in Stayton, Oregon.

The Opal Creek Wilderness and Opal Creek Scenic Recreation Area Act of 1996 (Opal Creek Act) (Pub. L. 104–208)

directed the Secretary of Agriculture to establish the Opal Creek Scenic Recreation Area Advisory Council. The Advisory Council is comprised of thirteen members representing state, county and city governments, and representatives of various organizations, which include mining industry, environmental organizations, inholders in Opal Creek Scenic Recreation Area, economic development, Indian tribes, adjacent landowners and recreation interests. The council provides advice to the Secretary of Agriculture on preparation of a comprehensive Opal Creek Management Plan for the SRA, and consults on a periodic and regular basis on the management of the area. The tentative agenda will include refining issue statements and describing the desired future condition of the SRA.

The public comment period is tentatively scheduled to begin at 8:00 p.m. Time allotted for individual presentations will be limited to 3 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits of the comment period. Written comments may be submitted prior to the February 12 meeting by sending them to Designated Federal Official Stephanie Phillips at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Stephanie Phillips; Willamette National Forest, Detroit Ranger District, HC 73 Box 320, Mill City, OR 97360; (503) 854–3366.

Dated: January 19, 2001.

Darrell Kenops,

Forest Supervisor.

[FR Doc. 01–2266 Filed 1–24–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Opal Creek Scenic Recreation Area (SRA) Advisory Council; Notice of Meeting

SUMMARY: An Opal Creek Scenic Recreation Area Advisory Council meeting will convene in Salem, Oregon on Saturday, February 3, 2001. The meeting is scheduled to begin at 9:00 a.m., and will conclude at approximately 2:00 p.m. The meeting will be held at the Salem City Library, Louck Hall, located on 585 Liberty Street SE in Salem, Oregon.

The Opal Creek Wilderness and Opal Creek Scenic Recreation Area Act of 1996 (Opal Creek Act) (Pub. L. 104–208) directed the Secretary of Agriculture to establish the Opal Creek Scenic Recreation Area Advisory Council. The Advisory Council is comprised of thirteen members representing state, county and city governments, and representatives of various organizations, which include mining industry, environmental organizations, inholders in Opal Creek Scenic Recreation Area, economic development, Indian tribes, adjacent landowners and recreation interests. The council provides advice to the Secretary of Agriculture on preparation of a comprehensive Opal Creek Management Plan for the SRA, and consults on a periodic and regular basis on the management of the area. The tentative agenda will include refining issue statements and describing the desired future condition of the SRA.

The public comment period is tentatively scheduled to begin at 1:00 p.m. Time allotted for individual presentations will be limited to 3 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits of the comment period. Written comments may be submitted prior to the February 3 meeting by sending them to Designated Federal Official Stephanie Phillips at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Stephanie Phillips; Willamette National Forest, Detroit Ranger District, HC 73 Box 320, Mill City, OR 97360; (503) 854–3366.

Dated: January 19, 2001.

Darrel Kenops,

Forest Supervisor.

[FR Doc. 01–2267 Filed 1–24–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–814]

Stainless Steel Sheet and Strip in Coils From France: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

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

ACTION: Notice of extension of time limit for the preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the preliminary results of the review of stainless steel sheet and strip in coils from France. This review covers the period January 4, 1999 through June 30, 2000.

EFFECTIVE DATE: January 25, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Bolling at (202) 482–3434; Office of AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA).

Background

On September 6, 2000, the Department published a notice of initiation of the administrative review of stainless steel sheet and strip in coils from France, covering the period January 4, 1999 through June 30, 2000 (65 FR 53980). The preliminary results are currently due no later than April 2, 2001.

Extension of Time Limit for Preliminary Results

Because of the complex issues enumerated in the Memorandum from Edward C. Yang to Joseph A. Spetrini, *Extension of Time Limit for the Preliminary Results of Administrative Review of Certain Stainless Steel Sheet and Strip in Coils from France,* on file in the Central Records Unit (CRU) of the Main Commerce Building, Room B–099, we find that it is not practicable to complete this review by the scheduled deadline of April 2, 2001. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the preliminary results of review by 90 days until July 2, 2001.

Dated: January 12, 2001.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 01–2202 Filed 1–24–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–830]

Notice of Initiation of Countervailing Duty Investigation: Stainless Steel Bar from Italy

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

ACTION: Initiation of countervailing duty investigation.

EFFECTIVE DATE: January 25, 2001.

FOR FURTHER INFORMATION CONTACT: Suresh Maniam or Greg Campbell at (202) 482–0176 and (202) 482–2239, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Initiation of Investigation

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are references to the provisions codified at 19 CFR part 351 (April 2000).

The Petition

On December 28, 2000, the Department received a petition filed in proper form by Carpenter Technology Corp., Crucible Specialty Metals, Electralloy Corp., Empire Specialty Steel Inc., Slater Steels Corp., and the United Steelworkers of America, AFL–CIO/CLC (collectively, the petitioners). The Department received supplemental information to the petition on January 8, 2001.

In accordance with section 702(b)(1) of the Act, the petitioners allege that manufacturers, producers, or exporters of the subject merchandise from Italy receive countervailable subsidies within the meaning of section 701 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and (D) of the Act and they have demonstrated sufficient industry support. *See infra,* ''Determination of Industry Support for the Petition.''

Scope of Investigation

For purposes of this investigation, the term ''stainless steel bar'' includes articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.,* cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times in thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.,* cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled product), and angles, shapes and sections.

The stainless steel bar subject to this investigation is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedules of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of these investigations is dispositive.

During our review of the petition, we discussed the scope with the petitioners and the Customs Service (*see* Memorandum to Paula Ilardi, ''Scope Language for Stainless Steel Bar Petitions,'' dated January 9, 2001) to ensure that the scope in the petition accurately reflects the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Government of Italy (GOI) and the European Commission (EC) for consultations with respect to the petition filed. The Department held consultations with the GOI and EC on January 10, 2001. The points raised in the consultations are described in the Memorandum to File, ''CVD Consultations with Officials from the Government of Italy and the European Commission,'' dated January 10, 2001 and in the subsequent submission by the EC, dated January 10, 2001. These points are addressed in the Import Administration Countervailing Duty Investigation Initiation Checklist, dated January 17, 2001 (hereafter the Initiation Checklist), on file in the Central Records Unit, Room B–099 of the main Department of Commerce building.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department

shall either poll the industry or rely on other information in order to determine if there is support for the petition.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

We reviewed the description of the domestic like product presented in the petition with Customs and the ITC. Based upon our review of the petitioners' claims, we concur that there is a single domestic like product, which is defined, *supra,* in the ''Scope of Investigation'' section. Moreover, the Department has determined that the petition contains adequate evidence of industry support and, therefore, polling is unnecessary (*see* Initiation Checklist). The Department received no opposition to the petition. The petitioners established industry support representing over 50 percent of total production of the domestic like product. Accordingly, we determine that this petition is filed on behalf of the domestic industry within the meaning of section 702(c)(4)(A) of the Act.

[1] *See Algoma Steel Corp. Ltd.,* v. *United States,* 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition,* 56 FR 32376, 32380–81 (July 16, 1991).

Injury Test

Because Italy is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from Italy materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise. The petitioners contend that the industry's injured condition is evident in the declining trends in net operating income, net sales volume and value, profit to sales ratios, and capacity utilization. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by accurate and adequate evidence, and meet the statutory requirements for initiation (*see* Initiation Checklist).

Allegations of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for an imposition of a duty under sections 701(a), and (2) is accompanied by information reasonably available to the petitioners supporting the allegations.

Initiation of Countervailing Duty Investigation

The Department has examined the countervailing duty petition on stainless steel bar from Italy and found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of stainless steel bar from Italy receive countervailable subsidies (*see* Initiation Checklist).

A. Equityworthiness

The petitioners allege that, consistent with *Wire Rod,*[2] the Department should find Cogne Acciai Speciali S.r.l. (CAS) and its predecessors unequityworthy from 1985 through 1988 and from 1991 through 1992.

B. Creditworthiness

The petitioners allege that, consistent with *Wire Rod,* the Department should find CAS and its predecessors uncreditworthy from 1985 through 1993. The petitioners also request that the Department investigate the creditworthiness of Gruppo Falck S.p.A. (Falck) and Acciaierie di Bolzonao S.p.A. (Bolzano) from 1993 through 1994 and from 1995 through 1996, respectively. The petitioners note that in *Wire Rod,* the Department initiated an uncreditworthy investigation on Falck and Bolzano for the years in question, but did not make a final determination because these companies were found to have not received any long-term loans or loan guarantees in those years (*see* Petitioners Supplement, dated January 8, 2001, at Attachment 1.) If, in the course of this investigation, we discover that Falck or Bolzano received equity infusions, loans or loan guarantees were provided in these years, we will investigate whether they were uncreditworthy.

C. Change in Ownership

The petitioners allege that Finsider S.p.A. (Finsider)/ILVA and Falck, received non-recurring grants prior to their changes in ownership and that, after the changes in ownership, CAS and Acciaierie Balbruna S.r.l. (Valbruna)/Bolzano are, for all intents and purposes, the same ''person'' as Finsider/ILVA and Falck, respectively. Consequently, according to the petitioners, consistent with the Department's recent *AST Remand Redetermination,*[3] the past countervailable subsidies received by these business entities continue to be countervailable after the changes in ownership. In support of the their allegation for CAS, the petitioners note that CAS, like the respondent in the *AST Remand Redetermination,* was created as a separately incorporated subsidiary of ILVA pursuant to the restructuring of the Italian steel industry. All assets and certain

[2] *See Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy,* 63 FR 40474 (July 29, 1998) (*Wire Rod*).

[3] *See Final Results of Redetermination Pursuant to Court Remand in Acciai Speciali Terni S.p.A.* v. *United States., et al., (Ct. No. 99–06–00364)* (December 19, 2000) (*AST Remand Redetermination*).

liabilities associated with the production facilities of these companies were contributed to the newly formed companies in preparation for privatization.

With regard to Bolzano, the petitioners argue that the company's financial statements demonstrate the continuity in the company's business activities before and after its sale. In particular, the company's production of merchandise continued unimpeded during the period of ownership change. Therefore, the petitioners request, consistent with the methodology in the *AST Remand Redetermination,* that all non-recurring subsidies provided to Finsider/ILVA and Falck be attributed in full to CAS and Valbruna/Bolzano, respectively.

D. Programs

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in Italy:

Government of Italy Subsidies

1. Capacity Reduction Payments under Law 193/1984
2. Law 796/76 Exchange Rate Guarantees
3. Article 33 of Law 227/77, Export Credit Financing Under Law 227/77, and Decree Law 143/98
4. Law 451/94 Early Retirement Benefits
5. Grants under Laws 46/82 and 706/85
6. Law 181/89 and Law 120/89
7. Law 488/92, Legislative Decree 96/93 and Circolare 38522
8. Law 341/95 and Circolare 50175/95
9. Law 675/77
10. Export Marketing Grants under Law 394/81
11. Law 10/91
12. Law 481/94 ''Law on Dismantling of the Private-Sector Steel Industry''
13. Law 549/95

Government of Bolzano Subsidies

14. Bolzano Law 25/81 Articles 13 through 15

Government of Valle d' Aosta Subsidies

15. Valle d' Aosta Law 64/92
16. Valle d' Aosta Law 12/87

European Union Subsidies

17. ECSC Article 54 Loans
18. European Social Fund
19. ECSC Article 56 Conversion Loans, Interest Rebates and Restructuring Grants
20. European Regional Development Fund
21. Commission Decision 88/588 and Resider II

Company Specific Subsidies Conferred by the Government of Italy

22. Restructuring Subsidies Provided to CAS
A. Equity Infusions to Finsider and ILVA
B. Pre-Privatization Assistance and Debt Forgiveness

Company Specific Subsidies Conferred by the Government of Bolzano

23. Purchase and Leaseback of Bolzano Industrial Site
A. Lease of Bolzano Industrial Site to Valbruna
B. Lease Exemption under Valbruna/Bolzano Lease
C. Environmental and Research and Development Assistance to Bolzano

Company Specific Subsidies Conferred by the Government of Valle d'' Aosta

24. Assistance Associated with Sale of CAS
A. Lease of Cogne Industrial Site
B. Provision of Electricity
C. Waste Plant
D. Loans to CAS to Transfer its Property

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the petition have been provided to the GOI and the EC. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided for under § 351.203(c)(2) of the Department's regulations.

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine no later than February 12, 2001, whether there is a reasonable indication that import of stainless steel bar from Italy is causing material injury, or threatening to cause material injury to, a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: January 17, 2001.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 01–2203 Filed 1–24–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012201B]

Fishing Vessel Capital Construction Fund Agreement, Application, and Certificate of Construction/Reconstruction

AGENCY: National Oceanic and Atmospheric Administration (NOAA)

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 26, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW., Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Charles L. Cooper, Financial Services Division, Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, phone 301-713-2396.

SUPPLEMENTARY INFORMATION:

I. Abstract

Respondents will be commercial fishing industry individuals, partnerships, and corporations that want to enter into Capital Construction Fund agreements with the Secretary of Commerce. Such agreements allow deferral of Federal taxation on fishing vessel income deposited into a fund for the respondent for use in the acquisition, construction, or reconstruction of a fishing vessel. Deferred taxes are recaptured by reducing an agreement vessel's basis for depreciation by the amount withdrawn from the fund for its acquisition, construction, or reconstruction. The information collected from agreement holders is used to determine their eligibility to participate in the Capital Construction Fund Program pursuant to

50 CFR part 259. At the completion of the construction/reconstruction, a certificate to that effect must be submitted.

II. Method of Collection

The information will be collected on forms: the Fishing Vessel Capital Construction Fund Application, the Interim Capital Construction Fund Agreement, and the Certificate of Construction/Reconstruction.

III. Data

OMB Number: 0648-0090.

Form Number: NOAA Form 88-14.

Type of Review: Regular submission.

Affected Public: Business and other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time Per Response: 3.5 hours for an agreement, 1 hour for a certificate.

Estimated Total Annual Burden Hours: 2,250.

Estimated Total Annual Cost to Public: $1,000.

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: January 19, 2001.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 01–2319 Filed 1–24–01; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011901B]

Endangered Species; Permits

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

ACTION: Receipt of an application for a scientific research permit 1275 and 1276.

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has received a scientific research permit application from Mr. Joseph Hightower, of North Carolina Cooperative Fish and Wildlife Research Unit (NCCFWRU) (1275)and from Mr. Jay Holder, of Florida Fish and Wildlife Conservation Commission (FFWCC) (1276).

DATES: Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5 p.m. eastern standard time on February 26, 2001.

ADDRESSES: Written comments on any of the new applications or modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application or modification request. Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are available for review in the indicated office, by appointment:

For permits 1275, 1276: Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910 (ph: 301-713-1401, fax: 301-713-0376).

FOR FURTHER INFORMATION CONTACT: Terri Jordan, Silver Spring, MD (ph: 301-713-1401, fax: 301-713-0376, e-mail: Terri.Jordan@noaa.gov).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222-226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species and evolutionarily significant units (ESU's) are covered in this notice:

Fish

Shortnose sturgeon (*Acipenser brevirostrum*)

New Applications Received

Application 1275: The applicant proposes to conduct a two year survey of the Nuese River to prepare a baseline study of the possible existance of shortnose sturgeon in the river. The research will use the NMFS sampling protocols for determining presence or absence of shortnose sturgeon in a selected river. The goals of the study are to determine whether shortnose sturgeon are present within the Nuese River system, and to determine if suitable shortnose sturgeon habitat is available within the river system.

Application 1276: The applicants propose to conduct an absence/presence study for shortnose sturgeon in the St. John River, Florida. Shortnose sturgeon were last reported in the system in the 1970s and 1980s. The primary objective of the study is to determine the existing population level of shortnose sturgeon within the river system. The applicant will use the NMFS approved sampling prototcols for a presence/absence study. Obtaining an estimate of shortnose sturgeon numbers will allow resource partners to implement the secondary objective whereby other recovery plan strategies for the species can proceed.

Dated: January 19, 2000.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–2317 Filed 1–24–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.011701C]

Endangered Species; Permits

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

ACTION: Issuance of permit 1267.

SUMMARY: Notice is hereby given that NMFS has issued a permit, on December 20, 2000, to the Plum Creek Timber Company (Plum Creek Timber Company, Inc., Plum Creek Timberlands, L.P., Plum Creek Timber I, L.L.C., Plum Creek Marketing, Inc., Plum Creek Land Company, Plum Creek Northwest Lumber, Inc., Plum Creek Northwest Plywood, Inc., and Plum Creek MDF, Inc.), hereafter referred to as A ''Plum Creek,'' that authorizes incidental take of Endangered Species Act-listed anadromous fish, subject to certain conditions set forth therein.

ADDRESSES: The applications and related documents are available for review in the following office, by appointment:

Snake River Habitat Branch Office, 10215 W Emerald, Suite 180, Boise, Idaho 83704.

FOR FURTHER INFORMATION CONTACT: Bob Ries (208-882-6148).

SUPPLEMENTARY INFORMATION: The permit was issued under the authority of section 10(a)(1)(B) of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 222-227).

The permit covers activities associated with manufacturing of forest products and commercial forest management, including timber harvest, tree planting, stand maintenance, fire suppression, prescribed burning, cattle grazing, sales of gravel and landscaping stones, habitat restoration, scientific surveys and studies, special forest use permits, and manufacturing plants in Idaho, Washington, and Montana, as described in the Plum Creek Native Fish Habitat Conservation Plan and associated Environmental Impact Statement, and Record of Decision. The Record of Decision was signed on November 20, 2000.

Notice was published on December 17, 1999 (64 FR 70695), that an application had been filed by Plum Creek for an incidental take permit. Permit 1267 was issued to the Plum Creek on November 20, 2000. Permit 1267 authorizes Plum Creek incidental take of threatened Columbia River Chum Salmon ESU (*Oncorhynchus keta*), Lower Columbia River chinook salmon ESU (*O. tschawytscha*), Lower Columbia River steelhead ESU (*O. mykiss*), Mid-Columbia River steelhead ESU (*O. mykiss*), Snake River steelhead ESU (*O. mykiss*), Snake River spring/summer chinook ESU (*O. tschawytscha*), and Snake River fall chinook salmon ESU (*O. tschawytscha*). In addition, Permit 1267 would authorize incidental take of the following unlisted species if they become listed prior to expiration of the permit: Upper Columbia River summer/fall chinook salmon ESU (*O. tschawytscha*), Mid-Columbia River spring chinook salmon ESU (*O. tschawytscha*), and Lower Columbia River/Southwest Washington coho salmon ESU (*O. kisutch*). Permit 1267 expires on November 20, 2030.

Issuance of the permit was based on a finding that Plum Creek had met the permit issuance criteria of 50 CFR 222.22(c). The permit will take effect for listed covered species on the effective date of a rule under Section 4(d) of the ESA prohibiting take of the species. For unlisted covered species, the permit will take effect upon the listing of a species as endangered, and for a species listed as threatened, on the effective date of a rule under section 4(d) of the ESA prohibiting take of the species.

Dated: January 22, 2001.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–2318 Filed 1–24–01; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Russia

January 19, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: January 25, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://www.otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement, effected by exchange of notes dated August 13, 1996 and September 9, 1996, as amended on December 15, 2000 and January 12, 2001, between the Governments of the United States and the Russian Federation establishes a limit for wool textile products in Category 435 for the period January 1, 2001 through March 31, 2001.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limit for the period January 1, 2001 through March 31, 2001.

This limit may be revised if Russia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Russia.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000).

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 19, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Bilateral Textile Agreement, effected by exchange

of notes dated August 13, 1996 and September 9, 1996, as amended on December 15, 2000 and January 12, 2001, between the Governments of the United States and the Russian Federation, you are directed to prohibit, effective on January 25, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 435, produced or manufactured in Russia and exported during the three-month period beginning on January 1, 2001 and extending through March 31, 2001, in excess of 13,801 dozen.

The limit set forth above is subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and the Russian Federation.

Products in the above category exported during 2000 shall be charged to the applicable category limit for that year (see directive dated September 13, 1999) to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such products shall be charged to the limit set forth in this directive.

This limit may be revised if Russia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Russia.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–2303 Filed 1–24–01; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board (DSB) Task Force on Chemical Warfare Defense will meet in closed sessions on February 12, 2001; February 26, 2001; March 12–13, 2001; and March 26, 2001; at SAIC, Inc., 4001 N. Fairfax Drive, Arlington, VA. The Task Force will assess the possibility of controlling the risk and consequences of a chemical warfare (CW) attack to acceptable national security levels within the next five years.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Task Force will assess current national security and military objectives with respect to CW attacks; CW threats that significantly challenge these objectives today and in the future; the basis elements (R&D, materiel, acquisition, personnel, training, leadership) required to control risk and consequences to acceptable levels, including counter-proliferation; intelligence, warning, disruption; tactical detection and protection (active and passive); consequence management; attribution and deterrence; and policy. The Task Force will also assess the testing and evaluation necessary to demonstrate and maintain the required capability and any significant impediments to accomplishing this goal.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board meetings, concern matters listed in 5 U.S.C. 552b(c)(1), and that accordingly these meetings will be closed to the public.

Dated: January 19, 2001.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–2279 Filed 1–24–01; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to delete and amend systems of records.

SUMMARY: The department of the Army is proposing to delete a system of records notice from its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

In addition, the Army is amending the system identifier for A0600–8–104b, Military Personnel Records Jacket (NGB) last published on November 4, 1999, at 64 FR 60177, to read A0600–8–104b NGB, same system name.

DATES: This proposed action will be effective without further notice on February 26, 2001, unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711.

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 systems 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: January 19, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion

A0640–10 ARPC

SYSTEM NAME:

Philippine Army Files (December 23, 1997, 62 FR 67055).

REASON:

Records are now covered under the Army's Privacy Act notice A0600–8–104b TAPC, Official Military Personnel Records.

Amendment

A0600–8–104B

SYSTEM NAME:

Military Personnel Records Jacket (NGB) (November 4, 1999, 64 FR 60177)

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with ''A0600–8–104b NGB''.

* * * * *

[FR Doc. 01–2278 Filed 1–24–01; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of the 1974; System of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice to amend preamble to systems of records notices.

SUMMARY: The Department of the Army is amending the Preamble to the Army's compilation of Privacy Act systems of records notices. The amendments consist of updating the For Further Assistance: and Points of Contact: entries, and adding GSA/GOVT–5 to the list of government-wide notice.

DATES: This proposed action will be effective without further notice on February 26, 2001 unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

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.

Dated: January 19, 2001.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

United States Army

How Systems of Records Are Arranged

Department of the Army records are identified by the directive number which prescribes the records created, maintained and used, and are published in numerical sequence by identification number. For example, a system of records about assignment of military personnel may be found in the 614 series; assignments, details and transfers'. Some subjects, such as investigations, are treated as sub-elements of a series, *e.g.,* 'criminal investigations', 'security', and 'military intelligence'.

How to Use the Index Guide

To locate a particular system of records, follow this general guide. The series subject corresponds to the system identification number. For example: medical records for military and civilian personnel are in the 40 series. The first letter, 'A', represents the Army, the number 40–66 is the prescribing directive, and the suffix letters are internal management devices.

For Further Assistance

Any questions should be addressed to the Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

Points of Contact

Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

Subject Series—System Identification Series

A0001—Office Administration Housekeeping Files
A0015—Boards, Commissions, and Committees Files
A0020—Inspector General Assistance, Inspections Investigation, and Follow-up Files
A0025—Information Management Files
A0027—Legal Services Files
A0030—Food Program Files
A0037—Financial Administration/ Management Files
A0040—Medical Services Files
A0055—Transportation and Travel Files
A0056—Surface Transportation Files
A0060—Exchange Service Files
A0065—Postal Services Files
A0070—Research, Development, and Acquisition Files
A0095—Aviation Files
A0135—General Army National Guard and Army Reserve Files
A0140—U.S. Army Reserve Files
A0145—Reserve Officers Training Corps (ROTC) Files
A0165—Religious Activity Files
A0190—Military Police Files
A0195—Criminal Investigation Files
A0210—Army Installations Files
A0215—Morale, Welfare, and Recreation/Non-appropriated Funds (NAF) Files
A0220—Military Personnel Data Files
A0340—Army Privacy Program Files
A0350—Training and Evaluation Files
A0351—Army Schools Files
A0352—Dependent's Education Files
A0360—Army and Public Information Files
A0380—Security Information Files
A0381—Military Intelligence Files
A0385—Safety Files
A0405—Homeowners Assistance/Real Estate Files
A0570—Human Resources Information Files
A0600—General/Military Personnel Management Files
A0601—Military Personnel Procurement Files
A0602—Behavioral and Social Sciences Files
A0608—Personal Affairs Files
A0614—Assignments, Details, and Transfers Files
A0621—Education Files
A0635—Officer/Enlisted Personnel Separation Files
A0640—Personnel Management and Identification of Individuals Files
A0672—Decorations, Awards, and Honors Files
A0680—Personnel Information System Files
A0690—Civilian Personnel Files
A0710—Inventory Management Files
A0715—Procurement Files
A0725—Requisition and Issue of Supplies and Equipment Files
A0735—Library Borrowers'/Users' Files
A0870—Army History Files
A0920—Civilian Marksmanship Program Files
A0930—Army Emergency Relief Transaction Files
A1105—Corps of Engineers Planning Files
A1130—Corps of Engineers Civilian Uniform Files
A1145—Corps of Engineers Regulator Functions Files

Army and Air Force Exchange Service (AAFES)

AAFES 02—Executive Management Records
AAFES 04—Personnel Management Records
AAFES 05—Information and Public Relations Records
AAFES 06—Legal and Legislative Records
AAFES 07—Financial Management Records
AAFES 09—Automated Data Processing Records
AAFES 12—Procurement Records
AAFES 15—Transportation Records
AAFES 16—Pans and Management Records
AAFES 17—Safety and Security Records

In Addition, the Department of the Army Maintains Systems of Records in Accordance with Government-Wide Privacy Act Systems of Records Notices.

Equal Employment Opportunity Commission

EEOC/GOVT–1—Equal Employment Opportunity in the Federal Government Complaint and Appeal Records

Federal Emergency Management Agency

FEMA/GOVT–1—National Defense Executive Reserve System

General Services Administration

GSA/GOVT–2—Employment Under Commercial Activities Contracts
GSA/GOVT–3—Travel Charge Card Program
GSA/GOVT–4—Contracted Travel Service Program
GSA/GOVT–5—Access Certificates for Electronic Services (ACES)

Department of Labor

DOL/GOVT–1—Office of Workers' Compensation Programs, Federal Employees' Compensation Act File
DOL/GOVT–2—Job Corps Student Records

Merit Systems Protection Board

MSPB/GOVT–1—Appeal and Case Records

Office of Government Ethics

OGE/GOVT–1—Executive Branch Public Financial Disclosure Reports and Other Ethics Program Records
OGE/GOVT–2—Confidential Statements of Employment and Financial Interests

Office of Personnel Management

OPM/GOVT–1—General Personnel Records
OPM/GOVT–2—Employee Performance File System Records
OPM/GOVT–3—Records of Adverse Actions, Performance Based Reduction in Grade and Removal Actions, and Termination of Probationers
OPM/GOVT–4—[Reserved]
OPM/GOVT–5—Recruiting, Examining, and Placement Records
OPM/GOVT–6—Personnel Research and Test Validation Records
OPM/GOVT–7—Applicant Race, Sex, National Origin, and Disability Status Records
OPM/GOVT–8—[Reserved]
OPM/GOVT–9—File on Position Classification Appeals, Job Grading Appeals, and Retained Grade or Pay Appeals
OPM/GOVT–10—Employee Medical File System Records

Requesting Records

Records are retrieved by name or by some other personal identifier. It is therefore especially important for expeditious service when requesting a record that particular attention be provided to the Notification and/or Access Procedures of the particular record system involved so as to furnish the required personal identifiers, or any other pertinent personal information as may be required to locate and retrieve the record.

Blanket Routine Uses

Certain ''blanket routine uses'' of the records have been established that are applicable to every record system maintained within the Department of Defense unless specifically stated otherwise within a particular record system. These additional blanket routine uses of the records are published below only once in the interest of simplicity, economy and to avoid redundancy.

Law Enforcement Blanket Routine Use

In the event that a system of records maintained by this component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

Disclosure When Requesting Information Blanket Routine Use

A record from a system of records maintained by this component may be disclosed as a routine use to a Federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

Disclosure of Requested Information Blanket Routine Use

A record from a system of records maintained by this component may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

Congressional Inquiries Blanket Routine Use

Disclosure from a system of records maintained by this component may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

Private Relief Legislation Blanket Routine Use

Relevant information contained in all systems of records of the Department of Defense published on or before August 22, 1975, may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

Disclosures Required by International Agreements Blanket Routine Use

A record from a system of records maintained by this component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities in order to comply with requirements imposed by, or to claim rights conferred in, international agreements and arrangements including those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel.

Disclosure to State and Local Taxing Authorities Blanket Routine Use

Any information normally contained in IRS Form W–2 which is maintained in a record from a system of records maintained by this component may be disclosed to state and local taxing authorities with which the Secretary of the Treasury has entered into agreements pursuant to Title 5, U.S. Code, Sections 5516, 5517, 5520, and only to those state and local taxing authorities for which an employee or military member is or was subject to tax regardless of whether tax is or was withheld. This routine use in in accordance with Treasury Fiscal Requirements Manual Bulletin Number 76–07.

Disclosure to the Office of Personnel Management Blanket Routine Use

A record from a system of records subject to the Privacy Act and maintained by this component may be

disclosed to the Office of Personnel Management concerning information on pay and leave, benefits, retirement deductions, and any other information necessary for the Office of Personnel Management to carry out its legally authorized Government-wide personnel management functions and studies.

Disclosure to the Department of Justice for Litigation Blanket Routine Use

A record from a system of records maintained by this component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

Disclosure to Military Banking Facilities Overseas Blanket Routine Use

Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged, or retired from the Armed Forces, information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual, the U.S. Government will be liable for the losses the facility may incur.

Disclosure of Information to the General Services Administration Blanket Routine Use

A record from a system of records maintained by this component may be disclosed as a routine use to the General Services Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

Disclosure of Information to the National Archives and Records Administration Blanket Routine Use

A record from a system of records maintained by this component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

Disclosure to the Merit Systems Protection Board Blanket Routine Use

A record from a system of records maintained by this component may be disclosed as a routine use to the Merit Systems Protection Board, including the Office of the Special Counsel for the purpose of litigation, including administrative proceedings, appeals, special studies of the civil service and other merit systems, review of OPM or component rules and regulations, investigation of alleged or possible prohibited personnel practices; including administrative proceedings involving any individual subject of the DOD investigation, and such other functions, promulgate din 5 U.S.C. 1205 and 1206, or as may be authorized by law.

Counterintelligence Purposes Blanket Routine Use

A record from a system of records maintained by this component may be disclosed as a routine use outside the DOD or the U.S. Government for the purpose of counterintelligence activities authorized by U.S. law or Executive Order or for the purpose of enforcing laws which protect the national security of the United States.

* * * * *

[FR Doc. 01–2277 Filed 1–24–01; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Navy

Public Hearings for the Draft Environmental Impact Statement for Renewal of Authorization to Use Pinecastle Range, Ocala National Forest, FL

AGENCY: Department of the Navy, DOD.

ACTION: Announcement of public hearings.

SUMMARY: The Department of the Navy (Navy) in cooperation with the United States Forest Service (USFS) has prepared and filed with the United States Environmental Protection Agency (EPA) a Draft Environmental Impact Statement (DEIS) for the renewal of USFS authorization to allow the Navy continued use of the Pinecastle Bombing Range located in the Ocala National Forest, FL. The Navy and USFS will conduct three public hearings to receive oral and written comments on the DEIS. Federal, state, and local agencies and interested individuals are invited to be present or represented at the hearings.

DATES: Hearing dates are:

1. January 29, 2001, 5:00 to 9:00 p.m., Ocala, FL.
2. January 30, 2001, 5:00 to 9:00 p.m., Eustis, FL.
3. February 12, 2001, 5:00 to 9:00 p.m., Umatilla, FL.

ADDRESSES: The hearing locations are:

1. Ocala—Ocala Civic Auditorium, 836 Northeast Sanchez, Ocala, FL.
2. Eustis—Eustis National Guard Armory, 605 South Bay Street, Eustis, FL (located on State Road 19).
3. Umatilla Community Center, 1 South Central Avenue Umatilla, FL.

FOR FURTHER INFORMATION CONTACT: Mr. Darrell Molzan, Southern Division Naval Facilities Engineering Command, telephone (843) 820–5796, facsimile (843) 820–7472, or e-mail: *molzandj@efdsouth.navfac.navy.mil.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the Navy in cooperation with the USFS has prepared and filed with the EPA a DEIS for the renewal of USFS authorization to allow the Navy continued use of the Pinecastle Bombing Range located in the Ocala National Forest, FL. A Notice of Intent for this DEIS was published in the **Federal Register** on April 1, 1997 (62 FR 15470). Two public scoping meetings were held in Umatilla, FL, on April 17, 1997, and in Ocala, FL, on April 29, 1997.

The DEIS is written to provide Navy and USFS decision-makers information of the potential impacts associated with the renewal of the Navy's authorization to continue using the range. The Navy is not proposing to select a new range or expand the current range under this action.

The Navy previously conducted a preliminary analysis of alternatives, including the plausibility of moving training operations to other military ranges in the southeast United States. These alternatives did not meet the Navy's operational criteria, thus were eliminated from detailed analysis in the DEIS. The preferred alternative presented in the DEIS would renew the Navy's authorization to use the range. There are no significant environmental impacts associated with either the preferred or no-action alternatives.

The DEIS has been distributed to various Federal, state, and local agencies, elected officials, and special interest groups, and is available for public review at the following public libraries:

—Umatilla Public Library, 412 Hatfield Drive, Umatilla, FL.

—Marion County Public Library, 15 Southeast Osceola Avenue, Ocala, FL.

The DEIS is also available to the public at two addresses on the worldwide web at *www.nasjax.navy.mil* or *www.efdsouth.navfac.navy.mil.* A limited number of printed copies are available to the public by contacting the project coordinator, Mr. Darrell Molzan by telephone (843) 820–5796, facsimile (843) 820–7472, or e-mail: *molzandj@efdsouth.navfac.navy.mil.*

The Navy will conduct three public hearings to receive oral and written comments concerning the DEIS. Each public hearing will be split into three segments. The first segment will be an Open-House from from 5 p.m. to 6:30 p.m., where attendees can circulate among poster stations that will highlight the main points of the DEIS, talk to Navy and USFS personnel about the document, and submit written comments. The second segment, from 6:30 p.m. to 8:00 p.m., will provide a public hearing format where individuals can provide comments orally. The third segment will be a continuation of the Open-House format from 8:00 p.m. to 9:00 p.m. Those who intend to speak will be asked to submit a speaker card available at the registration tables located at the entrance to each of the hearings. Oral comments will be transcribed by a stenographer. In the interest of available time, each speaker will be asked to limit oral comments to three minutes. Longer comments should be summarized at the public hearings and submitted in writing either at the hearings or mailed to Commander, Southern Division Naval Facilities Engineering Command (Attn: Mr. Darrell Molzan, Code 064DM), P.O. Box 190010, North Charleston, SC 29419–9010. Written comments are requested not later than February 20, 2001.

Dated: January 22, 2001.

J. L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 01–2309 Filed 1–24–01; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.141A and 84.149A]

Notice inviting applications for new awards for fiscal year (FY) 2001 for the High School Equivalency Program (HEP) and the College Assistance Migrant Program (CAMP)

AGENCY: Department of Education.

Purpose of Programs: The purpose of HEP and CAMP is to provide grants to institutions of higher education (IHEs), or to private non-profit agencies working in cooperation with IHEs, to help migrant and seasonal farmworkers complete high school and succeed in postsecondary education.

Eligible Applicants: IHEs or private non-profit agencies working in cooperation with IHEs.

Deadline for Transmittal of Applications: March 23, 2001.

Applications Available: January 25, 2001.

Deadline for Intergovernmental Review: May 23, 2001.

Available Funds: HEP $5,000,000.

Estimated Range of Awards: HEP $150,000–$475,000.

Estimated Average Size of Awards: HEP $385,000.

Estimated Number of Awards: HEP 13.

Available Funds: CAMP $3,000,000.

Estimated Range of Awards: CAMP $150,000–$400,000.

Estimated Average Size of Awards: CAMP $375,000.

Estimated Number of Awards: CAMP 8.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

SUPPLEMENTARY INFORMATION: HEP assists migrant and seasonal farmworkers to obtain a general education diploma (GED) and to be placed in postsecondary education or training, career positions, or the military. By locating the programs at IHEs, migrant and seasonal farmworkers also have opportunities to attend cultural events, academic programs, and other educational and cultural activities usually not available to them. CAMP assists migrant and seasonal farmworkers to successfully complete the first academic year of study in a college or university, and provides follow-up services to help students continue in postsecondary education.

The selection criteria used to review applications are included in the application package.

The Congress has appropriated a total of $20,000,000 for HEP and $10,000,000 for CAMP for FY 2001. The increases in the FY 2001 appropriations ($5,000,000 for HEP and $3,000,000 for CAMP) will be used to fund new applications.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, 86, 97, 98, and 99; (b) 34 CFR part 206, and the definitions of a migrant and seasonal farmworker in 34 CFR 200.40 and 20 CFR part 652, respectively.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the application or to obtain information on the program, call or write Mary L. Suazo, U.S. Department of Education, Office of Elementary and Secondary Education, Office of Migrant Education, 400 Maryland Avenue, SW, Room 3E227, FOB 6, Washington, DC 20202–6135. Telephone Number: (202) 260–1396. Inquiries may be sent by e-mail to mary__suazo@ed.gov or by FAX at (202) 205–0089. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document.

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use PDF you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

Program Authority: 20 U.S.C. 1070d–2

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 01–2257 Filed 1–24–01; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94–1384–029]

Morgan Stanley Capital Group Inc.; Notice of Filing

January 19, 2001.

Take notice that on November 8, 2000, Morgan Stanley Capital Group

Inc. (MSCG) tendered for filing an updated market power analysis in compliance with the Commission's orders authorizing MSCG to engage in wholesale sales of electric power at market-based rates.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before January 29, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests 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 at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–2295 Filed 1–24–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–364–013]

Williston Basin Interstate Pipeline Company; Nomination Variance Credits Refund Report

January 19, 2001.

Take notice that on January 12, 2001, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing with the Commission, its Nomination Variance Credits Refund Report made as a result of the Commission's Letter Order issued November 21, 2000 in the above referenced dockets.

Williston Basin states that on December 28, 2000, pursuant to Subsection 15.13.4 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1 and the November 21, 2000 Order, refunds related to calculated nominations variance charges incurred by Williston Basin's affiliates for the period July 1, 1996 through May 31, 2000 were made with interest through December 28, 2000 to all qualified shippers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before January 26, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests 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 at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–2296 Filed 1–24–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–364–014]

Williston Basin Interstate Pipeline Company; Notice of Refund Report

January 19, 2001.

Take notice that on January 12, 2001, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing with the Commission its Refund Report made in compliance with the Settlement approved by the Commission's Order issued November 21, 2000 in the above-referenced dockets.

Williston Basin states that on December 27, 2000, refunds of amounts owed were sent by overnight delivery to Williston Basin's shippers in connection with the Settlement rates and the rates that were in effect from January 1, 1996 through May 31, 2000, with interest calculated through December 28, 2000, in accordance with Section 154.501 of the Commission's Regulations and the Commission's Order issued November 21, 2000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before January 26, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests 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 at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–2297 Filed 1–24–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–463–000]

Williston Basin Pipeline Company; Notice of Technical Conference

January 19, 2001.

On August 15, 2000, Williston Basin Pipeline Company (Williston Basin) made a filing to comply with Order No. 637. Several parties have protested various aspects of Williston Basin's filing.

Take notice that a technical conference to discuss the various issues raised by Williston Basin's filing will be held on Tuesday, March 6, 2001, at 9:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Persons protesting any aspects of Williston Basin's filing should be prepared to defend their positions as well as discuss alternatives.

All interested persons are permitted to attend. To assist Staff in compiling a list of attendees for distribution at the conference, please e-mail esref.bilgihan@ferc.fed.us stating your name, the name of the entity you represent, the names of the persons who will be accompanying you, and an e-mail address and telephone number where you can be reached.

The issues to be discussed will include but are not limited to segmentation, flexible point rights, mainline priority at secondary points, discount provisions, imbalance services, penalties, and operational flow orders.

The above schedule may be changed as circumstances warrant.

David P. Boergers,

Secretary.

[FR Doc. 01–2298 Filed 1–24–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–318–001, et al.]

Consumers Energy Company, et al.; Electric Rate and Corporate Regulation Filings

January 18, 2001.

Take notice that the following filings have been made with the Commission:

1. Consumers Energy Company

[Docket No. ER01–318–001]

Take notice that on January 12, 2001, Consumers Energy Company (Consumers), tendered for filing the following tariff sheets as part of its FERC Electric Tariff No. 6 in compliance with the December 29, 2000 order issued in this proceeding:

Sub Original Sheet Nos. 117, 122, 123, 132 through 137, 141, 142, 144, 145, 146 and 157 and Original Sheet Nos. 117A, 137A, 142A and 157A

The sheets are to have an effective date of November 1, 2000.

Copies of the filed agreement were served upon the Michigan Public Service Commission and those on the official service list in this proceeding.

Comment date: February 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. California Independent System Operator Corporation

[Docket Nos. ER01–313–000; ER01–819–000; ER01–836–000; ER01–836–001]

Take notice that on January 12, 2001, the California Independent System Operator Corporation (ISO), tendered a supplement (Supplement) to Amendment No. 35 to the ISO Tariff. The ISO states that it tendered the Supplement to harmonize the Tariff sheets submitted in Amendment No. 35 with the Tariff sheets submitted in previous filings, and to correct a typographical error. The ISO proposes no substantive Tariff changes in the Supplement.

The ISO states that this filing has been served upon all parties in the above-referenced proceedings. In addition, the ISO has served this filing upon the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, the owners of RMR Units, and all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff.

Comment date: February 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Consumers Energy Company CMS Marketing, Services and Trading Company

[Docket No. ER01–171–001]

Take notice that on January 12, 2001, Consumers Energy Company (CECo) and CMS Marketing, Services and Trading Company (CMS MST), tendered for filing an amendment to its October 19, 2000, application requesting modification of Code of Conduct, modification of CECo's market-based rate power sales tariff, FERC Electric Tariff, First Revised Volume No. 8, and acceptance of a service agreement.

Comment date: February 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Alliant Energy Corporate Services, Inc.

[Docket No. ER01–937–000]

Take notice that on January 12, 2001, Alliant Energy Corporate Services Inc. (ALTM), tendered for filing a signed Service Agreement under ALTM's Market Based Wholesale Power Sales Tariff (MR–1) between itself and Dynegy Power Marketing, Inc., (DYPM).

ALTM respectfully requests a waiver of the Commission's notice requirements, and an effective date of October 24, 2000.

Comment date: February 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Arizona Public Service Company

[Docket No. ER01–938–000]

Take notice that on January 12, 2001, Arizona Public Service Company (APS), tendered for filing notice that effective midnight February 8, 2001, APS FERC Rate Schedule No. 97, effective date March 12, 1983 and filed with the Federal Energy Regulatory Commission by Arizona Public Service Company is to be canceled.

Notice of the proposed cancellation has been served upon the Arizona Electric Power Cooperative, Inc., and The Arizona Corporation Commission.

Comment date: February 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Illinois Power Company

[Docket No. ER01–939–000]

Take notice that on January 12, 2001, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 65251–2200, tendered for filing with the Commission a Service Agreement for Firm Long-Term Point-To-Point Transmission Service with Illinois Power and entered into pursuant to Illinois Power's Open Access Transmission Tariff.

Illinois Power requests an effective date of January 1, 2001 for the Agreement and accordingly seeks a waiver of the Commission's notice requirement.

Comment date: February 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Puget Sound Energy, Inc.

[Docket No. ER01–940–000]

Take notice that on January 12, 2001, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Long-Term Firm Point-To-Point Transmission Service with the United States of America Department of Energy acting by and through the Bonneville Power Administration (Bonneville), as Transmission Customer.

A copy of the filing was served upon Bonneville.

Comment date: February 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. The Dayton Power and Light Company

[Docket No. ER01–941–000]

Take notice that on January 12, 2001, The Dayton Power and Light Company (Dayton), tendered for filing a service agreement establishing PSEG Energy Resources & Trade LLC as a customer under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon PSEG Energy Resources & Trade LLC and the Public Utilities Commission of Ohio.

Comment date: February 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Heard County Power, L.L.C.

[Docket No. ER01–943–000]

Take notice that on January 12, 2001, Heard County Power, L.L.C. (Heard County), tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Tariff No. 1, effective February 15, 2001.

Heard County intends to sell electric power at wholesale at rates, terms, and conditions to be mutually agreed to with the purchasing party. Heard County's tariff provides for the sale of electric energy and capacity at agreed prices.

Comment date: February 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Northeast Utilities Service Company

[Docket No. ER01–945–000]

Take notice that on January 12, 2001, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company, and Public Service Company of New Hampshire, submitted pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations, rate schedule changes for sales of electricity to Unitil Power Corp.

NUSCO states that a copy of this filing has been mailed to Unitil Power Corp. and the Public Utilities Commission of New Hampshire.

NUSCO requests that the rate schedule changes become effective on January 15, 2001.

Comment date: February 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Doyle I, L.L.C.

[Docket No. ER01–946–000]

Take notice that on January 12, 2001, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d (1994), and Sections 35.1(c), 35.13, 385.203, and 385.205 of the Commission's Regulations, 18 CFR 35.1(c), 35.13, 385.203, 385.205, Doyle I, L.L.C. (Doyle), tendered for filing a revised rate consistent with its FERC Electric Rate Schedule No. 1 (Rate Schedule), which is the Power Purchase and Sale Agreement, as amended (PPSA) executed by Doyle and Oglethorpe Power Corporation (an electric membership corporation) (Oglethorpe) on May 25, 1999.

Copies of the filing were served upon Oglethorpe and on the Georgia Public Service Commission.

Comment date: February 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Exelon Generation Company L.L.C.

[Docket No. ER01–948–000]

Take notice that on January 12, 2001, Exelon Generation Company, L.L.C. (Exelon), tendered for filing power sales agreements under which Exelon will sell power.

Exelon states that a copy of the filing was served on each of the other parties to the agreements.

Comment date: February 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 01–2294 Filed 1–24–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–6937–2]

California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption—Notice of Within-the-Scope Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice regarding waiver of federal preemption-within-the-scope determination.

SUMMARY: On March 26, 1999, EPA published a Notice of Opportunity for Public Hearing and Public Comment (see 64 FR 14715, March 26, 1999), regarding California's request to EPA that EPA confirm the California Air Resources Board's (CARB's) finding that amendments to its zero-emission vehicle (ZEV) requirements of the low-emission vehicle (LEV) program are within-the-scope of a waiver of federal preemption EPA had previously approved (the earlier LEV waiver can be found at 58 FR 4166, January 13, 1993).

EPA is determining that California's amendments to the ZEV requirements of the LEV program, including the repeal of ZEV sales requirements from 1998 through 2002, are within the scope of previous waivers of Federal preemption granted pursuant to section 209(b) of the Clean Air Act (Act) to adopt and enforce its revised emission standards and accompanying enforcement procedures for 1988 and later model year vehicles and engines. In conjunction with the Notice of Opportunity for Public Hearing and Public Comment noted above, EPA held a hearing on the issues discussed within today's determination, therefore no additional opportunity for hearing is offered.

ADDRESSES: At the EPA's Air and Radiation Docket and Information Center, there are copies of the decision document containing an analysis of CARB's within-the-scope waiver request including: Information on standards and procedures and records of documents used in the decision document analysis (Docket A–97–20). The Air Docket Office is open from 8 to 5:30 p.m. Monday through Friday, room M–1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

Electronic copies of this Notice and the accompanying Decision Document are available via the Internet on the Office of Transportation and Air Quality (OTAQ) website (*http://www.epa.gov/OMSWWW*). Users can finds these documents by accessing the OTAQ website and looking at the path entitled ''Regulations.'' This service is free of charge, except for any cost you already incur for Internet connectivity. The electronic **Federal Register** version of the Notice is made available on the day of publication on the primary website (*http://www.epa.gov/docs/fedrgstr/EPA–AIR*).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, *etc.,* may occur.

FOR FURTHER INFORMATION CONTACT: David J. Dickinson, Supervisory Attorney, Certification and Compliance Division, U.S. Environmental Protection Agency, Ariel Rios Building (6405J), 1200 Pennsylvania Avenue, NW.,

Washington, DC 20460. Telephone: (202) 564–9256. Fax: (202) 565–2057. E-Mail address: Dickinson.David@epa.gov.

SUPPLEMENTARY INFORMATION:

I. ZEV Amendments Within the Scope Request

A. Procedural History

On January 13, 1993, EPA published a Notice Regarding Waiver of Federal Preemption granting California a waiver of federal preemption for the California LEV program. (58 FR 4166). The California LEV waiver included California's original ZEV requirements.

In March 1996, CARB amended the LEV program by eliminating the ZEV sales requirement for model years 1998 through 2002 along with several other modifications noted above.

On February 26, 1997, CARB submitted to the Administrator a request that EPA confirm the CARB Board's determination that the amendments to its regulations are within-the-scope of the existing LEV waiver. CARB also entered into, on March 29, 1996, memoranda of agreement (MOAs) with the seven largest vehicle manufacturers. These MOAs provide for the introduction of a certain number of ZEVs into the California market for calendar years 1998 through 2000 and require CARB to perform certain tasks.

When EPA receives new waiver requests from CARB, EPA publishes a notice of opportunity for public hearing and comment and then publishes a decision in the **Federal Register** following the public comment period. In contrast, when EPA receives within-the-scope waiver requests from CARB, EPA traditionally publishes a decision in the **Federal Register** and concurrently invites public comment if an interested party is opposed to EPA's decision.

Because EPA had already received written comment on this within-the-scope request, EPA held a hearing and invited comment on several issues before issuing today's decision. (See 58 FR 14715, 14716, March 26, 1999). The hearing was held on April 23, 1999. The public comment period closed on May 10, 1999.

Subsequent to the hearing and comment period, the United States Court of Appeals for the First Circuit issued a decision regarding the State of Massachusetts' adoption of California's MOAs as its own regulations, including a ruling on the question of whether the MOAs are federally preempted by section 209(a) of the Act. (See *Association of International Automobile Manufacturers, Inc.* v. *Commissioner, Massachusetts Department of Environmental Protection,* 208 F.3d 1 (1st Cir. 2000)).

B. Scope of Review

EPA may consider CARB's amendments or regulations to be within the scope of a previously granted waiver if the amendment does not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as comparable Federal standards, does not affect the consistency of California's requirements with section 202(a) of the Act, and does not raise new issues affecting EPA's previous waiver determination.

C. Decision

I have determined that California's ZEV amendments to its LEV regulations as applied in the 1994 model year and beyond are within the scope of previous waivers of Federal preemption granted pursuant to section 209(b) of the Act. The basis for this determination is described in detail in the Decision Document, which can be found in the docket for this action. The ZEV amendments to the LEV requirements which are applicable under California state law to 1998 through 2002 model year passenger cars, light-duty trucks, and medium-duty vehicles require manufacturers to provide the following:

(1) The elimination of the requirement upon manufacturers to certify, produce, and offer for sale in California ZEVs in amounts equal to two percent of their total California sales of passenger cars and light-duty trucks weighing less than 3,750 pounds beginning with the 1998 model year, increasing to five percent in the 2001 model year and ten percent in the 2003 model year (the ten percent ZEV requirement for the 2003 model year has been retained by California);

(2) the creation of multiple ZEV credits for vehicles produced prior to the 2003 model year; and

(3) the creation of test procedures for determining All-Electric Vehicle Range.

In a February 26, 1997 letter to EPA, CARB notified EPA of the above-described ZEV amendments to its LEV regulations affecting 1988 and subsequent model year vehicles, and requested that EPA confirm that the ZEV amendments are within the scope of existing waivers of Federal preemption. The Executive Officer stated that ''[t]he Board found that the amendments covered by this letter will not cause California motor vehicle emission standards, in the aggregate, to be less protective of public health and welfare than applicable Federal standards.* * *'' [1]

On January 7, 1993, EPA granted a waiver of Federal preemption for California's LEV program.[2] In doing so, EPA found that CARB's protectiveness determination was not arbitrary or capricious. As explained more fully in the Decision Document, EPA finds that CARB's protectiveness determination is not undermined by the ZEV amendments. Despite the elimination of the ZEV sales requirements from 1998 to 2002, CARB's NMOG fleet average standard remains the same and CARB's tiered LEV standards are at least as protective as comparable federal standards.

In addition, EPA finds that CARB's amendments do not affect their consistency with section 202(a) of the Act. The elimination of the ZEV sales requirement places no additional burden on the manufacturers; in fact, the manufacturers now have additional lead time to develop and implement ZEV technology. EPA also finds that the test procedure consistency requirement is not adversely affected by the CARB amendments as manufacturers of ZEVs are only required to test according to CARB's procedures. Finally, the ZEV amendments raise no new issues affecting EPA's previous waiver determination. Thus, these amendments are within the scope of the previous waiver granted on January 13, 1993.

II. Significance of MOAs

Within the initial **Federal Register** notice regarding CARB's request,[3] EPA sought comment as to ''the significance of the MOAs and issues that may arise out of the MOAs and their relevance to the within-the-scope waiver request CARB has submitted to EPA, addressing how the MOAs and related issues affect EPA's consideration either under the within-the-scope or waiver criteria.''

As more fully explained in the Decision Document, EPA has determined that the existence of the MOAs does not affect the within-the-scope determination. EPA believes that it has the authority and discretion to examine the MOAs, and similar methodologies and realities in California, to determine whether they have any adverse impact on either the waiver or within-the-scope criteria. As noted in the Decision Document, no such adverse impact was found in today's determination.

My decision will affect not only persons in California but also the

[1] CARB letter at 5.

[2] 58 FR 4166 (January 13, 1993).

[3] 64 FR 14715, 14716 (March 26, 1999).

manufacturers outside the State who must comply with California's requirements in order to produce motor vehicles for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability.

As with past waiver decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. sec. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Finally, the Administrator has delegated the authority to make determinations regarding waivers of Federal preemption under section 209(b) of the Act to the Assistant Administrator for Air and Radiation.

Dated: January 18, 2001.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 01–2174 Filed 1–24–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34203G; FRL–6764–2]

Chlorpyrifos; End-Use Products Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the use deletions and cancellations as requested by the companies that hold the registrations of pesticide end-use products containing the active ingredient chlorpyrifos and accepted by EPA, pursuant to section 6(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This order follows up a November 17, 2000, notice of receipt of requests for amendments to delete uses and receipt of requests for registration cancellations. In that notice, EPA indicated that it would issue an order confirming the voluntary use deletions and registration cancellations. Any distribution, sale, or use of canceled chlorpyrifos products is only permitted in accordance with the terms of the existing stocks provisions of this cancellation order.

DATES: The cancellations are effective January 25, 2001.

FOR FURTHER INFORMATION CONTACT: Tom Myers, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone number: (703) 308–8589; fax number: (703) 308–8041; e-mail address: myers.tom@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use chlorpyrifos products. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access information about the risk assessment for chlorpyrifos, go to the Home Page for the Office of Pesticide Programs or go directly http://www.epa.gov/pesticides/op/chlorpyrifos.htm.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–34203E. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

II. Receipt of Requests to Cancel and Amend Registrations to Delete Uses

A. Background

In a memorandum of agreement (Agreement) effective June 7, 2000, EPA and the basic manufacturers of the active ingredient chlorpyrifos agreed to several voluntary measures that will reduce the potential exposure to children associated with chlorpyrifos containing products. EPA initiated the negotiations with registrants after finding chlorpyrifos, as currently registered, was an exposure risk especially to children. As a result of the Agreement, registrants that hold the pesticide registrations of end-use products containing chlorpyrifos (who are in large part the customer of these basic manufacturers) have asked EPA to cancel or amend their registrations for these products. Pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA announced the Agency's receipt of these requests from the registrants by a **Federal Register** notice published on November 17, 2000 (65 FR 69518) (FRL–6753–3). With respect to the registration amendments, the registrants have asked EPA to amend end-use product registrations to delete the following uses: all termite control uses (these will be phased out); all residential uses (except for ant and roach baits in child resistant packaging (CRP) and fire ant mound drenches for public health purposes by licensed applicators and mosquito control for public health purposes by public health agencies); all indoor non-residential uses (except ship holds, industrial plants, manufacturing plants, food processing plants, containerized baits in CRP, and processed wood products treated during the manufacturing process at the manufacturing site or at the mill); all outdoor non-residential

sites (except golf courses, road medians, industrial plant sites, fence posts, utility poles, railroad ties, landscape timbers, logs, pallets, wooden containers, poles, posts, processed wood products, manhole covers, and underground utility cable and conduits; and fire ant mound drenches for public health purposes by licensed applicators and mosquito control for public health purposes by public health agencies); and use on post-bloom apple trees. In addition, the companies agreed to limit the maximum chlorpyrifos end-use dilution to 0.5% active ingredient (a.i.) for termiticide uses that will be phased out, limit the maximum label application rate for outdoor non-residential use on golf courses, road medians, and industrial plant sites to 1 lb/a.i. per acre, and either classify all new/amended chlorpyrifos products (except baits in CRP) as Restricted Use or package the products in large containers, depending on the formulation type, to ensure that remaining chlorpyrifos products are not available to homeowners. In return, EPA stated that with this Agreement, it had no current intention to initiate any cancellation or suspension proceedings under section 6(b) or 6(c) of FIFRA with respect to the issues addressed in the Agreement.

In the **Federal Register** of November 17, 2000, EPA published a notice of the Agency's receipt of end-use product amendments and cancellations from registrants that hold the pesticide registrations containing chlorpyrifos (who are in large part the customer of the basic manufacturers). These requests were submitted as a result of the Memorandum of Agreement that was signed on June 7, 2000 between EPA and the basic manufacturers of chlorpyrifos. A copy of the Memorandum of Agreement that was signed on June 7, 2000 is located in docket control number OPP–34203D.

B. Requests for Voluntary Cancellation of End-Use Products

Pursuant to the Agreement and FIFRA section 6(f)(1)(A), several registrants have submitted requests for voluntary cancellation of registrations for their end-use products. The registrations for which cancellations were requested are identified in the following Table 1.

TABLE 1.—END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS

Company	Reg. No.	Product
Verdant Brands, Inc.	70–178	Dursban 1/2G Granular Insecticide
	70–180	Dursban Lawn & Ornamental Spray
	70–184	Kill-Ko Dursban 1G Granular Insecticide
	70–228	Home Pest Insect Killer
	70–232	Rigo Dursban 2EC Liquid Insecticide
	70–255	Rigo Home Pest Control
	70–286	Rigo Dursban 1E Insecticide
	70–290	Rigo's Best Termite Killer
Dexol, A Division of Verdant Brands, Inc.	192–141	Dexol Dexa-Klor Granules Soil Insect Control
	192–142	Dexol Dexa-Klor Insect Spray
	192–151	Dexol Dexa-Klor Pest Control Indoor Insect Killer
	192–171	Dexol Roach, Cricket and Spider Dust
	192–173	Dexol Termite and Lawn Insect Killer
	192–180	Dexol Dursban Granules Insect Control
	192–192	Dexol Predator Home Insect Killer II
Whitmire Micro-Gen Research Laboratories, Inc.	499–147	Whitmire PT 270 Dursban
	499–256	Whitmire Chlorpyrifos Pressurized Residual Spray
	499–270	Whitmire 1-12 Insecticide
	499–292	Whitmire PT 279 Engage Residual Injection System
	49–315	Whitmire Duration PT 275
	499–317	Whitmire 1-6 Insecticide
	499–364	Whitmire PT 1900 Total Release Insecticide
	499–379	Whitmire PT 479 Regulator
	499–423	Whitmire TC-135 Chlorpyrifos MC
	499–424	Whitmire TC-160 Microencapsulated Termiticide
	499–448	Whitmire TC 151 Bait
Walco-Linck Company	506–158	TAT Flea & Tick Killer with Residual Action
	506–164	TAT Roach & Ant Killer II
The Scotts Company	538–69	Scotts Western Lawn Insect Control
	538–94	Scotts Western Lawn Insect Control Plus Fertilizer
	538–140	Summer Insect and Disease Control Plus Lawn Fertilizer
	538–153	Scotts Proturf Insect Control Plus Fertilizer
	538–154	Scotts Summer Insect Control Plus Fertilizer For Lawns
Rockland Corporation	572–213	Rockland Insecticide for Wood Destroying Pests
	572–219	Rockland Super Professional Dursban Chinch Bug Killer
Indy Specialty Products, Inc	654–131	Klor-Ban Concentrate
Prentiss Incorporated	655–577	Prentox Residual Insect Spray 2
	655–739	Prentox Pyrifos 0.5 Water Base Insecticide
	655–743	Prentox Pyrifos 1E
The Garden Grow Company	802–530	Lilly/Miller Chlorban Insect Spray
	802–532	Lilly/Miller Chlorban Insect Granules
	802–560	Lilly/Miller 1% Chlorban Insect Granules
	802–595	Lilly/Miller Hose'n Go Ant, Flea & Tick Killer
Southern Agricultural Insecticides, Inc.	829–250	Home & Garden Home Pest Control Spray

TABLE 1.—END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS—Continued

Company	Reg. No.	Product
	829–281	SA-50 Brand Home Pest Control Concentrate
Green Light Company	869–158	Green Light Dursban Granules
	869–168	Green Light Many Purpose Dursban Granules
	869–172	Green Light Borer Killer II
	869–184	Green Light Fire Ant Killer
	869–185	Green Light House Plant Spray II
	869–191	Green Light Indoor Flea & Tick Spray
	869–205	Green Light Ready-to-Use Fire Ant Mound Drench
	869–209	Green Light Dursban 5% Granules
	869–210	Green Light Double Dursban Granules
	869–221	Green Light Many Purpose Dursban Concentrate II
The Garden Grow Company	909–94	Cooke Act Plus Lawn Insecticide
	909–108	Cooke Ant Barrier
Agriliance	1381–149	Green Velvet Lawn Food Plus Insect Control
Universal Cooperatives, Inc.	1386–627	Red Panther Dursban Granular Turf and Lawn Insecticide
	1386–628	Red Panther Dursban 1
	1386–659	Agway Insect Spray
I. Schneid	2155–127	KR-24
PBI/Gordon Corporation	2217–646	Gordon's Dursban Turf Insecticide
Sergeant's	2517–52	Sergeant's Flea & Tick Collar
	2517–57	Sergeant's Fast-Acting Flea & Tick Collar for Dogs
Hartz	2596–135	Hartz 330 Day Flea & Tick Collar for Dogs
Wellmark International	2724–327	Zoecon RF-150 Yard and Kennel Spray
	2724–486	Arthitrol 0.5% Dursban (Granular) Ant and Roach Bait
Coyne Chemical Company	3050–136	Coyne Formula No. 101
ABC Compounding	3862–93	Assault
	3862–126	WB Residual Pressurized Spray
BETCO	4170–78	RA26 Residual Insecticide Spray
Combe Incorporated	4306–15	Sulfodene Scratchex Flea and Tick Collar for Dogs
Pet Chemicals	4758–135	Holiday Flea & Tick Killer
S.C. Johnson & Son, Inc.	4822–152	Raid Treatment for Crawling Insects
	4822–189	Raid Liquid Roach & Ant Killer Formula I
	4822–226	Raid Tree Guard Spray
	4822–230	Raid Outdoor Flea Killer
	4822–231	Raid Gypsy Moth & Japanese Beetle Killer II
	4822–232	Raid Gypsy Moth & Japanese Beetle Killer
	4822–236	Raid Tree Guard Spray Formula II
	4822–238	Raid Home Insect Killer Formula II
	4822–263	Raid Fire Ant Killer
	4822–264	Raid Fire Ant Killer Formula 2
	4822–275	Raid Outdoor Insect Killer
	4822–382	Raid Wasp & Hornet Killer
	4822–390	Raid Wasp & Hornet Killer Formula XII
	4822–402	Raid Max Roach Bait III
	4822–412	Raid Wasp & Hornet Killer ND
	4822–451	Raid Wasp & Hornet Killer AD
	4822–498	PA Formula 2
Verdant Brands, Inc.	5887–144	Black Leaf Dursban
	5887–177	Ready-to-Use Ant, Roach, Flea and Spider Spray
Midco Products Company, Inc.	6658–42	Pyreban-3
Carl Pool Products	6926–11	Carl Pool Lawn and Turf Food Plus Dursban 15-5-10
Cessco, Inc.	6959–73	Cessco ID Residual Insecticide
Carter-Wallace, Inc.	8220–38	Victory 12 Full Year Collar with Dursban Insecticide for Large Dogs
	8220–39	Victory II Full Season Cat Collar
Robinson Associates	8278–6	Metro (Tested) Soildrin D
Pursell Industries, Inc.	8660–10	Sta-Green Law Pest Control & Fertilizer 25-3-3
	8660–13	Sta-Green Lawn Pest Control & Fertilizer A
	8660–14	Sta-Green Lawn Pest Control & Fertilizer B
	8660–78	Dursban Lawn Insect Control
	8660–88	Dursban Granules
	8660–94	Green Up Insect & Grub Control with Dursban
	8660–97	Dursban 4E Insecticide
	8660–102	Dursban Plus
	8660–108	VertaGreen Dursban - DDVP 1.25 Turf Insecticide
	8660–109	VertaGreen Dursban - DDVP 2.50 Turf Insecticide
	8660–110	VertaGreen Home Pest Killer
	8660–122	Lawn & Ornamental Insect Spray Concentrate
	8660–123	VertaGreen Dursban 0.5% Granules
	8660–152	VertaGreen Professional Turf Food with Dursban
	8660–177	Golden Vigoro Insect Control Plus Lawn Fertilizer

TABLE 1.—END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS—Continued

Company	Reg. No.	Product
	8660–182	Green Turf Lawn Food with Insect Control
	8660–193	Ideal 18 Insect Control Plus Lawn Fertilizer
	8660–194	Ideal 20 Insect Control Plus Lawn Fertilizer
	8660–195	Ideal 25 Insect Control Plus Lawn Fertilizer
	8660–203	Koos Dursban 1.00 Granules
	8660–213	Par Ex Slow Release Fertilizer Plus Insect Control
	8660–232	Vigoro 2.32 Insecticide Granules
	8660–239	Vigoro Granular Cinch Bug Control
	8660–240	Vigoro Insect Control Plus Lawn Fertilizer for Texas Turf
Sherwin-Williams Company	10900–67	858 P.D. Aqueous Roach & Ant Spray
Illinois Tool Works, Inc.	11694–91	Duramist
Speer Products Incorporated	11715–70	Speer Roach & Ant Killer
	11715–97	Magic Guard Dursban Ant & Roach Pressurized Spray
	11715–99	Magic Guard Ant & Roach Killer
	11715–110	Mug-A-Bug Professional Strength Insecticide
	11715–132	Better World Ready-to-Use Insecticide
	11715–133	Mug-A-Bug II Professional Strength Insecticide
	11715–139	SPI Spot Treatment Spray
	11715–142	SPI Ant & Roach Spray
	11715–163	Speer Transparent Emulsion Spray 0.1% + 0.5%
	11715–298	Pro-Tect Home Pest Control
	11715–299	Speer Point Five Chlorpyrifos Aerosol
	11715–306	Speer Cyfluthrin Flea Killer
	11715–312	Speer D-Trans Residual Spray with Nylar
	11715–324	SPI Chlorpyrifos Wasp & Hornet Spray
	11715–326	SPI Chlorpyrifos Pet Area Treatment with Nylar
	11715–327	Security Granulated Chinch Bug Killer
Louisiana Chemical USA, Inc.	11746–15	Davis Kill-A-Bug XI
	11746–16	Davis Kill-A-Bug XII
Rainbow Technology Corporation	13283–8	Rainbow Insect Control
	13283–15	Rainbow Liquid RTU Fire Ant Killer
Positive Formulators, Inc.	26693–3	6 Months Pest Control
	26693–5	Killmaster II CC
Unicorn Laboratories	28293–35	Unicorn 30 Flea Spray
	28293–49	Unicorn Yard & Kennel Spray Concentrate
	28293–103	Unicorn House & Carpet Spray WB
	28293–104	Unicorn Dursban Household Insecticide
	28293–211	Termi-Chlor Termite Concentrate
	28293–321	Dursban 1EC Insecticide
PBI/Gordon Corporation	33955–540	Acme Ant Granules Contains Dursban Insecticide
	33955–547	Acme Dursban Insecticide for Lawns & Ornamentals
	33955–550	Acme Roach-Rid Brand Home Pest Killer
Pet Chemicals	37425–10	Adams Surface Spray
	37425–24	Adams Lawn and Kennel Spray Concentrate
Morgro, Inc.	42057–100	Dursban (R) Insecticide
CCL Industries Inc.	46813–38	CCL Crawling Insect Killer I
	46813–42	CCL Insecticide Foam Spray I
Marman USA, Inc.	48273–16	Agroban 4E
Gro Tec, Inc.	59144–8	Ant, Flea & Tick Granules
	59144–9	Green Charm Dursban 1% Granules
	59144–37	R & M Yard & Kennel Spray Concentrate
Kop-Coat, Inc.	60061–106	Woodlife B Clear Wood Preservative
Contract Packaging, Inc.	67572–53	CP Flea and Brown Dog Tick Granules - S.F.
Speer Products Incorporated	68688–3	Elite Yard & Kennel Spray
	68688–40	Elite Dursban 1-12-R144 Insecticide

In the **Federal Register** notice of November 17, 2000, EPA requested public comment on the voluntary cancellation and use deletion requests, and provided a 30-day comment period. The registrants requested that the Administrator waive the 180-day comment period provided under FIFRA section 6(f)(1)(C).

No public comments were submitted to the docket in response to EPA's request for comments.

C. Requests for Voluntary Amendments to Delete Uses from the Registrations of End-Use Products

Pursuant to section 6(f)(1)(A) of FIFRA, several registrants have also submitted requests to amend their end-use registrations of pesticide products containing chlorpyrifos to delete the aforementioned uses. The registrations for which amendments to delete uses were requested are identified in the following Table 2.

TABLE 2.—END-USE PRODUCT REGISTRATION AMENDMENT REQUESTS

Company	Reg. No.	Product
Whitmire Micro-Gen Research Laboratories, Inc	499–367	Whitmire PT 275 Dur-O-Cap Microencapsulated Chlorpyrifos Liquid Concentration
	499–405	Whitmire PT-1920 Total Release Insecticide
	499–413	Whitmire TC 100 Intern
	499–419	Whitmire PT 275 Dur-O-Cap Microencapsulated Chlorpyrifos
The Scotts Company	538–98	Proturf 30-5-3 Fertilizer Plus Insecticide III
	538–111	Proturf Insecticide III
	538–191	24-3-3 Fertilizer Plus Insecticide III
	538–226	Fertilizer Plus Insecticide/Preemergent Weed Control
Rockland Corporation	572–329	Urban Insect Spray
Prentiss Incorporated	655–441	Prentox Residual Concentrate DV-One
	655–466	Prentox Dursban 2E Insecticide
	655–499	Prentox Dursban 4E Insecticide
	655–696	Prentox Pyrifos 0.50 RTU
	655–764	Prentox Dursban 2.32G Granular Insecticide
	655–766	Prentox Dursban 1/2G Granular Insecticide
	655–786	Prentox Pyrifos Residual Spray
	655–792	Prentox D+2 Insecticide
	655–793	Prentox Super Brand D+2 Insecticide
Southern Agricultural Insecticides, Inc.	829–223	SA-50 Dursban .5G Granular Insecticide
	829–279	SA-50 Dursban 2-E Insecticide
	829–280	SA-50 Dursban 4-E Insecticide
	829–291	SA-50 Brand Dursban 1% Mole Cricket Bait
	829–292	SA-50 Brand Dursban 2.5% Granular Insecticide
ISK Biocides, Inc.	1022–543	Chapcide 4-EC
Universal Cooperatives, Inc.	1386–652	Security Pro-Turf 1 Insect Control Granules
	1386–653	Security Pro-Turf 2 Insect Control Granules
	1386–613	Dursban Lawn and Ornamental Insect Control
	1386–615	Termite Kill II
	1386–649	Dursban 4E Insecticide
Wellmark International	2724–487	Arthitrol 0.5% Dursban Paste Bait
Cessco, Inc.	6959–67	Cessco Accudose Aerosol for Fire Ant Control
Knox Fertilizer Company, Inc.	8378–26	Dursban 92 with Plant Food
	8378–27	Dursban 114 + Fertilizer
	8378–28	Dursban 50 Granular Insecticide
	8378–33	Dursban 1.14 Granules
	8378–34	2.32 Dursban Granules
The Andersons, Inc.	9198–32	Turf Care for Lawn Maintenance 38-0-0 with Dursban Brand Insecticide
	9198–39	Turf Care Dursban 2.5G
	9198–68	The Andersons 1% Dursban Brand Insecticide
	9198–82	Tee Time Fertilizer with 0.52% Dursban 30-3-5
	9198–84	Andersons Tee Time 30-3-5 with 0.65% Dursban
	9198–85	Tee Time Fertilizer with 0.71% Dursban 30-3-5
	9198–98	Andersons Tee Time with Team/Dursban I
	9198–99	Andersons Tee Time 19-5-9 with Team/Dursban
	9198–127	Twinlight Professional Dursban Lawn Insect Killer
	9198–132	The Andersons 0.97% Dursban Brand Insecticide
	9198–137	The Andersons 0.5% Dursban Brand Insecticide
Gowan Company	10163–158	Gowan Chlorpyrifos 4E
Lesco, Inc.	10404–15	Lesco 2.32 Granular Insecticide
	10404–27	Lesco 40-0-0 Fertilizer with Dursban
	10404–29	Lesco 32-5-7 Fertilizer with Dursban
	10404–40	Lesco 20-0-10 Fertilizer with Dursban
	10404–67	Lesco 1% Dursban Granular
	10404–81	Lesco 0.97 Dursban Granules
Sungro Chemicals, Inc.	11474–40	Sungro Reside Du
	11474–55	Sungro Combo Water Base
	11474–66	Sungro Dursbo
	11474–90	Sungro Buggone II Residual Insecticide
Rainbow Technology Corporation	13283–14	Rainbow Fire Ant Killer
	13283–17	Rainbow KO Fire Ant Killer
Drexel Chemical Company	19713–504	Regatta 4E
Positive Formulators, Inc.	26693–2	Killmaster II
Unicorn Laboratories	28293–87	Unicorn House and Carpet Spray
	28293–99	Unicorn Dursban Spray
	28293–121	Unicorn Dursban - Resmethrin Spray
	28293–142	Unicorn Kennel Spray
	28293–149	Unicorn House and Carpet Spray II
	28293–200	Unicorn Dursban 2E

TABLE 2.—END-USE PRODUCT REGISTRATION AMENDMENT REQUESTS—Continued

Company	Reg. No.	Product
	28293–201	Unicorn Dursban 2.5% Granules
	28293–202	Unicorn Dursban 1.0% Granules
	28293–203	Unicorn Dursban 1%-D Dust
	28293–204	Unicorn Dursban 4E
	28293–205	Unicorn Dursban 1-12
	28293–210	Dursban 1E Insecticide
	28293–265	Unicorn Dursban 6.7% Insecticide
	28293–266	Dursban Plus Resmethrin Concentrate
Howard Johnson's Enterprises, Inc.	32802–19	Dursban Insecticide 0.7 Plus Fertilizer
	32802–20	Dursban 1.14 Granular Lawn and Turf Insect Control
	32802–21	Dursban 1.14 Plus Lawn Fertilizer
	32802–22	Dursban 2.32G
	32802–39	Dursban .5 Granules Insecticide
	32802–49	Dursban 100 Granules
Phaeton Corporation	47006–5	Orlik Dursban Granules
Marman USA, Inc.	48273–13	Pestban 2E
	48273–14	Pestban TC
	48273–19	Pestban 4E
Biodyne Americas Corporation	59920–1	Super IQ Insecticide Coating APT
	59920–2	Super IQ Insecticide Coating LC

In the **Federal Register** notice of November 17, 2000, EPA requested public comment on the voluntary cancellation and use deletion requests, and provided a 30-day comment period. The registrants requested that the Administrator waive the 180-day comment period provided under FIFRA section 6(f)(1)(C).

III. Cancellation Order

Pursuant to section 6(f) of FIFRA, EPA is approving the requested use deletions and the requested registration cancellations. Accordingly, the Agency orders that the registrations identified in Table 2 are hereby amended to delete the following uses: All post-construction termite control uses, except spot and local treatment (use of such products for spot and local treatment will be prohibited after December 31, 2002 by product labeling); all other termite control uses, effective December 31, 2004 (unless EPA has made a decision prior to that date that preconstruction use may continue); all residential uses (except for ant and roach baits in child resistant packaging (CRP) and fire ant mound drenches for public health purposes by licensed applicators and mosquito control for public health purposes by public health agencies); all indoor non-residential, non-agricultural uses (except ship holds, industrial plants, manufacturing plants, food processing plants, containerized baits in CRP, and processed wood products treated during the manufacturing process at the manufacturing site or at the mill); all outdoor non-residential, non-agricultural sites (except golf courses, road medians, industrial plant sites, fence posts, utility poles, railroad ties, landscape timbers, logs, pallets, wooden containers, poles, posts, processed wood products, manhole covers, and underground utility cable and conduits; and fire ant mound drenches for public health purposes by licensed applicators and mosquito control for public health purposes by public health agencies); and use on post-bloom apple trees (except for tree trunk use). The Agency also orders that the registrations identified in Table 1 are hereby canceled. Any distribution, sale, or use of existing stocks of the products identified in Tables 1-2 in a manner inconsistent with the terms of this Order or the Existing Stock Provisions in Unit IV. of this notice will be considered a violation of section 12(a)(2)(K) of FIFRA and/or section 12(a)(1)(A) of FIFRA.

IV. Existing Stocks Provisions

For purposes of this Order, the term existing stocks is defined, pursuant to EPA's existing stocks policy (56 FR 29362, June 26, 1991), as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the amendment or cancellation.

1. *Distribution, sale and use of products bearing instructions for use on apples trees post-bloom.* The distribution or sale of existing stocks by any person of any product listed in Table 1 or 2 that bears instructions for post-bloom application to apple trees (other than tree trunk use) will not be lawful under FIFRA after [*insert date of publication in the* **Federal Register**], except for the purposes of returns for relabeling consistent with the June 7, 2000 Memorandum of Agreement, shipping such stocks for export consistent with the requirements of section 17 of FIFRA, or proper disposal. Any use of such products for post-bloom application to apple trees (other than tree trunk use) will not be lawful after [*insert date of publication in the* **Federal Register**]. All other use of such products may continue until stocks are exhausted, provided such use is in accordance with the existing labeling of that product.

2. *Distribution or sale by registrants of products bearing other uses*—(i) *Restricted use and package size limitations.* Except for the purposes of returns for relabeling consistent with the June 7, 2000 Memorandum of Agreement, shipping for export consistent with the requirements of section 17 of FIFRA, or proper disposal:

(a) The distribution or sale by registrants of existing stocks of any EC formulation product listed in Table 1 or 2 will not be lawful under FIFRA after February 1, 2001 unless the product is labeled as restricted use;

(b) The distribution or sale by registrants of existing stocks of any product listed in Table 1 or 2 labeled for any agricultural use and that is not an EC, will not be lawful under FIFRA after February 1, 2001, unless the product is either labeled for restricted use or packaged in containers no smaller than 15 gallons of a liquid formulation, 50 pounds of a granular formulation, or 25 pounds of any other dry formulation;

(c) The distribution or sale by registrants of existing stocks of any product listed in Table 1 or 2 labeled solely for non-agricultural uses (other

than containerized baits in CRP) and that is not an EC, will not be lawful under FIFRA after of February 1, 2001, unless the product is either labeled for restricted use or packaged in containers no smaller than 15 gallons of a liquid formulation or 25 pounds of a dry formulation.

(ii) *Prohibited uses*. Except for the purposes of returns for relabeling consistent with the June 7, 2000 Memorandum of Agreement, shipping for export consistent with the requirements of section 17 of FIFRA, or proper disposal, the distribution or sale of existing stocks by registrants of any product identified in Table 1 or 2 that bears instructions for any of the following uses will not be lawful under FIFRA after February 1, 2001:

(a) Termite control, unless the product bears directions for use of a maximum 0.5% active ingredient chlorpyrifos end-use dilution;

(b) Post-construction termite control, except for spot and local termite treatment, provided the label of the product states that the product may not be used for spot and local treatment after December 31, 2002;

(c) Indoor residential except for containerized baits in CRP;

(d) Indoor non-residential except for containerized baits in CRP and products with formulations other than EC that bear labeling solely for one or more of the following uses: Warehouses, ship holds, railroad boxcars, industrial plants, manufacturing plants, food processing plants, or processed wood products treated during the manufacturing process at the manufacturing site or at the mill;

(e) Outdoor residential except for products bearing labeling solely for one or more of the following public health uses: individual fire ant mound treatment by licensed applicators or mosquito control by public health agencies;

(f) Outdoor non-residential, non-agricultural except for products that bear labeling solely for one or more of the following uses: Golf courses, road medians, and industrial plant sites, provided the maximum label application rate does not exceed 1lb./ai per acre; mosquito control for public health purposes by public health agencies; individual fire ant mound treatment for public health purposes by licensed applicators; and fence posts, utility poles, railroad ties, landscape timbers, logs, pallets, wooden containers, poles, posts, processed wood products, manhole covers, and underground utility cable and conduits.

3. *Retail and other distribution or sale*. The retail sale of existing stocks of products listed in Table 1 or 2 bearing instructions for the prohibited uses set forth in Unit IV.2.(ii)(a)-(f) of this notice will not be lawful under FIFRA after December 31, 2001. Except as otherwise provided in this order, any other distribution or sale (for example, return to the manufacturer for relabeling) is permitted until stocks are exhausted.

4. *Final distribution, sale and use date for preconstruction termite control*. The distribution, sale or use of any product listed in Table 1 or 2 bearing instructions for pre-construction termiticide use will not be lawful under FIFRA after December 31, 2005, unless, prior to that date, EPA has issued a written determination that such use may continue consistent with the requirements of FIFRA.

5. *Use of existing stocks*. Except for products bearing those uses identified in Units IV.1. and IV.4. of this notice, EPA intends to permit the use of existing stocks of products listed in Table 1 or 2 until such stocks are exhausted, provided such use is in accordance with the existing labeling of that product.

List of Subjects

Environmental protection, Memorandum of Agreement, Pesticides and pests.

Dated: January 9, 2001.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 01–2184 Filed 1–24–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6937–9]

Preliminary Administrative Determination Document on the Question of Whether Ferric Ferrocyanide Is One of the ''Cyanides'' Within the Meaning of the List of Toxic Pollutants Under the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability and public comment period.

SUMMARY: By order dated October 19, 1995, the United States District Court for the District of Massachusetts stayed the proceedings in *Commonwealth of Massachusetts* v. *Blackstone Valley Electric Co.* (No. 94–2286) and referred the question of whether ferric ferrocyanide qualifies as one of the ''cyanides'' within the meaning of the list of toxic pollutants under the Clean Water Act (CWA) to the U.S. Environmental Protection Agency (EPA). This District Court order followed a U.S. Court of Appeals decision in which the First Circuit determined that it was appropriate to refer this question to EPA for an ''administrative determination.'' *Commonwealth of Massachusetts* v. *Blackstone Valley Electric Co.,* 67 F.3d 981 (1st Cir. 1995). Today's notice announces the availability of EPA's preliminary administrative determination for public review and comment.

DATES: Comments and relevant information on this preliminary administrative determination must be submitted to the Agency by March 12, 2001. Comments submitted should be adequately documented.

ADDRESSES: Mail written comments to: FFC Administrative Determination, USEPA, Engineering and Analysis Division (4303), Office of Science and Technology, 1200 Pennsylvania Avenue, Ariel Rios Building, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For further information and to request a copy of the administrative determination contact Dr. Maria Gomez-Taylor, USEPA, Engineering and Analysis Division (4303), Office of Science and Technology, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or call (202) 260–1639; or fax (202) 260–7185; or e-mail gomez-taylor.maria@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has prepared a preliminary administrative determination describing EPA's opinion on how to interpret the term ''cyanides'' (40 CFR 401.15, 40 CFR 302.4, and Table 302.4) as it applies to ferric ferrocyanide. (40 CFR 401.15 contains the list of toxic pollutants, 40 CFR 302.4 provides the designation of hazardous substances, and Table 302.4 at 40 CFR 302.4 contains the list of hazardous substances and reportable quantities.) This preliminary administrative determination document has been prepared in order to respond to a referral from the United States District Court for the District of Massachusetts. By order dated October 19, 1995, the United States District Court for the District of Massachusetts stayed the proceedings in *Commonwealth of Massachusetts* v. *Blackstone Valley Electric Co.* (No. 94–2286) and referred the question of whether ferric ferrocyanide qualifies as one of the ''cyanides'' within the meaning of 40 CFR 401.15, 40 CFR 302.4, and Table 302.4 to the U.S. Environmental

Protection Agency (EPA). This District Court order followed a U.S. Court of Appeals decision in which the First Circuit determined that it was appropriate to refer this question to EPA for an ''administrative determination.'' *Commonwealth of Massachusetts* v. *Blackstone Valley Electric Co.,* 67 F.3d 981 (1st Cir. 1995).

As explained in the preliminary administrative determination document, it is EPA's preliminary administrative determination that ferric ferrocyanide is one of the ''cyanides'' within the meaning of 40 CFR 401.15, 40 CFR 302.4, and Table 302.4. This preliminary administrative determination is being issued in order to respond to the referral from the District Court. It is not a legislative rule and notice and comment is not required. However, EPA is soliciting public comment because it had previously notified interested parties of its intent to do so.

Dated: January 18, 2001.

J. Charles Fox,

Assistant Administrator for Water.

[FR Doc. 01–2172 Filed 1–24–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6936–6]

Draft National Coastal Condition Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and request for comments.

SUMMARY: Notice of availability is hereby given for a 60-day public comment period on the draft National Coastal Condition Report describing the condition of the Nation's coastal waters. Coastal waters are valuable from both an environmental and economic perspective. These waters are also vulnerable to pollution from diverse sources. EPA expects that this report on the condition of coastal waters will support more informed decisions concerning protection of this resource and will increase public awareness of the extent and seriousness of pollution of these waters. EPA seeks public input concerning the information used in the report, the availability of additional data, and the appropriateness of conclusions drawn from the information presented.

DATES: Written comments must be received by March 26, 2001.

ADDRESSES: Address all comments concerning this notice to Barry Burgan, U.S. Environmental Protection Agency (4504–F), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 260–7060; fax (202) 260–9960.

FOR FURTHER INFORMATION CONTACT: Barry Burgan, U.S. Environmental Protection Agency (4504–F) 1200 Pennsylvania Avenue, NW, Washington, DC 20460. See Supplementary information section for electronic access and filing address.

SUPPLEMENTARY INFORMATION:

I. Background

The National Coastal Condition Report describes the condition of coastal waters based on available information. The report concludes that the overall condition of coastal waters is fair to poor with some variation in conditions from region to region. A combination of data, mostly from EPA, the National Oceanic and Atmospheric Administration, the U.S. Geological Survey, and the U.S. Fish and Wildlife Service is used to present indicators of coastal condition and a broad baseline picture of the condition of coastal waters. The Report also highlights several exemplary programs at the Federal, State, Tribal, and local levels that show coastal condition at various regional scales.

This Report is the first attempt to provide the public with a comprehensive picture of the health of the Nation's coastal waters. It will serve as a useful benchmark for analyzing the progress of coastal management programs in the future. We recognize that data are not currently available to characterize all the estuarine and near-coastal waters of the country and that work is still needed in formulating improved indicators of the coastal condition. Public input on the draft Report regarding data completeness, the choice of indicators, the methodologies used to synthesize data, the ''bars'' set for each indicator, the choice of spatial scales and the overall Report presentation is important to us in preparing this and future reports.

II. Electronic Access and Filing

You may view and download the draft Report on EPA's Internet site at the Office of Water homepage at http://epa.gov/ow/ under What's New in Water. You may submit comments by sending electronic mail (e-mail) to burgan.barry@epa.gov; comments may also be mailed to Barry Burgan at the following address: U.S. Environmental Protection Agency (4504–F), 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Submit comments as an ASCII file avoiding the use of special characters and any form of encryption. Identify all comments and data in electronic form by docket number.

Dated: January 18, 2001.

J. Charles Fox,

Assistant Administrator, Office of Water.

[FR Doc. 01–2177 Filed 1–24–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6937–4]

Proposed CERCLA Administrative Settlement—Rocky Flats Industrial Park, Jefferson County, CO

AGENCY: Environmental Protection Agency.

ACTION: Notice and request for public comment.

SUMMARY: In accordance with the requirements of Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of the proposed administrative settlement under Section 122(g) of CERCLA, 42 U.S.C. 9622, concerning the Rocky Flats Industrial Park site between EPA, the State of Colorado, and the settling parties listed in the Supplementary Information portion of this notice. The Rocky Flats Industrial Park Superfund Site, is located in the 17,000 block of West Highway 72, approximately 2½ miles east of the intersection of State Highways 72 and 93 in unincorporated Jefferson County, Colorado near the City of Arvada (''Site''). The settlement, embodied in proposed Administrative Order on Consent for Removal Action, EPA Docket No. CERCLA–8–2000–20 (''AOC''), is designed to partially resolve each settling party's liability at the Site through a covenant not to sue for past response costs, and for work performed, under Sections 104 and 107 of CERCLA, 42 U.S.C. 9604 and 9607. The proposed AOC requires the Potentially Responsible Parties (''PRPs'') listed below to implement the selected response actions at the Site.

Opportunity for Comment: For thirty (30) days following the date of publication of this notice, the Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments

received will be available for public inspection at the EPA Superfund Record Center, 999 18th Street, 5th Floor, in Denver, Colorado. Commenters may request an opportunity for a public meeting in the affected area in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

DATES: Comments must be submitted on or before February 26, 2001.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the EPA Superfund Records Center, 999 18th Street, 5th Floor, in Denver, Colorado. Comments and requests for a copy of the proposed settlement should be addressed to Carol Pokorny, Enforcement Specialist (8ENF–T), Technical Enforcement Program, U.S. Environmental Protection Agency, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, and should reference the Rocky Flats Industrial Park Site, Jefferson County, Colorado and EPA Docket Nos. CERCLA 8–2000–20.

FOR FURTHER INFORMATION CONTACT: Carol Pokorny, Enforcement Specialist (8ENF–T), Technical Enforcement Program, U.S. Environmental Protection Agency, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, (303) 312–6970.

SUPPLEMENTARY INFORMATION: Notice of proposed administrative settlement under Section 122 of CERCLA, 42 U.S.C. 9622: In accordance with Section 122 of CERCLA, 42 U.S.C. 9622, notice is hereby given that the terms of the Administrative Order on Consent (''AOC'') have been agreed to by the following settling parties:

Settling Parties

Adoph Coors Company
Ball Corporation
CoorsTek, Inc. (a/k/a Coors Ceramics Company)
Crown, Cork and Seal Company, Inc.
The Denver Post Corporation
Eastman Kodak Company
Eaton Corporation
Hamilton Sundstrand Corporation
Hwelett-Packard Company
Roche Colorado Corporation
Sterling Stainless Tube Corporation
Zenco de Chihuahua, S.A. de C.V., and
Zenith Electronics Corporation of Texas

By the terms of the proposed AOC, the settling parties will perform a CERCLA Removal Action which involves the installation of an air sparging/soil vapor extraction system on two of the three industrial properties that comprise the Site (the properties owned by Thoro Products Company and Hwy. 72 Properties, Inc.). The estimated future cost to the settling parties to perform the Removal Action is $3,715,000.

The United States and the State are providing the settling parties with a covenant not to sue under Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), the Solid Waste Disposal Act, as amended (also known as the Resource Conservation and Recovery Act), federal claims for natural resources damages, and state law related to the presence or migration of hazardous substances on the Site for: the work performed under the AOC, response actions associated with the GWI facility at the Site, and specific work performed by the settling parties in the past at the Site.

It is so agreed:

Dated: October 12, 2000.

Jack W. McGraw,

Acting Regional Administrator, Environmental Protection Agency, Region VIII.

[FR Doc. 01–2173 Filed 1–24–01; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6937–7]

Settlement Agreement, Application of Labor Standards Provision in the Clean Water Act State Revolving Fund Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of settlement.

SUMMARY: The Environmental Protection Agency (EPA) is publishing a final settlement agreement between EPA and the Building and Construction Trades Department, AFL/CIO (Building Trades) which will resolve a matter pending before the Department of Labor's (DOL) Wage and Hour Division Administrator. Under the settlement agreement, EPA will prospectively apply the Davis-Bacon Act's prevailing wage rate requirements in the Clean Water State Revolving Fund (CWSRF) program established in title VI of the Federal Water Pollution Control Act, as amended (more commonly known as the Clean Water Act (CWA)), 33 U.S.C. 1381–1387, in the same manner as they applied before October 1, 1994. In exchange for EPA's commitment, Building Trades has agreed not to pursue any further action on this matter before DOL or any other Federal administrative agency, or in litigation.

Title VI of the CWA authorizes EPA to award grants to capitalize state revolving funds from which states, in turn, award loans and other types of assistance for the construction of publicly-owned treatment works and other water quality projects. CWA section 602(b)(6) required publicly-owned treatment works funded with CWSRF assistance ''directly made available by [capitalization grants]'' that were ''constructed in whole or in part *before fiscal year 1995''* (emphasis added) to comply with the requirements of a number of other CWA provisions. Among the provisions was CWA section 513, which applies Davis-Bacon Act requirements to treatment works for which grants are made under the CWA.

EPA interpreted the language of CWA section 602(b)(6) as limiting the application of the Davis-Bacon Act and other requirements to CWSRF-funded treatment works projects ''constructed in whole or in part before fiscal year 1995'', and, in an August 8, 1995, memorandum, announced that these requirements would not apply to CWSRF-assisted projects that begin construction on or after October 1, 1994. In 1997, the Building Trades asked the DOL Wage and Hour Division to rule that the requirements of the Davis-Bacon Act continue to apply to treatment works projects funded with CWSRF loans that began construction on or after October 1, 1994. The Building Trades argued that the Davis-Bacon Act requirement applied to CWSRF-funded projects as long as Congress appropriated funds for the program. EPA responded in opposition to the Building Trades request for ruling.

After closely considering the relationship of CWA section 513 and CWA section 602(b)(6) and the arguments of the Building Trades in its request for ruling, EPA became persuaded of the appropriateness of the view that CWA section 513 imposes a continuing, independent obligation on the Agency to ensure that Davis-Bacon Act requirements apply to any grants made under the CWA for treatment works, including capitalization grants made under title VI of the CWA. The language of CWA section 602(b)(6) does not relieve the Agency of this obligation. Furthermore, as a matter of policy, the Agency has determined that prevailing wage rate requirements applicable to federally-assisted construction projects should continue to apply to federally-assisted treatment works construction in the CWSRF program. Consequently, EPA decided to settle the matter with the Building Trades and provided the public an opportunity to comment on a proposed settlement agreement, which was published in the **Federal Register**

on June 22, 2000. 65 FR 38828. In addition, EPA held a public meeting on July 13, 2000, to provide the public an additional opportunity to comment.

Public Comments on the Proposed Settlement Agreement

EPA received 25 comments on the proposed settlement agreement. Most commentators stated that the Agency's original position was correct and disputed the legal basis for reimposing the Davis-Bacon Act in the CWSRF program. Although they varied in detail, the arguments of the commentators generally contained these points: CWA section 602(b)(6) clearly sunsetted the Davis-Bacon Act in the CWSRF program; continuing appropriations for the program after FY 1995 did not extend that sunset date; CWA section 513 does not place a continuing obligation on the Agency to impose the Davis-Bacon Act requirements in the program because, by its plain language, CWA section 513 applies only to direct grants for treatment works construction.

The states, in particular, complained that reimposing the Davis-Bacon Act requirement would create hardships for the CWSRF programs, including increased labor costs for assistance recipients and administrative burdens on both the recipients and the states. State commentators also requested a delay in the implementation of the agreement's terms to allow time to notify potential borrowers and to more closely coincide with state planning schedules. Several states with state prevailing wage rate laws said that the Davis-Bacon Act requirements are more burdensome and costly on businesses and state agencies than their similar state requirements without bringing additional benefit for workers. They suggested that in situations in which states had substantially similar prevailing wage rate requirements, that states be given discretion to substitute state procedures for federal procedures.

Response to Comments

As the June 22, 2000, **Federal Register** notice stated, the Agency's original position on the Davis-Bacon Act and the CWSRF program ''rest(ed) on a reasonable legal interpretation.'' 65 FR at 38828. However, the legal basis for reimposing the Davis-Bacon Act requirements is sound and, as a matter of policy, it is proper for prevailing wage rates to apply to construction projects that are, for all intents and purposes, federally-assisted.

Reimposing the Davis-Bacon Act requirements may increase construction costs for many CWSRF recipients, but the levels of those cost increases vary widely and are often insignificant. Although EPA is interested in streamlining administrative requirements and reducing implementation costs, state prevailing wage rate laws cannot substitute for the requirements of CWA section 513.

EPA has made one change to the settlement agreement in response to state comments. In order to allow states more time to notify borrowers of the requirements, and to more closely match the yearly CWSRF planning schedules in most states (July 1 to June 30), the Agency has changed the date for implementing the Davis-Bacon Act requirement from January 1, 2001, until July 1, 2001. All capitalization grants awarded on or after July 1, 2001 will contain a condition requiring the states to ensure that the Davis-Bacon Act requirements will be applied to publicly owned treatment works receiving CWSRF assistance under those agreements in the same manner as the requirements were applied to projects initiated before October 1, 1994. Building Trades has agreed to this revision, which is reflected in the settlement agreement reprinted below.

DATES: This settlement agreement is effective as of January 17, 2001.

FOR FURTHER INFORMATION CONTACT: Geoffrey Cooper, EPA Office of General Counsel, Mail Code 2377A, 1200 Pennsylvania Avenue, Washington, D.C. 20004; telephone: 202–564–5451; email: cooper.geoffrey@epa.gov.

Dated: January 19, 2001.

Gary S. Guzy,

General Counsel.

In the matter of: Application of Labor Standard Provisions In the Clean Water Act's State Revolving Fund Program

Settlement Agreement

Whereas, title VI of the Federal Water Pollution Control Act, as amended (more commonly known as the Clean Water Act (CWA)), 33 U.S.C. 1381–1387, authorizes the Environmental Protection Agency (EPA) to make grants to states to capitalize Clean Water State Revolving Funds (CWSRF), from which the states, in turn, make loans and other types of assistance for the construction of publicly owned treatment works and other water quality projects and activities;

Whereas, section 602(b)(6) of the CWA, 33 U.S.C. 1382(b)(6), requires states to ensure that publicly owned treatment works ''constructed in whole or in part before fiscal year 1995 with CWSRF funds directly made available by'' capitalization grants comply with sixteen provisions of the CWA, including section 513 of the CWA, 33 U.S.C. 1372, which applies Davis-Bacon Act requirements to treatment works for which grants are made under the CWA;

Whereas, EPA has not required states to ensure that publicly owned treatment works that began construction on or after October 1, 1994, with CWSRF assistance will comply with the requirements identified in section 602(b)(6) of the CWA, including the requirements of the Davis-Bacon Act;

Whereas, the Building and Construction Trades Department, AFL–CIO, (Building Trades), challenged this position and requested a ruling by John R. Fraser, Acting Administrator of the Department of Labor's (DOL) Wage and Hour Division, that the requirements of the Davis-Bacon Act continued to apply to the construction of publicly owned treatment works receiving CWSRF assistance as long as Congress appropriates funds for grants under title VI of the CWA.

Whereas, Congress has continued to appropriate funds for grants to states for their CWSRF programs under the CWA;

Whereas, EPA replied in opposition to the Building Trades request for ruling;

Whereas, On June 14, 2000, EPA published this settlement agreement in the **Federal Register** along with a request for the public to comment on whether EPA should again apply section 513 of the CWA to treatment works projects assisted with CWSRF funds directly made available by capitalization grants, and consulted with state and local government officials on the terms of this agreement;

Whereas, EPA has carefully considered the comments received on the **Federal Register** Notice and the comments provided by state and local governments during the consultation process;

And whereas, EPA and the Building Trades have determined that it is in the public interest to resolve this matter expeditiously;

It is therefore agreed that,

1. EPA will issue a memorandum to its Regional Water Division Directors directing them to include a condition in all capitalization grant agreements entered into between EPA and the states under title VI of the CWA, on or after July 1, 2001, requiring the states to ensure that the requirements of section 513 of the CWA will be applied to publicly owned treatment works receiving CWSRF assistance under those agreements in the same manner as section 513 requirements were applied before October 1, 1994.

2. The grant condition will require states to ensure that the requirements of section 513 of the CWA, and no other requirements identified in section

602(b)(6) of the CWA, will apply only to publicly-owned treatment works that are funded with funds ''directly made available by'' grants under title VI of the CWA, as that phrase is defined at 40 CFR § 35.3105(g).

3. The grant condition will be included in all capitalization grant agreements entered into between EPA and the states under title VI of the CWA on or after July 1, 2001;

4. The Building Trades and EPA will submit this agreement to the Administrator of the Wage and Hour Division, DOL, with a joint request to dismiss the administrative proceeding on the Building Trades Department's request for ruling.

5. The Building Trades will not pursue any further action on the matter hereby resolved in this settlement agreement, either before DOL or any other Federal administrative agency, or in litigation.

6. In the event that EPA does not accomplish one or more of the items specified in Paragraphs 1, 2 and 3 above, the Building Trades sole remedy will be to reinstitute its request for ruling before the DOL.

7. Nothing in the terms of this agreement shall be construed to limit or modify the discretion accorded EPA by the CWA or by general principles of administrative law.

8. The undersigned representatives of each party certify that they are fully authorized by the parties they represent to bind the respective parties to the terms of this settlement agreement. This settlement agreement will be deemed to be executed when it has been signed by the representatives of the parties below.

Agreed:

Dated: January 11, 2001.

Gary S. Guzy,

General Counsel, United States Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20460.

Dated: January 17, 2001.

Edward C. Sullivan,

President, Building and Construction Trades Department, AFL–CIO, American Federation of Labor/Congress of Industrial Organizations, 815 16th Street, N.W., 6th Floor, Washington, D.C. 20006–4101.

[FR Doc. 01–2179 Filed 1–24–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

[Notice 2001–1]

Filing Dates for the California Special Election in the 32nd Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: California has scheduled a special election on April 10, 2001, to fill the U.S. House of Representatives seat in the Thirty-Second Congressional District held by the late Julian C. Dixon. Under California law, a majority winner in a special election is declared elected. Should no candidate achieve a majority vote, a Special Runoff Election will be held on June 5, 2001, among the top vote-getters of each qualified political party, including qualified independent candidates.

Committees participating in the California special elections are required to file pre- and post-election reports. Filing dates for these reports are affected by whether one or two elections are held.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory J. Scott, Information Division, 999 E Street, NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION: All principal campaign committees of candidates who participate in the California Special General and Special Runoff Elections and all other political committees that support candidates in these elections shall file a 12-day Pre-General Report on March 29, 2001, with coverage dates from the close of the last report filed, or the day of the committee's first activity, whichever is later, through March 21, 2001; a Pre-Runoff Report on May 24, 2001, with coverage dates from March 22 through May 16, 2001; and a Post-Runoff Report on July 5, 2001, with coverage dates from May 17 through June 25, 2001.

All principal campaign committees of candidates in the Special General Election *only* and all other political committees that support candidates in the Special General Election shall file a 12-day Pre-General Report on March 29, 2001, with coverage dates from the close of the last report filed, or the day of the committee's first activity, whichever is later, through March 21, 2001; and a Post General Report on May 10, 2001, with coverage dates from March 22 through April 30, 2001.

All political committees that support candidates in the Special Runoff *only* shall file a 12-day Pre-Runoff Report on May 24, 2001, with coverage dates from the last report filed through May 16, 2001; and a Post-Runoff Report on July 5, 2001, with coverage dates from May 17 through June 25, 2001.

Committees filing monthly that support candidates in the California Special General or Special Runoff Elections should continue to file according to the non-election year monthly reporting schedule.

CALENDAR OF REPORTING DATES FOR CALIFORNIA SPECIAL ELECTIONS

Report	Close of books [1]	Reg./Cert. mailing date [2]	Filing date
If only the special general is held (04/10/01), committees must file:			
Pre-General	03/21/01	03/26/01	03/29/01
Post-General	04/30/01	05/10/01	05/10/01
Mid-Year	06/30/01	07/31/01	07/31/01
If two elections are held, a committee involved in only the special general (04/10/01) must file:			
Pre-General	03/21/01	03/26/01	03/29/01
Mid-Year	06/30/01	07/31/01	07/31/01
Committees involved in the special general (04/10/01) and the special runoff (06/05/01) must file:			
Pre-General	03/21/01	03/26/01	03/29/01
Pre-Runoff	05/16/01	05/21/01	05/24/01
Post-Runoff	06/25/01	07/05/01	07/05/01
Mid-Year	06/30/01	07/31/01	07/31/01
Committees involved in only the special runoff (06/05/01) must file:			
Pre-Runoff	05/16/01	05/21/01	05/24/01
Post-Runoff	06/25/01	07/05/01	07/05/01

CALENDAR OF REPORTING DATES FOR CALIFORNIA SPECIAL ELECTIONS—Continued

Report	Close of books [1]	Reg./Cert. mailing date [2]	Filing date
Mid-Year	06/30/01	07/31/01	07/31/01

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.
[2] Reports sent registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.

Dated: January 18, 2001.

Danny L. McDonald,

Chairman, Federal Election Commission.

[FR Doc. 01–2198 Filed 1–24–01; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Notice; Meeting

Federal Register Citation of Previous Announcement:

66 FR 1990, January 10, 2001

Previously Announced Time and Date of the Meeting:

10:00 A.M., Wednesday, January 24, 2001

Cancellation of the Meeting:

Notice is hereby given of the cancellation of the Board of Directors meeting scheduled for January 24, 2001.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

James L. Bothwell,

Managing Director.

[FR Doc. 01–2401 Filed 1–23–01; 1:48 pm]

BILLING CODE 6725–01–U

FEDERAL MARITIME COMMISSION

[Docket No. 01–01]

The Impact of the Ocean Shipping Reform Act of 1998; Notice of Issuance of Notice of Inquiry

Notice is given that on January 22, 2001, the Federal Maritime Commission (''Commission'') issued a Notice of Inquiry (''Inquiry'') to solicit information and comments concerning the impact of the Ocean Shipping Reform Act of 1998 on all sectors of the international liner transportation system.

Although most of the Inquiry's questions are designed to elicit responses from a broad range of industry participants, a few of the questions are addressed to specific industry sectors, such as vessel-operating common carriers, ocean transportation intermediaries (non-vessel-operating common carriers and ocean freight forwarders), or shippers (whether individual beneficial owners, shippers' associations or non-vessel-operating common carriers), port authorities and marine terminal operators. All commenters are encouraged to complete at least those parts of the Inquiry which deal with their specific industry sector, and to respond to as many of the non-sector-specific questions as possible. These comments will assist the Commission's analysis and evaluation of the new Act's effects during its first two years in force. That analysis and evaluation will be incorporated into the Commission's ongoing Ocean Shipping Reform Act Impact Study, which is scheduled to be released in the summer of 2001.

Responses to the Inquiry are due on or before March 12, 2001. If requested, the Commission will provide confidential treatment to a response or portion thereof to the extent permitted by law. The Inquiry contains additional information for responding.

The full text of the Inquiry may be viewed on the Commission's home page at http://www.fmc.gov, or at the Office of the Secretary, Room 1046, 800 N. Capitol Street, NW, Washington, DC. The Office of the Secretary may be contacted at (202) 523–5725 or by e-mail at Secretary@fmc.gov.

Dated: January 22, 2001.

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–2310 Filed 1–24–01; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Program Support Center; Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Program Support Center (PSC) will periodically publish summaries of proposed information collection projects and solicit public comments in compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the PSC Reports Clearance Officer on (301) 443–1494.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

1. Application Packets for Real Property for Public Health Purposes—0937–0191—Revision

The Department of Health and Human Services administers a program to convey or lease surplus real property to States and their political subdivisions and instrumentalities, to tax-supported institutions, and to nonprofit institutions to be used for health purposes. State and local governments and nonprofit organizations use these applications to apply for excess/surplus, underutilized/unutilized and off-site Government real property. Information in the applications is used to determine eligibility to purchase, lease, or use property under the provisions of the surplus property program. The application instructions for the homeless or public health purposes are being revised to clarify some of the questions which will assist reviewers in making more informed determinations. No changes are being proposed for the environmental information form used to evaluate potential environmental effects of a proposal as required by the National Environmental Policy Act of 1969. *Respondents:* State, local or tribal governments; not-for-profit institutions; *Total Number of Respondents:* 32 per calendar year; *Number of Responses per Respondent:* one response per request; *Average Burden per Response:* 200 hours; *Estimated Annual Burden:* 6,400 hours.

Send comments to Irene S. West, PSC Reports Clearance Officer, Room 17A–18, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 19, 2001.

Curtis L. Coy,

Director, Program Support Center.

[FR Doc. 01–2275 Filed 1–24–01; 8:45 am]

BILLING CODE 4168–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Public Meeting/Opportunity for Public Comment: Framework Convention on Tobacco Control (FCTC).

AGENCY: Office of Public Health and Science/Office of the Secretary/HHS.

ACTION: Notice of meeting.

SUMMARY: The Department of Health and Human Services is soliciting comments on the Framework Convention on Tobacco Control (FCTC), a proposed international legal instrument intended to address the global problem of tobacco use. Individuals and organizations are encouraged to comment on the FCTC in one or both of the following ways: (1) In writing, by submission through the mails, or e-mail; (2) in person, at a public meeting that will be convened in San Francisco, CA.

DATES: Written comments may be submitted until March 15, 2001. Comments can be submitted by mail or electronically (electronic submissions are encouraged).

ADDRESSES: To submit electronic comments, send via e-mail to *FCTCOIRH@osophs.dhhs.gov.* To submit comments by mail, send to: FCTC Comments (Attn: Ms. Amal Thomas), Office of International and Refugee Health, 5600 Fishers Lane, Room 18–105, Rockville, MD 20857. The public meeting will be held on March 8, 2001, from 8:30 a.m. to 5 p.m. at the Bill Graham Civic Auditorium, 99 Grove Street, 4th Floor, San Francisco, CA 94102. Seating capacity is 100 people. Comments also will be accepted during the public meeting. Those who wish to attend are encouraged to register early with the contact person listed below. If you will require a sign language interpreter, or have other special needs, please notify the contact person by 4:30 E.S.T. on February 26, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Joy Epstein, Office of International and Refugee Health, 5600 Fishers Lane, Room 18–105, Rockville, MD 20857, 301–443–1774 (telephone) or 301–443–6822 (facsimile) or *FCTCOIRH@osophs.dhhs.gov.*

SUPPLEMENTARY INFORMATION: In May 1999, the World Health Assembly, the governing body of the World Health Organization, unanimously adopted resolution WHA 52.18 calling for negotiation of a Framework Convention on Tobacco Control support (FCTC). The United States joined other countries in voicing support for negotiation of the convention, which is intended to address the global problem of tobacco use. Following two meetings of an FCTC working group held in Geneva in October 1999 and March 2000, an Intergovernmental Negotiating Body (INB) was established to negotiate the text of the FCTC and related protocols. The first session of the INB was held in October 2000. A negotiating team headed by the Deputy Assistant Secretary for International and Refugee Health (HHS) represented the United States. Other members of the negotiating team represented HHS, the Departments of State, Treasury, and Agriculture, and the U.S. Trade Representative. An interagency working group developed the guidance for the negotiating team.

The second INB session is scheduled for April 30–May 5, 2001.

(Background documents on the FCTC are available on the World Health Organization's web site at *http://tobacco.who.int/en/fctc/index.html.*)

Written Comments: In preparation for the second INB session, the U.S. negotiating delegation is seeking comments from the public on the FCTC. If the WHO publishes a draft FCTC before the date of the hearing, we will seek comments on the provisions of that draft. Further opportunity for public input is envisioned before subsequent negotiating sessions.

Announcement of Meeting: The U.S. government is seeking to understand the perspectives of various organizations and individuals on the Framework Convention on Tobacco Control (FCTC). The comment period and public meeting are intended to give interested persons, including public health and medical professionals, state and local officials, farmers, retailers, manufacturers and others an opportunity to comment on the FCTC. Panels of respondents to this notice will be formed to facilitate the discussion between the public and representatives of the government.

Meeting Location and Registration: The public meeting will be held on March 8, 2001, from 8:30 a.m. to 5 p.m. at the Bill Graham Civic Auditorium, 99 Grove Street, 4th Floor, San Francisco, CA 94102.

If you would like to attend the public meeting, you are encouraged to register early by providing your name, title, firm name, address, and telephone number to Amal Thomas (contact information above). The U.S. government encourages individuals to submit written comments, either electronically or by mail. Comments also will be accepted during the meeting. If you would like to speak at the meeting, please notify Amal Thomas (address above) when you register.

The transcript of the public meeting and submitted comments will be posted on the Internet at *http://www.cdc.gov/tobacco.*

Dated: January 19, 2001.

Thomas E. Novotny,

Deputy Assistant Secretary for International and Refugee Health, Office of International and Refugee Health.

[FR Doc. 01–2217 Filed 1–24–01; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Administration on Aging

[Program Announcement No. AoA–01–01]

Fiscal Year 2001 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications in seven states—Kansas, Kentucky, New Jersey, North Dakota, Tennessee, Vermont, and West Virginia—to carry out cooperative agreement awards to train retired persons to serve in their communities as volunteer expert resources and educators in combating health care waste, fraud, and abuse.

SUMMARY: The Administration on Aging (AoA) announces that under this program announcement it will hold a competition for ''Senior Medicare Patrol Projects'' that demonstrate effective ways of utilizing retired persons as volunteer expert resources and educators in community efforts to combat waste, fraud and abuse in the Medicare and Medicaid programs. The deadline date for the submission of applications is March 23, 2001. Public and/or nonprofit agencies, organizations, and institutions in Kansas, Kentucky, New Jersey, North

Dakota, Tennessee, Vermont, and West Virginia are eligible to apply under this program announcement. The AoA is currently funding ''Senior Medicare Patrol Projects'' in the remaining forty-three states, plus the District of Columbia and Puerto Rico. No further awards will be made in these states.

Application kits are available by writing to the Department of Health and Human Services, Administration on Aging, Office of Governmental Affairs and Elder Rights, 330 Independence Avenue, SW., Room 4749, Washington, DC 20201, telephone: (202) 619–3775 or (202) 619–1351.

Dated: January 19, 2001.

Jeanette C. Takamura,

Assistant Secretary for Aging.

[FR Doc. 01–2218 Filed 1–24–01; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–01–18]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

X-ray Examination Program—Extension—OMB No. 0920–0020 National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC). The X-ray Examination Program is a federally mandated program under the Federal Mine Safety and Health Act of 1977, PL–95–164. The Act provides the regulatory guidance for the administration of the National Coal Workers' X-ray Surveillance Program, a surveillance program to protect the health and safety of underground coal miners. This program requires the gathering of information from coal mine operators, participating miners, participating x-ray facilities, and participating physicians. The Appalachian Laboratory for Occupational Safety and Health (ALOSH), National Institute for Occupational Safety and Health (NIOSH) is charged with administration of this program. Based on an average of $15.00 per hour for all respondents, the total cost to respondents is $71,865.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/ response in hours	Total burden in hours
Physicians/interpretation	20,000	1	3/60	1,000
Physician/certification	350	1	10/60	58
Miners	10,000	1	20/60	3,333
Mine operators	500	1	30/60	250
Facilities	300	1	30/60	150
Total				4,791

Dated: January 18, 2001.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–2228 Filed 1–24–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01024]

Post-Infective Fatigue: A Model for Chronic Fatigue Syndrome; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program for Post-Infective Fatigue: A Model for Chronic Fatigue Syndrome. This program addresses the ''Healthy People 2010'' focus areas of Disability and Secondary Conditions and Immunization and Infectious Diseases. Visit the internet site: *http://www.health.gov/healthypeople.*

The purpose of the program is to use active surveillance systems to identify and enroll individuals from documented acute viral and rickettsial infections that result in a post-infection fatigue of >3 months and prospectively follow those individuals to define pathophysiological processes of the post-infective fatigue state.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $500,000 is available in FY 2001 to fund one award. It is expected that the award will begin on or about April 30, 2001 and will be made for a 12-month budget period within a project period of up to 3 years. The funding estimate may change.

A continuation award within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Select three specific infectious agents, which should include at least one RNA virus, one DNA virus and one rickettsial agent and define the rationale.

b. Develop a plan that will establish three post-infection cohorts where the enrolled subjects in each cohort are in the acute phase of the illness as evidenced by IgM positive antibody response results to the infectious agent.

c. To ensure sufficient numbers of cases infected with each agent will be recruited and enrolled and to ensure that sufficient numbers of cases will be enrolled to reach meaningful conclusions, the applicant should provide evidence of an ongoing institutional surveillance program by providing numbers of cases for each infectious agent observed over a period of time (i.e., over the past year, previous six months).

d. Develop and implement self-report and interview instruments that are standard measures of fatigue, psychological distress and psychiatric morbidity in addition to more specific self-report and interview-based measures of prolonged fatigue.

e. Develop and conduct clinical and laboratory assessments to include administration of forms identified in (d) and collection of clinical samples necessary for detection of microbial pathogens and host gene expression analysis.

f. Develop a plan that will:

(1) Measure and evaluate possible associations between persistence of microbial genetic material or antigen that may predispose subjects to post-infective fatigue.

(2) Measure and evaluate possible associations between cytokine production and development of post-infective fatigue.

(3) Evaluate contributions of pre-morbid and concurrent psychiatric disorders to the persistence of post-infective fatigue.

g. Define the contribution of genetic risk to the development of post-infective fatigue and examine the relationship with immunological, gene expression and psychological factors.

h. Publish and disseminate results of research.

2. CDC Activities

a. Provide technical and laboratory expertise to measure and evaluate the similarities and differences of host gene expression between the three post-infection cohorts (*e.g.,* RNA virus, DNA virus, Rickettsial infections) and compare to the gene expression patterns defined for Chronic Fatigue Syndrome.

b. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 50 double-spaced pages, printed on one side, with one inch margins, and unreduced font.

F. Submission and Deadline

Letter of Intent (LOI)

Your letter of intent should include the following information: Identification of the organization which will submit the application; the Principle Investigator; a brief synopsis of the extent of experience in dealing with patients with Chronic Fatigue Syndrome or research on Chronic Fatigue; the three proposed types of infectious agents; ability to accrue sufficient subjects in a three year period to reach meaningful conclusions; and the ability to perform extensive clinical and laboratory assessment.

The letter of intent must be submitted on or before February 15, 2001, to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Application

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS–398). Forms are available at the following Internet address: *www.cdc.gov/. . . Forms*, or in the application kit. On or before March 15, 2001, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and Need (15 points)

Extent to which applicant demonstrates a clear understanding of the background, purpose, and objectives of the focus area being addressed and the relevance to the disease being studied. Extent to which applicant demonstrates that the proposed project addresses the purpose. Extent to which the applicant demonstrates that the

proposed program collaborates with and does not duplicate existing efforts.

2. Capacity (40 points)

Extent to which applicant describes adequate resources and facilities (both technical and administrative) to implement active surveillance systems for the three infectious agents, to identify and enroll individuals infected with one of the three infectious agents, to collect and safely transport biological specimens, to conduct laboratory methods necessary for evaluation persistence of infectious agent and for evaluation of cellular DNA and RNA. Extent to which the applicant documents that professional personnel involved in the project are qualified and have past experience and achievements in research related to that proposed as evidenced by curriculum vitae, publications, etc. If applicable, extent to which applicant includes letters of support from participating non-applicant organizations, individuals, etc., and the extent to which such letters clearly indicate the author's commitment to participate as described in the operational plan.

3. Objectives and Technical Approach (40 points total)

(a) Extent to which applicant describes measurable and time-phased objectives of the proposed project which are consistent with the purpose of the focus area being addressed. (10 points)

(b) Extent to which applicant presents a detailed operational plan for initiating and conducting the project which clearly and appropriately addresses all recipient activities for the specific programmatic focus area being addressed. Extent to which applicant clearly describes applicant's technical approach/methods for conducting the proposed studies and extent to which the approach/methods are feasible, appropriate, and adequate to accomplish the objectives. Extent to which applicant describes specific study protocols or plans for the development of study protocols that are appropriate for achieving project objectives. Extent to which applicant clearly describes collaboration with others during various phases of the project. (25 points)

(c) The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes (1) the proposed plan for the inclusion of both sexes and racial and ethnic minorities, (2) the proposed justification when representation is limited or absent, (3) a statement as to whether the design of the study is adequate to measure differences when warranted and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits. (5 points)

4. Evaluation

Extent to which applicant provides a detailed and adequate plan for evaluating progress toward achieving project process and outcome objectives. (5 points)

5. Budget (not scored)

Extent to which the line-item budget is detailed, clearly justified, and consistent with the purpose and objectives of this program.

6. Human Subjects (not scored)

Does the application adequately address the requirements of 45 CFR part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with an original plus two copies of the following:

1. Progress reports (annual);
2. financial status report, no more than 90 days after the end of the budget period; and
3. final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) and 317(k)(2) of the Public Health Service Act, [42 U.S.C. Sections 241(a) and 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where to Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Hank Eggink, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number 770–488–2740, Email address: *hbe7@cdc.gov*.

For program technical assistance, contact: Dr. Suzanne Vernon, Division of Viral and Rickettsial Diseases, National Center for Infectious Diseases, Centers for Disease Control and Prevention, Atlanta, GA 30333, Telephone number 307–334–4096, Email address: *sdv2@cdc.gov*.

Dated: January 19, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–2269 Filed 1–24–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Head Start and Early Head Start Grantees; Preliminary Finding of No Significant Impact

AGENCY: Administration on Children, Youth and Families (ACYF), ACF, DHHS.

ACTION: Notice.

SUMMARY: The Administration for Children and Families published a Notice in the **Federal Register** on November 9, 2000 (65 FR 67377) notifying interested parties that a Draft Programmatic Environmental Assessment issued by ACF was available for review and comment. The document assesses the environmental impacts of activities undertaken by Head Start and Early Head Start grantees

when purchasing, renovating or constructing child care facilities with grant funds. This document was prepared in accordance with the National Environmental Policy Act of 1969, as amended, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the Revised General Administration Manual, HHS Part 30, Environmental Protection. ACF received no comments on the Draft Programmatic Environmental Assessment. The Agency has reviewed the conclusion of the Environmental Assessment (EA), and agrees with its findings. ACF has made a preliminary determination that regulations governing the purchase, construction and renovation of Head Start and Early Head Start child care centers will not have a significant impact on the quality of the human environment and that preparation of an environmental impact statement will not be necessary. A final finding of no significant impact will not be made until at least 30 days from the publication of this notice.

DATES: Written comments on this preliminary finding of no significant impact should be received February 26, 2001.

ADDRESSES: Persons wishing to comment on this finding of no significant impact may respond to writing to: Head Start PEA Team, The Mangi Environmental Group, 701 West Broad Street, Suite 205, Falls Church, Virginia 22046.

FOR FURTHER INFORMATION CONTACT: Douglas Klafehn, Acting Associate Commissioner, Head Start Bureau, Administration on Children, Youth and Families, 330 C Street, SW., Washington, DC 20447; (202) 205–8572.

SUPPLEMENTARY INFORMATION: Head Start and Early Head Start are authorized under the Head Start Act (42 U.S.C. 9801 *et seq.*). It is a national program providing comprehensive developmental services to low-income preschool children, primarily from age three to the age of compulsory school attendance, and their families. Early Head Start programs enroll children from birth to three years old and pregnant women. To help enrolled children achieve their full potential, Head Start and Early Head Start programs provide comprehensive health, nutritional, educational, social and educational services. ACF has proposed amendments to existing Head Start regulations (44 CFR part 1309) to establish procedures for grantees to apply to use grant funds to cover the cost of constructing and making major renovations to Head Start and Early Head Start facilities and the steps necessary to protect the federal interest in those facilities. The regulations at 45 CFR part 1309 currently establish procedures for grantees to request to use Head Start and Early Head Start grant funds to purchase facilities and to protect the federal interest in those facilities. The authority for use of Head Start and Early Head Start grant funds to purchase, construct or undertake major renovations is found in section 644 (f) and (g) of the Head Start Act.

ACF prepared and published for comment a Draft Environmental Assessment on November 9, 2000 (65 FR 67377). The alternative assessed included the Proposed Action, which would include the full range of authorized activities including facility purchase, new construction and major renovation. The Alternative Action to the Proposed Action assessed a more restrictive alternative in which only minor construction and renovations would be conducted. The No Action Alternative under which only incidental alterations and renovations would be conducted was also assessed. The assessment considered the Proposed Action, Alternative Action and the No Action Alternative and the effects of each on water quality, air quality, noise, land use, transportation, waste management, human health and safety, soils, vegetation and wildlife, wetlands, cultural resources, socioeconomic factors, environmental justice, recreation, aesthetics, public services and utilities.

ACF has chosen to implement the Proposed Action. Environmental resources may be affected by implementing the Proposed Action and these impacts are analyzed in the Programmatic Environmental Assessment. Given the nationwide nature of this Assessment and the variety of possible environmental conditions it was not deemed prudent to define the affected environment for all possible sites. Instead, the Assessment identifies circumstances which may result in significant impacts which must be avoided or mitigated when costs of purchasing, constructing or making major renovations to a Head Start or Early Head Start facility are met with grant funds. In the course of implementing the Proposed Action, there will be some impacts to environmental resources. Most of these impacts, however, are expected to be minimal, largely due to mitigating measures during the site selection, construction, operation and decommissioning phases. In many cases compliance with state, local and tribal regulations will lead to the avoidance of significant impacts, simply by requiring mitigation or by leading the grantee to select a different site.

The Programmatic Environmental Assessment described the following possible significant impacts and means for mitigating them.

(a) *Water Quality*—An impact would be considered significant if effluent or pollutant emissions result in exposure of people, wildlife, or vegetation to surface or ground waters that do not meet the standards established under the Clean Water Act, or interfere with state water quality standards. Significant impacts on the environment from operation, construction or renovation will be mitigated by grantees adhering to all state, local and tribal regulations regarding zoning, planning and construction.

(b) *Air Quality*—An impact would be considered significant if pollutant emissions result in exposure of people, wildlife, or vegetation to ambient air that does not meet the standards established under the Clean Air Act, or interfere with state ambient air quality standards. Significant impacts on the environment will be mitigated by grantees adhering to all state, local and tribal regulations regarding construction and operational emissions.

(c) *Noise*—An impact would be considered significant if it resulted in exposure of sensitive receptors to a Day-Night Level (DNL) of greater than 65 A-weighted decibels (dBA). A significant impact on the environment from operation, renovation or construction sites can be mitigated by maintaining normal daylight hours for construction and normal operation. Significant impacts on the environment will be mitigated by grantees adhering to all state, local and tribal noise regulations.

(d) *Land Use*—An impact would be considered significant if the proposed action conflicted with any federal, regional, state, or local land use plans. If land use patterns are changed in the immediate project area due to the proposed action, the impact would also be considered significant. Significant impacts can be mitigated by requiring grantees to comply with state, local and tribal land use plans and ordinances.

(e) *Transportation*— An impact would be considered significant if there is a traffic increase, which is predicted to upset the normal flow of traffic, create the need for major road repair as a result of the action, or generate traffic levels requiring the expansion of existing roadways or facilities. Significant impacts can be mitigated by using flaggers on busy roads during construction phases. Transit can be subsidized if a facility is on a major road to discourage automobile use.

(f) *Waste Management*— An impact would be considered significant if there an increase in the generation of solid or hazardous waste beyond the present facility capacity or new facility capacity to safely handle and dispose of that waste. Significant impacts will be mitigated by grantees adhering to state, local and tribal regulations and ordinances for waste management.

(g) *Human Heath and Safety*—An impact would be considered significant if there is inadequate protection against serious injury to any worker or user during construction, maintenance, or operation of the project. Exposure to hazardous compounds or fumes at concentrations above health-based levels would be a significant impact. Significant impacts can be mitigated by making use of Head Start provided design guides, and by following state, local and tribal licensing requirements. Grantees will avoid new construction at sites with a history of hazardous material use or storage or sites near pollution sources. As required under 45 CFR 1304.22 all Head Start grantees must establish and implement policies and procedures to respond to medical and dental health emergencies with which all staff are familiar and trained. In addition all grantees are required to post emergency evacuation routes and other procedures for emergencies which are practiced regularly.

(h) *Soils*—An action would cause of significant impact if soil erosion produced gullying, damage to vegetation, or a sustained increase in sedimentation in streams. An action would also constitute a significant impact if the action causes ground fracturing, folding, subsistence or instability. Impacts associated with soil contamination would be significant if the affected area was no longer able to support its current function or vegetable cover. Significant impacts will be mitigated by grantees adhering to all applicable state, local and tribal regulations.

(i) *Vegetation and Wildlife*—An action would cause a significant impact if the degradation or loss of habitat sufficient to cause indigenous populations to leave or avoid the area occurred. Significant impacts will be avoided by Head Start and Early Head Start grantees choosing sites which do not raise substantial biological concerns.

(j) *Wetlands*—An action would cause a significant impact if the soil structure, or water related hydrologic features or the vegetation of more than acre (1/10 ha) of a wetland would be altered, or a floodplain area is altered enough to present a reasonable flood danger to the area, or causes the degradation or loss of habitat for populations indigenous to the floodplain area, or prohibits farming activities. Significant impacts will be avoided by Head Start and Early Head Start grantees choosing sites other than wetlands.

(k) *Cultural Resources*—An impact would be significant if an effect on a historic property occurs that may diminish the integrity of the historic property's location, design, setting, workmanship, feeling or association as set forth in 36 CFR 800.9. Significant impacts will be avoided by Head Start and Early Head Start grantees choosing sites which are not historic sites.

(l) *Socioeconomics*—A change of more than 2 percent of the previously projected level of local employment, population, or gross domestic product would be considered a significant impact. Also, if school populations decrease by more than 2 percent, revenues decrease by more than 2 percent and if the vacancy rate increased by more than 2 percent that would constitute a significant impact. Mitigation of significant impacts are not expected to be likely as the impacts in this area are considered to be positive.

(m) *Environmental Justice*—A significant impact would occur if a disproportionate number of minority and/or low income populations were adversely affected by the project. Mitigation of significant impacts are not expected to be necessary because facilities are not expected to have significant adverse environmental impacts.

(n) *Recreation*—Significant impacts on recreation facilities and resources would occur when the project conflicts with local, state or tribal recreation plans for the community, or a physical invasion by the project prevents current and/or future recreational use of adjacent properties. Significant impacts will be mitigated by including recreation sites in plans for child care centers to reduce reliance on public resources.

(o) *Aesthetics*—A significant impact would be the addition, into a predominantly natural setting, of incongruous human-made elements such as structures, noise, trash or pollutants, to the extent that they degrade the enjoyment of the setting for a majority of visitors or residents. Significant impacts will be mitigated by grantees adhering to with local or tribal ordinances and regulations on building appearance.

(p) *Public Services*—An impact would be considered significant if the proposed project inhibited the public services by preventing fire, police, emergency or social services from responding to calls in a timely way or if the project would impose excessive demands on public services. Significant impacts will be mitigated by grantees using public services in appropriate and responsible ways and by complying with state, local or tribal licensing regulations to reduce dangers of fires or other emergencies.

(q) *Utilities*—Significant impacts would occur where the proposed project would inhibit the use of such services by any other property owner, or if the project created an unreasonable demand on utility companies. Significant impacts will be mitigated by incorporating energy efficient features in building design.

(r) *Cumulative Effects*—Considered on a nationwide scale, activities related to the purchase, construction and major renovation of Head Start and Early Head Start facilities are expected to have a negligible cumulative impact.

In the course of implementing the Proposed Action, there will be some impacts to environmental resources. ACF believes that compliance by grantees with State, local or tribal requirements will prevent significant impacts by requiring mitigation or will lead grantees to select other sites for their projects which do not raise issues of environmental impact. When existing requirements do not fully address the need for mitigation of environmental impacts, ACF will require the grantee to take additional steps.

ACF does not contemplate approving the purchase, construction or major renovation of Head Start or Early head Start facilities located, or to be located, on wet lands or floodplains, at sites where the project would affect significantly sensitive natural habitats, or at sites where the project would significantly affect historic properties. This policy reflects concern not only with the adverse effects on the environment that selection of such sites would have but also in recognition of the prohibitive costs which would likely be incurred in mitigating significant impacts at those sites.

Dated: January 16, 2001.

Olivia A. Golden,

Assistant Secretary for Children and Families.

[FR Doc. 01–2219 Filed 1–24–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Big Valley Rancheria Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Big Valley Rancheria Liquor Control Ordinance. The ordinance regulates the control of, the possession of, and the sale of liquor on the Big Valley Rancheria trust lands, and is in conformity with the laws of the States of California, where applicable and necessary. Although the Ordinance was adopted on July 22, 2000, it does not become effective until published in the **Federal Register** because the failure to comply with the ordinance may result in criminal charges.

DATES: This ordinance is effective on January 25, 2001.

FOR FURTHER INFORMATION CONTACT: Kaye Armstrong, Office of Tribal Services, 1849 C Street, NW., MS 4631–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transaction in Indian country. The Big Valley Rancheria Liquor Control Ordinance, Resolution No. 07–22–00–08, was duly adopted by the General Community Council of the Big Valley Band of Pomo Indians on July 22, 2000. The Big Valley Rancheria, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenues to combat alcohol abuse and its debilitating effects among individuals and family members within the Big Valley Rancheria community.

This notice is being published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.

I certify that by Resolution No. 07–22–00–08, the Big Valley Rancheria Liquor Control Ordinance was duly adopted by the General Community Council of the Big Valley Band of Pomo Indians on July 22, 2000.

Dated: January 16, 2001.

Michael J. Anderson,

Acting Assistant Secretary—Indian Affairs.

The Big Valley Rancheria Liquor Control Ordinance, Resolution No. 07–22–00–08, reads as follows:

General Community Council Resolution No. 07–22–00–08

Whereas, pursuant to applicable Federal law (the Act of August 15, 1953, Pub. L. 83–277, 67 Stat. 588, 18 U.S.C. § 1161) in order for sales, possession and introduction of liquor within Indian Country to be lawful, the Tribe must enact a liquor control ordinance, and said ordinance must be approved by the Secretary of the Interior and published in the **Federal Register**; and

Whereas, the General Community Council of the Big Valley Tribe wishes to permit tribally owned and operated enterprises within the Big Valley Rancheria to sell alcohol in order to preserve the economic viability of said enterprises and to provide additional income to support provision of tribal government services to tribal members; and

Whereas, the Big Valley Liquor Control Ordinance provides for sales, introduction and possession of alcohol in conformity with the laws of the State of California.

It is therefore resolved, That the Big Valley Liquor Control Ordinance is hereby enacted as a law of the Big Valley Rancheria.

Ordinance # 07–22–00–08

Liquor Control Ordinance

Be it enacted by the General Community Council of the Big Valley Band of Pomo Indians, as follows:

Article 1. Name. This ordinance shall be known as the Big Valley Liquor Control Ordinance.

Article 2. Authority. This ordinance is enacted pursuant to the Act of August 15, 1953, (Pub. L. 83–277, 67 Stat. 588, 18 U.S.C. § 1161) and Article IV of the Constitution and Bylaws of the Big Valley Tribe.

Article 3. Purpose. The purpose of this ordinance is to regulate and control the possession and sale of liquor on the Big Valley Rancheria, and to permit alcohol sales by tribally owned and operated enterprises, and at tribally approved special events, for the purpose of the economic development of the Big Valley Tribe. The enactment of a tribal ordinance governing liquor possession and sales on the Big Valley Rancheria will increase the ability of tribal government to control Rancheria liquor distribution and possession, and will provide an important source of revenue for the continued operation and strengthening of the tribal government, the economic viability of tribal enterprises, and the delivery of tribal government services. This Liquor Control Ordinance is in conformity with the laws of the State of California as required by 18 U.S.C. 1161, and with all applicable federal laws.

Article 4. Effective Date. This ordinance shall be effective as of the date of its publication in the **Federal Register**.

Article 5. Possession of Alcohol. The introduction or possession of alcoholic beverages shall be lawful within the exterior boundaries of the Big Valley Rancheria; Provided, That such introduction or possession is in conformity with the laws of the State of California.

Article 6. Sales of Alcohol.

(a) The sale of alcoholic beverages by business enterprises owned by and subject to the control of the Big Valley Tribe shall be lawful within the exterior boundaries of the Big Valley Rancheria; Provided, That such sales are in conformity with the laws of the State of California.

(b) The sale of alcoholic beverages by the drink at special events authorized by the Big Valley Tribe shall be lawful within the exterior boundaries of the Big Valley Rancheria; Provided, That such sales are in conformity with the laws of the State of California and with prior approval by the Big Valley Tribe.

Article 7. Age Limits. The drinking age within the Big Valley Rancheria shall be the same as that of the State of California, which is currently 21 years. No person under the age of 21 years shall purchase, possess or consume any alcoholic beverage. At such time, if any, as California Business and Profession Code § 25658, which sets the drinking age for the State of California, is repealed or amended to raise or lower the drinking age within California, this Article shall automatically become null and void, and the Business Committee shall be empowered to amend this Article to match the age limit imposed by state law, such amendment to become effective upon publication in the **Federal Register** by the Secretary of the Interior.

Article 8. Civil Penalties. The Big Valley Tribe, through its Business Committee and duly authorized security personnel, shall have authority to enforce this ordinance by confiscating any liquor sold, possessed or introduced in violation hereof. The Business Committee shall be empowered to sell such confiscated liquor for the benefit of the Big Valley Tribe and to develop and approve such regulations as may

become necessary for enforcement of this ordinance.

Article 9. Prior Inconsistent Enactments. Any prior tribal laws, resolutions or ordinances which are inconsistent with this ordinance are hereby repealed to the extent they are inconsistent with this ordinance.

Article 10. Sovereign Immunity. Nothing contained in this ordinance is intended to, nor does in any way, limit, alter, restrict, or waive the sovereign immunity of the Big Valley Tribe or any of its agencies from unconsented suit or action of any kind.

Article 11. Severability. If any provision of this ordinance is found by any agency or court of competent jurisdiction to be unenforceable, the remaining provisions shall be unaffected thereby.

Article 12. Amendment. This ordinance may be amended by majority vote of the General Council of the Big Valley Tribe at a duly noticed General Community Council meeting, such amendment to become effective upon publication in the **Federal Register** by the Secretary of the Interior.

[FR Doc. 01–2223 Filed 1–24–01; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1310–DB]

Draft Resource Management Plan Amendment (RMPA) and Environmental Impact Statement (EIS) for Federal Fluid Minerals Leasing and Development in Sierra and Otero Counties, New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Extension of Public Comment Period and Additional Public Hearings.

SUMMARY: The BLM announces the extension of the public comment period on the Draft RMPA and EIS for Federal Fluid Minerals Leasing and Development in Sierra and Otero Counties. Pursuant to 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, Council on Environmental Quality (CEQ) regulations (40 CFR 1500–1508), and the Federal Land Policy and Management Act (FLPMA) of 1976, the BLM Las Cruces Field Office (through Dames and Moore, Inc., a qualified consultant) has prepared a Draft RMPA/EIS. The RMPA/EIS addresses Federal fluid minerals (oil, gas, and geothermal) leasing and subsequent activities (e.g., exploration, development, and/or production) in Sierra and Otero Counties, New Mexico. The 60-day extension of the public comment period was granted after BLM review of the reasons for the request. The 60-day extension starts immediately after the end of the 90-day public comment period. The 90-day public comment period ends February 20, 2001. The 60-day extension of the public comment period starts February 21, 2001 and ends April 23, 2001.

DATES: Written comments on the Draft RMPA/EIS must be postmarked on or before April 23, 2001. Public hearings will be held at the times and places listed under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Written comments should be sent to: Tom Phillips, RMPA/EIS Team Leader, BLM, Las Cruces Field Office, 1800 Marquess, Las Cruces, NM 88005.

FOR FURTHER INFORMATION CONTACT: Tom Phillips, RMPA/EIS Team Leader, (505) 525–4377.

SUPPLEMENTARY INFORMATION: Public hearings will be held at the following times and locations.

Date	Time	City	Location
April 3, 2001	7:00 p.m.	Roswell, NM	Sally Port Inn, 2000 N. Main St.
April 4, 2001	7:00 p.m.	Alamogordo, NM	County Commission Chambers, 1000 New York Ave.
April 5, 2001	7:00 p.m.	Truth or Consequences, NM	County Commission Chambers, 100 N. Date St.

Both oral and written comments may be given at the hearings. Written comments may also be submitted to the BLM, Las Cruces Field Office, 1800 Marquess, Las Cruces, NM 88005 on or before April 23, 2001. This date reflects an agreed upon 60-day extension to the public comment period.

A time limit for oral testimony at the hearings will be established by the presiding hearings officer, based on the number of people wishing to make comments at each hearing. Written text of prepared comments may be filed at the hearing whether or not the speaker has been able to complete the oral delivery in the allotted time.

All oral and written comments on the adequacy of the Draft RMPA/EIS will receive consideration in the Proposed RMPA/Final EIS.

Copies of the Draft RMPA/EIS have been distributed to a mailing list of identified interested parties. Single copies of the Draft RMPA/EIS may be obtained from the BLM Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico. Public reading copies are available for review at public and university libraries in Las Cruces, Alamogordo, Truth or Consequences, Roswell, and Santa Fe, New Mexico and El Paso, Texas.

The RMPA amends the 1986 Resource Management Plan (RMP) for the White Sands Resource Area. The objective of the RMPA is to determine (1) which lands overlying Federal fluid minerals are suitable and available for leasing and subsequent development and (2) how those leased lands will be managed. The EIS identifies the potential impacts that alternative plans for fluid minerals leasing and subsequent activities could have on the environment and identifies appropriate measures to mitigate those impacts.

Dated: January 19, 2001.

Leonard T. Brooks,

Acting Field Manager, Las Cruces.

[FR Doc. 01–2299 Filed 1–24–01; 8:45 am]

BILLING CODE 4310—VC–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Colorado River Interim Surplus Guidelines

AGENCY: Bureau of Reclamation, Department of the Interior.

ACTION: Notice of Availability of Record of Decision for the adoption of Colorado River Interim Surplus Guidelines.

SUMMARY: The Bureau of Reclamation (Reclamation), published a **Federal Register** notice on December 15, 2000 (65 FR 78511) which informed the public of the availability of the Final Environmental Impact Statement (FEIS)

on the proposed adoption of specific criteria under which surplus water conditions will be determined in the Lower Colorado River Basin during the next 15 years. We are now notifying the public that the Secretary of the Interior signed the Record of Decision (ROD) on January 16, 2001. The text of the ROD may be found below.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Ms. Jayne Harkins by telephone at (702) 293–8785. The ROD is also available for viewing on the Internet at *http://www.lc.usbr.gov.*

Dated: January 18, 2001.

Bruce Babbitt,

Secretary, Department of the Interior.

Record of Decision

Colorado River Interim Surplus Guidelines; Final Environmental Impact Statement

I. Introduction

This document constitutes the Record of Decision (ROD) of the Department of the Interior, regarding the preferred alternative for Colorado River Interim Surplus Guidelines (Guidelines). The Secretary of the Interior (Secretary) is vested with the responsibility of managing the mainstream waters of the lower Colorado River pursuant to federal law. This responsibility is carried out consistent with applicable federal law. Reclamation, as the agency that is designated to act on the Secretary's behalf with respect to these matters, is the lead Federal agency for the purposes of National Environmental Policy Act (NEPA) compliance for the development and implementation of the proposed interim surplus guidelines. The FEIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended, the Council on Environmental Quality's (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 Code of Federal Regulations [CFR] Parts 1500 through 1508), Department of Interior Policies, and Reclamation's NEPA Handbook. Colorado River Interim Surplus Criteria is the subject of the Final Environmental Impact Statement (FEIS), filed with the Environmental Protection Agency (FES–00–52) on December 8, 2000 and noticed by the Environmental Protection Agency and Reclamation in the **Federal Register** on December 15, 2000.

The FEIS was prepared by Reclamation to address the formulation and evaluation of specific interim surplus guidelines and to identify the potential environmental effects of implementing such guidelines. The FEIS addresses the environmental issues associated with, and analyzes the environmental consequences of various alternatives for specific interim surplus guidelines. The alternatives addressed in the FEIS are those Reclamation determined would meet the purpose of and need for the federal action and represented a broad range of the most reasonable alternatives.

The National Park Service (NPS) and the International Boundary and Water Commission United States and Mexico (IBWC) are cooperating agencies for purposes of assisting with the environmental analysis in the FEIS. The NPS administers three areas of national significance within the area potentially affected by the proposed action: Glen Canyon National Recreation Area (GCNRA), Grand Canyon National Park and Lake Mead National Recreation Area (LMNRA). The NPS administers recreation, cultural and natural resources in these areas and also grants and administers recreation concessions for the operation of marinas and related facilities at Lake Powell and Lake Mead, while the elevation of each of these reservoirs is controlled by and subject to Reclamation operations. The IBWC is a bi-national organization responsible for administration of the provisions of the U.S.-Mexico Water Treaty of 1944 (Treaty), including the Colorado River waters allocated to Mexico, protection of lands along the Colorado River from floods by levee and floodway projects, resolution of international boundary water sanitation and other water quality problems, and preservation of the river as the international boundary. The IBWC consists of the United States Section and the Mexico Section which have their headquarters in the adjoining cities of El Paso, Texas and Ciudad Juarez, Chihuahua, respectively. These and other federal, state and local agencies are expected to use the FEIS and ROD in their planning and decision-making processes.

II. Recommended Decision

The recommendation is the approval of the following Federal action the adoption of specific interim surplus guidelines identified in the Preferred Alternative (Basin States Alternative) as analyzed in the FEIS. These specific interim surplus guidelines would be used annually to determine the conditions under which the Secretary would declare the availability of surplus water for use within the states of Arizona, California and Nevada. These guidelines would be consistent with both the Decree entered by the United States Supreme Court in 1964 in the case of *Arizona* v. *California* (Decree) and Article III(3)(b) of the Criteria for Coordinated Long-Range Operation of the Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act of September 30, 1968 (LROC). The guidelines would remain in effect for determinations made through calendar year 2015 regarding the availability of surplus water through calendar year 2016, may be subject to five-year reviews conducted concurrently with LROC reviews, and would be applied each year as part of the Annual Operation Plan (AOP) process.

III. Background

The Secretary of the Interior manages the lower Colorado River system in accordance with federal law, including the 1964 Decree of the U.S. Supreme Court in *Arizona* v. *California* (Decree), the Colorado River Basin Project Act of 1968 (CRBPA), and the Criteria for Coordinated Long-Range Operation of the Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act of September 30, 1968 (LROC). Within this legal framework, the Secretary makes annual determinations regarding the availability of surplus water from Lake Mead by considering various factors, including the amount of water in system storage and predictions for natural runoff. The 1964 Decree provides that if there exists sufficient water available in a single year for release (primarily from Lake Mead) to satisfy annual consumptive use in the states of Arizona, California, and Nevada in excess of 7.5 million acre-feet (maf), such excess consumptive use in Arizona, California and Nevada is ''surplus.'' The Secretary is authorized to determine the conditions upon which such water may be made available. The CRBPA directed the Secretary to adopt criteria for coordinated long-range operation of reservoirs on the Colorado River in order to comply with and carry out the provisions of the Colorado River Compact of 1922 (Compact), the Colorado River Storage Project Act of 1956 (CRSPA), the Boulder Canyon Project Act of 1928 (BCPA) and the United States-Mexico Water Treaty of 1944 (Treaty). The Secretary sponsors a formal review of the LROC every five years.

The LROC provide that the Secretary will determine the extent to which the reasonable consumptive use requirements of mainstream users in Arizona, California and Nevada (the Lower Division states) can be met. The LROC define a normal year as a year in which annual pumping and release from Lake Mead will be sufficient to satisfy 7.5 maf of consumptive use in accordance with the Decree. A surplus

year is defined as a year in which water in quantities greater than normal (i.e., greater than 7.5 maf) is available for pumping or release from Lake Mead pursuant to Article II(B)(2) of the Decree after consideration of relevant factors, including the factors listed in the LROC. Surplus water is available to agencies which have contracted with the Secretary for delivery of surplus water, for use when their water demand exceeds their basic entitlement, and when the excess demand cannot be met within the basic apportionment of their state. Water apportioned to, but unused by one or more Lower Division states can be used to satisfy beneficial consumptive use requests of mainstream users in other Lower Division states as provided in Article II(B)(6) of the Decree.

Pursuant to the CRBPA, the LROC are utilized by the Secretary, on an annual basis, to make determinations with respect to the projected plan of operations of the storage reservoirs in the Colorado River Basin. The AOP is prepared by Reclamation, acting on behalf of the Secretary, in consultation with representatives of the Colorado River Basin states (Basin States) and other parties, as required by federal law. The interim surplus guidelines would serve to implement the provisions of Article III(3)(b) of the LROC on an annual basis in the determinations made by the Secretary as part of the AOP process for a period of fifteen years.

To date, the Secretary has applied factors, including but not limited to those found in Article III(3)(b)(i–iv) of the LROC, in annual determinations of the availability of surplus quantities of water for pumping or release from Lake Mead. As a result of actual operating experience and through preparation of AOPs, particularly during recent years when there has been increasing demand for surplus water, the Secretary has determined that there is a need for more specific surplus guidelines, consistent with the Decree and applicable federal law, to assist in the Secretary's annual decision making during an interim period.

For many years, California has been diverting more than its normal 4.4 maf apportionment. Prior to 1996, California utilized unused apportionments of other Lower Division states that were made available by the Secretary. Since 1996, California has also utilized surplus water made available by Secretarial determination. California is in the process of developing the means to reduce its annual use of Colorado River water to 4.4 maf. Both Arizona and Nevada are approaching full use of their Colorado River apportionments.

Additionally, through adoption of specific interim surplus guidelines, the Secretary will be able to afford mainstream users of Colorado River water, particularly those in California who currently utilize surplus flows, a greater degree of predictability with respect to the likely existence, or lack thereof, of surplus conditions on the river in a given year. Adoption of the interim surplus guidelines is intended to recognize California's plan to reduce reliance on surplus deliveries, to assist California in moving toward its allocated share of Colorado River water, and to avoid hindering such efforts. Implementation of interim surplus guidelines would take into account progress, or lack thereof, in California's efforts to achieve these objectives. The surplus guidelines would be used to identify the specific amount of surplus water which may be made available in a given year, based upon factors such as the elevation of Lake Mead, during a period within which demand for surplus Colorado River water will be reduced. The increased level of predictability with respect to the prospective existence and quantity of surplus water would assist in planning and operations by all entities that receive surplus Colorado River water pursuant to contracts with the Secretary.

IV. Alternatives Considered

The FEIS analyzed five action alternatives for interim surplus guidelines as well as a No Action Alternative/Baseline Condition that was developed for comparison of potential effects of the action alternatives. A common element of all alternatives is that in years in which the Field Working Agreement between the Bureau of Reclamation and the Army Corps of Engineers for Flood Control Operation of Hoover Dam and Lake Mead (Field Working Agreement) requires releases greater than the downstream beneficial consumptive use demands, the Secretary shall determine that a ''flood control surplus'' will be declared in that year. In such years, releases will be made to satisfy all beneficial uses within the United States and up to an additional 200,000 acre feet (af) will be made available to Mexico under the Treaty. The No Action Alternative/Baseline Condition and the five action alternatives are described below.

1. *No Action Alternative/Baseline Condition:* Under the No Action Alternative, determinations of surplus would continue to be made on an annual basis, in the AOP process, pursuant to the LROC and the Decree. The No Action Alternative represents the future AOP process without specific interim surplus guidelines. Surplus determinations consider such factors as end-of-year system storage, potential runoff conditions, projected water demands of the Basin States and the Secretary's discretion in addressing year-to-year issues. The No Action Alternative is identified as the ''environmentally preferable alternative'' as it affords the Secretary the greatest degree of annual flexibility in managing the mainstream waters and resources of the lower Colorado River pursuant to applicable federal law. However, the year-to-year variation in the conditions considered by the Secretary in making surplus water determinations makes projections of surplus water availability highly uncertain, and may hinder efforts by California to reduce its over-reliance on Colorado River water supplies.

The approach used in the FEIS for analyzing the hydrologic aspects of the interim surplus guidelines alternatives was to use a computer model that simulates specific operating parameters and constraints. In order to follow CEQ guidelines calling for a No Action alternative for use as a ''baseline'' against which to compare project alternatives, Reclamation selected a specific operating strategy for use as a baseline condition, which could be described mathematically in the model.

The baseline is based on a 70R spill avoidance strategy (70R strategy). The 70R baseline strategy involves assuming a 70-percentile inflow into the system subtracting out the consumptive uses and system losses and checking the results to see if all of the water could be stored or if flood control releases from Lake Mead would be required. If flood control releases from Lake Mead would be required, additional water is made available to the Lower Basin states beyond 7.5 maf. The notation 70R refers to the specific inflow where 70 percent of the historical natural runoff is less than this value (17.4 maf) for the Colorado River basin at Lee Ferry. In practice, the 70R surplus determination trigger elevation would be made during the fall of the preceding year using projected available system space. The 70R strategy trigger line gradually rises from approximately 1199 feet above mean sea level (msl) in 2002 to 1205 feet msl in 2050 as a result of increasing water use in the Upper Basin. Under baseline conditions, when a surplus condition is determined to occur, surplus water would be made available to fill all water orders by holders of surplus water contracts in the Lower Division states.

Reclamation has utilized a 70R strategy for both planning purposes and

studies of surplus determinations in past years. When Reclamation reviewed previous surplus determinations as part of the Draft Environmental Impact Statement (DEIS) effort, the data indicated that the 1997 surplus determination did not precisely fit the 70R strategy. As a result, Reclamation selected the 75R strategy as representative of recent operational decisions for use as the baseline condition in the DEIS. However, based on further review and analysis, public comment, and discussion with representatives of the Basin States during the DEIS review period, Reclamation selected the 70R strategy for the baseline condition in the FEIS. While the 70R strategy is used to represent baseline conditions, it does not represent a decision by Reclamation to utilize the 70R strategy for determination of future surplus conditions in the absence of interim surplus guidelines. It should be noted that the 70R strategy and 75R strategy produced very similar modeling results for the purpose of determining impacts associated with the action alternatives analyzed in this FEIS. The primary effect of simulating operation with the 70R strategy would be that surplus conditions would only be determined when Lake Mead is nearly full.

2. *Basin States Alternative (Preferred Alternative)*: The Basin States Alternatives is similar to, and based upon, information submitted to the Secretary by representatives of the Governors of the states of Colorado, Wyoming, Utah, New Mexico, Arizona, Nevada and California. After receipt of this information (during the public comment period), Reclamation shared the submission with the public (through the **Federal Register** and Reclamation's surplus guidelines web sites) for consideration and comment. Reclamation then analyzed the states' submission and crafted this additional alternative for inclusion in the FEIS. Some of the information submitted for the Department's review was outside of the scope of the proposed action for adoption of interim surplus guidelines and was therefore not included as part of the Basin States Alternative (e.g., adoption of shortage criteria and adoption of surplus criteria beyond the 15-year period) as presented in the FEIS.

The Basin States Alternative specifies ranges of Lake Mead water surface elevations to be used through 2015 for determining the availability of surplus water through 2016. The elevation ranges are coupled with specific uses of surplus water in such a way that, if Lake Mead's surface elevation were to decline, the amount of surplus water would be reduced. The surplus determination elevations under the preferred alternative consist of three tiered Lake Mead water surface elevations, each of which is associated with certain designations on the purposes for which surplus water could be used. When a flood control surplus is determined, surplus water would be made available for all established uses by contractors for surplus water in the Lower Division States. When Lake Mead water levels are below the lowest surplus trigger elevation, surplus water would not be made available.

3. *Flood Control Alternative:* Under the Flood Control Alternative, a surplus condition is determined to exist when flood control releases from Lake Mead are occurring or projected to occur in the subsequent year. The method of determining need for flood control releases is based on flood control regulations published by the Los Angeles District of the Corps of Engineers (Corps) and the Field Working Agreement between the Corps and Reclamation. Under the flood control strategy, a surplus is determined when the Corps flood control regulations require releases from Lake Mead in excess of downstream demand. If flood control releases or space building releases are required, surplus conditions are determined to be in effect. The average Lake Mead water surface elevation that would trigger flood control releases is approximately 1211 feet msl. In practice, flood control releases are not based on the average trigger elevation, but would be determined each month by following the Corps regulations. When a flood control surplus is determined, surplus water would be made available for all established uses by contractors for surplus water in the Lower Division States.

4. *Six States Alternative:* The Six States Alternative specifies ranges of Lake Mead water surface elevations to be used through 2015 for determining the availability of surplus water through 2016. The elevation ranges are coupled with specific uses of surplus water in such a way that, if Lake Mead's surface elevation were to decline, the amount of surplus water would be reduced. The surplus determination elevations under the Six States Alternative consist of three tiered Lake Mead water surface elevations, each of which is associated with certain designations on the purposes for which surplus water could be used. When flood control releases are made, any and all beneficial uses would be met, including unlimited off-stream storage. When Lake Mead water levels are below the lowest surplus trigger elevation, surplus water would not be made available.

5. *California Alternative:* The California Alternative specifies Lake Mead water surface elevations to be used for the interim period through 2015 for determining the availability of surplus water through 2016. The elevation ranges are coupled with specific uses of surplus water in such a way that, if Lake Mead's surface elevation declines, the amount of surplus water would be reduced. The Lake Mead elevations at which surplus conditions would be determined under the California Alternative are expressed as three tiered, upward sloping trigger lines that rise gradually year by year to 2016, in recognition of the gradually increasing water demand of the Upper Division states from the present to 2016. Each tier would be coupled with limitations on the amount of surplus water available at that tier. Each tier under the California Alternative would be subject to adjustment during the interim period based on changes in Upper Basin demand projections. When flood control releases are made, any and all beneficial uses would be met, including unlimited off-stream storage. When Lake Mead water levels are below the lowest surplus trigger elevation, surplus water would not be made available

6. *Shortage Protection Alternative:* The Shortage Protection Alternative is based on maintaining an amount of water in Lake Mead necessary to provide a normal annual supply of 7.5 maf for the Lower Division, 1.5 maf for Mexico and storage necessary to provide an 80 percent probability of avoiding future shortages. The surplus triggers under this alternative range from an approximate Lake Mead initial elevation of 1126 feet msl to an elevation of 1155 feet msl at the end of the interim period. At Lake Mead elevations above the surplus trigger, surplus conditions would be determined to be in effect and surplus water would be available for use in the Lower Division states. Below the surplus trigger elevation, surplus water would not be made available.

V. Basis for Decision

Reclamation selected the Basin States Alternative as its preferred alternative based on Reclamation's determination that it best meets all aspects of the purpose and need for the action, including the need: to remain in place for the entire period of the interim guidelines; to garner support among the Basin States that will enhance the Secretary's ability to manage the Colorado River reservoirs in a manner that balances all existing needs for these

precious water supplies; and, to assist in the Secretary's efforts to insure that California water users reduce their over reliance on surplus Colorado River water. Reclamation notes the important role of the Basin States in the statutory framework for administration of Colorado River Basin entitlements and the significance that a seven-state consensus represents on this issue. With respect to the information within the scope of the proposed action, Reclamation found the Basin States Alternative to be a reasonable alternative and fully analyzed the environmental effects of this alternative in the FEIS. The identified environmental effects of the Basin States Alternative are well within the range of anticipated effects of the alternatives presented in the DEIS and do not affect the environment in a manner not already considered in the DEIS. Thus, based on all available information, this alternative is the most reasonable and feasible alternative.

VI. Public Response to Final Environmental Statement

Following the **Federal Register** Notice of Availability for the FEIS on December 15, 2000, and as of Friday at 7:00 PM (EST), on January 12, 2001, Reclamation had received one letter supporting the preferred alternative in the FEIS, one letter from the Ten Tribes Partnership, one letter from a Non-governmental Organization and four letters and approximately 7,517 email comments entitled ''Stop Damage to the Colorado River Delta'' commenting on the FEIS. The email form letter appears to be based upon information made available by Environmental Defense as posted on its Environmental Defense Action Network Internet web site. The live action alert allows citizens to automatically email a form/sample letter to a designated addressee (in this case the Bureau of Reclamation's project leader). Of the total of approximately 7,517 email form letters, approximately 400 have been edited in some manner from the template letter provided and the remainder (approx. 7,100) are identical to the form letter. Of the edited email form letters none make substantive comments on the FEIS beyond that contained in the email form letter template.

With respect to the comments received on the FEIS, and pursuant to Reclamations's NEPA guidance, ''Only in special circumstances should any specific comments be responded to in the ROD. If the comments raise significant issues that have not been addressed, the need to supplement the FEIS should be determined.'' Reclamation does not believe that the comments received on the FEIS raise any significant issues that would require supplementing the FEIS. Reclamation provides the following additional information.

A summary of issues raised by the comment letters are as follows:

Comment/Issue 1: Objection to the preferred alternative in the FEIS because these criteria will deprive the Colorado River delta of life-sustaining water, destroy important native riparian habitats, and push numerous endangered species perilously close to extinction.

Response: The rational for identification of the preferred alternative is addressed in Chapter 2.3.2 and analyzed in the Chapter 3, Affected Environment and Environmental Consequences. Transboundary Impacts are addressed in Chapter 3.16 of the FEIS. In addition, the status of consultation on special status species for the preferred alternative in the FEIS is addressed in Section VIII of the ROD.

Comment/Issue 2. Urges Reclamation to insure that impacts to the Colorado River delta are mitigated by dedicating sufficient water to meet the needs of its riparian ecosystems, specifically the needs of cottonwoods and willows throughout their lifecycle.

Response: Dedicating Colorado River Water for the Colorado River delta is addressed in Chapter 1.1.4 and Chapter 2.2.3 of the FEIS. Transboundary Impacts are addressed in Chapter 3.16 of the FEIS. See also Section X. Part 7, Transboundary Impacts, and Section VIII of the ROD that discusses the status of consultation on special status species for the preferred alternative.

Comment/Issue 3: Urges Reclamation to issue a supplemental EIS including the Pacific Institute proposal as a reasonable alternative and its analysis.

Response: Consideration of the Pacific Institute's proposal in the FEIS is addressed in Chapter 2.2.3 and further responded to in Volume III, Comment and Responses, Part B, page B–22, Response 11–2 and page B–24, Response 11–6, page B–38, comment 12–6 and 12–7. These responses address the reasons that the Pacific Institute proposal was not analyzed as an independent alternative in the FEIS. Accordingly, Reclamation has determined that is not necessary to supplement the FEIS.

Comment/Issue 4: Disagreement on the acceptance of the Basin States proposal as an alternative and its identification as the preferred alternative.

Response: The Basin States Alternative and its identification as the preferred alternative is addressed in Chapter 2.3.2 of the FEIS. The working draft of the Basin States Proposal was published in the **Federal Register** during the DEIS public comment process. The **Federal Register** notice on the draft Basin States Proposal is included in the FEIS in Chapter 5.9.

Comment/Issue 5: The Ten Tribes Partnership, by letter dated January 8, 2001, expressed concerns regarding the impact of the Interim Surplus Guidelines on the Tribes' reserved water rights. The Tribes noted their disagreement with Reclamation's analysis and the position taken by the Department of the Interior with regard to its trust responsibility on Tribal water rights in the FEIS. Additionally, the Ten Tribes Partnership requested Reclamation to assist them in on-reservation development of their water resources.

Response: As an initial matter, Reclamation fully identified and analyzed Tribal water rights in the FEIS in Chapter 3.14, their Depletion Schedule in Attachment Q, and fully responded to Tribal comments on the DEIS in Volume III, pages B–164 through 219 of the FEIS.

Additionally, as part of its analysis of the proposed federal action in the EIS, Reclamation identified a significant quantity of confirmed but unused water rights belonging to several Indian tribes in the Colorado River basin. These undeveloped rights are a factor in the available water supply which is being managed as surplus.

The Department, as trustee, believes that these surplus guidelines will benefit the tribes by helping to ensure that California does not develop a permanent reliance on unused water rights. By the same token, the Department believes it important for the tribes to develop and utilize their water rights. Accordingly, the Department directs the Bureau of Reclamation to provide appropriate assistance (including technical and financial assistance) to each of the relevant tribes to establish a water use plan for on-reservation development.

VII. Alteration of Project Plan In Response To Public Comment

Public comments on the FEIS did not result in changes to the proposed action nor selection of the Preferred Alternative.

VIII. Status of Consultation on Special Status Species Under Section 7(a)(2) of the Endangered Species Act

On January 11, 2001, Reclamation received a memorandum from the U.S. Fish and Wildlife Service (Service)

pursuant to the Endangered Species Act (Act) of 1973, as amended, responding to Reclamation's November 29, 2000 memorandum regarding the adoption of proposed Interim Surplus Criteria for the lower Colorado River and its possible effects to endangered species and their critical habitat in the river corridor below Glen Canyon Dam to Separation Rapid from Glen Canyon Dam operations. Reclamation's November 29, 2000 memorandum concluded that the proposed project may affect, but is not likely to adversely affect, listed species in the Colorado River corridor or their critical habitat from Glen Canyon Dam to the headwaters of Lake Mead. The species of consideration include the endangered humpback chub (*Gila cypha*) with critical habitat, endangered razorback sucker (*Xyrachen texanus*) with critical habitat, endangered southwestern willow flycatcher (*Empidonax extimus trailli*) without critical habitat, and threatened (proposed delisted) bald eagle (*Haliaeetus leucocephalus*) without critical habitat. The Service concurred with Reclamation's determination that a 2 percent change in the frequency of occurrence of experimental flows as a result of Interim Surplus Criteria ''may affect, but is not likely to adversely affect the above mentioned listed species or their critical habitat.'' The Service also concurred with Reclamation's determination that a change in the frequency of Beach Habitat Building Flows (BHBF) through the Grand Canyon from 1 in 5 years, to the current estimate of 1 in every 6 years with the adoption of Interim Surplus Criteria ''may affect, but is not likely to adversely affect listed species or adversely modify their critical habitat'' given that BHBF's are not required to remove jeopardy to native fish, nor required to minimize incidental take, and have not proven critical to the survival or recovery of native fishes. No further section 7 consultation is required for the adoption of Interim Surplus Criteria in the Grand Canyon at this time.

On January 12, 2001 Reclamation received a Biological Opinion (BO) from the Service for Interim Surplus Criteria, Secretarial Implementation Agreements, and Conservation Measures on the Lower Colorado River, Lake Mead to the Southerly International Boundary, Arizona, California, and Nevada. This BO is based on information provided in the August 31, 2000 biological assessment, the DEIS for Interim Surplus Criteria, and final conservation measures provided by Reclamation on January 9, 2001. The species under consideration include the razorback sucker, bonytail chub (*Gila elegans*), desert pupfish (*Cyprinodon macularius*), Yuma clapper rail (*Rallus longirostris yumanensis*), brown pelican (*Pelecanus occidentalis*), southwestern willow flycatcher, the threatened desert tortoise (*Gopherus agassizii*) and bald eagle; and designated critical habitat for the razorback sucker and bonytail chub. The service previously concurred with Reclamation's determination of ''is not likely to adversely affect'' for the bald eagle. Reclamation has also made findings of ''no effect'' for the desert pupfish, brown pelican, and desert tortoise and critical habitat for the bonytail chub. After reviewing the current status of the bonytail chub, razorback sucker, Yuma clapper rail and southwestern willow flycatcher, the environmental baseline for the action area, the effects of Interim Surplus Criteria, including conservation measures, and cumulative effects, it is the Service's biological opinion that the proposed action of Interim Surplus Criteria is not likely to jeopardize the continued existence of the bonytail chub, razorback sucker, Yuma clapper rail, and southwestern willow flycatcher or result in the destruction or adverse modification of critical habitat for the razorback sucker in the Lower Colorado River. Reclamation has provided conservation measures that would be part of the proposed action once selected. These measures are designed to reduce the significance of the effects of the action on listed species and critical habitat. These conservation measures are identified in this ROD in Section X.—Environmental Impacts and Implementation of Environmental Commitments, Part 4—*Special Status Species.*

Reclamation consulted with the Service and the National Marine Fisheries Service (NMFS) through a supplemental biological assessment (SBA) on Transboundary effects in Mexico from the proposed action for Interim Surplus Criteria by memoranda dated January 9, 2001. These consultations do not reflect any conclusion on Reclamation's part that consultation is required, as a matter of law or regulation, on any possible impact the adoption of interim surplus criteria may have on U.S. listed species in Mexico. Rather, consultation on these effects have proceeded with the expressed understanding that it may exceed what is required under applicable Federal law and regulations and does not establish a legal or policy precedent.

The Service responded to Reclamation's memorandum on Transboundary effects on January 11, 2001. The Service noted that Reclamation requested Service concurrence with a finding of ''may affect, not likely to adversely affect'' for the endangered southwestern willow flycatcher and totoaba (*Totoaba macdonaldi*). Reclamation also made findings of ''no effect'' to the endangered desert pupfish, Yuma clapper rail, and the vaquita (*Phocaena sinus*). The Service stated that it does not have jurisdiction in section 7 consultations for marine species such as the vaquita and totoaba, therefore they are not discussed in their memorandum. The Yuma clapper rail is not listed under the Endangered Species of 1973 (as amended) outside of the United States. Therefore, Yuma clapper rails in Mexico are not protected or considered in the section 7 consultation and are not discussed further in their memorandum. The Service concurred with Reclamation's finding of ''no effect'' for the desert pupfish. The Service finds that the effects of the Interim Surplus Criteria as described in the SBA are insignificant and concurs with Reclamation's finding of ''may affect, not likely to adversely affect'' for the southwestern willow flycatcher.

The NMFS responded to Reclamation's memorandum on Transboundary effects on January 12, 2001. Reclamation concluded that the proposed action for the Interim Surplus Criteria will ''not affect'' the Yuma clapper rail, desert pupfish, and the vaquita. Reclamation also concluded that the proposed interim surplus criteria ''may affect, but is not likely to adversely affect'' the southwestern willow flycatcher and totoaba and requested concurrence with this finding for the endangered totoaba. In their response the NMFS concurred with Reclamation's determination that the implementation of the preferred alternative will not likely adversely affect the totoaba. This finding concludes informal consultation pursuant to section 7 of the Endangered Species Act and its implementing regulations.

IX. Status of Consultation on Cultural Resources Under Section 106 of the National Historic Preservation Act

Reclamation is the agency designated to act on behalf of the Secretary with respect to the adoption of specific interim surplus guidelines identified in the Preferred Alternative (Basin States Alternative) analyzed in the FEIS. Reclamation is the lead Federal agency for the purposes of compliance with Section 106 of the National Historic Preservation Act (NHPA) of 1966, as

amended. Reclamation determined in the FEIS, that while development and implementation of Interim Surplus Guidelines should be considered an undertaking for the purposes of Section 106, it is not of a type that was likely to affect historic properties. Following publication and distribution of the DEIS, Reclamation received a memorandum from the Nevada State Historic Preservation Officer (NSHPO) through the public review and comment process. The memorandum stated that the NSHPO disagreed with Reclamation's finding that development and implementation of Interim Surplus Guidelines constituted an undertaking with no potential to effect historic properties, and requested the matter be forwarded to the Advisory Council on Historic Preservation (Council) for review. In accordance with the NSHPO's request, and pursuant to 36 CFR 800.5(c)3, Reclamation has prepared a memorandum on this matter and has forwarded it to the Council for review. Reclamation is proposing that further consultation occur within the framework provided by Section 110 of the NHPA. Reclamation believes questions and concerns regarding what sorts of impacts might be occurring to, or may occur at some future date to historic properties as a result of on-going operation of the Colorado River system, are better viewed as long term management issues, which should be addressed through consultation under Section 110 or the NHPA, rather than through Section 106 compliance for a specific activity that represents only a small part of a much larger, on-going program.

X. Environmental Impacts and Implementation of Environmental Commitments

Potential Impacts are associated with changes in the difference between probabilities of occurrence for specific resource issues under study when comparing the No Action Alternative/ Baseline Condition to that of the Preferred Alternative. Potential impacts on 13 resource issues from the Preferred Alternative were analyzed by Reclamation in the FEIS. These included; Water Supply, Water Quality, River Flow Issues, Aquatic Resources, Special Status Species, Recreation, Energy Resources, Air Quality, Visual Resources, Cultural Resources, Indian Trust Assets, Environmental Justice, and Transboundary Impacts. Reclamation determined these resource issues will not be adversely affected by the adoption of the Preferred Alternative and thus will not require specific mitigation measures to reduce or eliminate non-significant effects because the small changes in the probabilities of occurrence of flows which would effect these resource issues are within Reclamation's current operational regime and authorities under applicable federal law. In recognition of potential effects that could occur with implementation of the Preferred Alternative, Reclamation has developed a number of environmental commitments that will be undertaken. Some environmental commitments are the result of compliance with specific consultation requirements.

Environmental commitments that will be implemented by Reclamation are identified below.

1. Water Quality

Reclamation will continue to monitor salinity and Total Dissolved Solids (TDS) in the Colorado River as part of the ongoing Colorado River Basin Salinity Control Program to ensure compliance with the numeric criteria on the river as set forth in the Forum's 1999 Annual Review.

Reclamation will continue to participate in the Lake Mead Water Quality Forum and the Las Vegas Wash Coordination Committee as a principal and funding partner in studies of water quality in the Las Vegas Wash and Lake Mead. Reclamation is an active partner in the restoration of the Las Vegas Wash wetlands.

Reclamation is and will continue to acquire riparian and wetland habitat around Lake Mead and on the Lower Colorado River related to ongoing and projected routine operations.

Reclamation will continue to participate with the Nevada Division of Environmental Protection and Kerr-McGee Chemical Company in the perchlorate remediation program of groundwater discharge points along Las Vegas Wash which will reduce the amount of this contaminant entering the Colorado River.

Reclamation will continue to monitor river operations, reservoir levels and water supply and make this information available to the Colorado River Management Work Group (CRMWG), agencies and the public. This information is also available on Reclamation's website (http://www.lc.usbr.gov and http://www.uc.usbr.gov).

2. Riverflow Issues

Reclamation and the other stakeholders in the Glen Canyon Dam Adaptive Management Program (AMP) are currently developing for recommendation to the Secretary an experimental flow program for the operations of Glen Canyon Dam which includes Beach/Habitat-Building-Flows (BHBFs). BHBFs are implemented over the long-term by hydrologic triggering criteria approved by the Secretary, and are one measure implemented subject to and consistent with existing law designed to protect and mitigate adverse impacts to and improve the values for which Grand Canyon National Park and Glen Canyon National Recreation Area were established. This experimental flow program will consider both the potential for reduced frequency of BHBFs resulting from the Interim Surplus Guidelines and for experimental flows to be conducted independent of the hydrologic triggering criteria. The design of the experimental flow program will include the number of flows, the duration and the magnitude of experimental flows. The AMP shall forward their recommendation on this matter for the Secretary's consideration.

3. Aquatic Resources

Reclamation will initiate a temperature monitoring program below Hoover Dam with state and other Federal agencies to document temperature changes related to baseline conditions and implementation of interim surplus guidelines and assess their potential effects on listed species and the sport fishery. The existing hydrolab below Hoover Dam will be modified as necessary to provide this temperature data.

4. Special Status Species

Reclamation will implement the following conservation measures for Razorback sucker in Lake Mead and native fish in Lake Mohave:

1. Reclamation will continue to provide funding and support for the ongoing Lake Mead Razorback Sucker study. The focus will be on locating populations of razorbacks in Lake Mead from the lower Grand Canyon (Separation Canyon) area downstream to Hoover Dam, documenting use and availability of spawning areas at various water elevations, clarifying substrate requirements, monitoring potential nursery areas, continuing ageing studies and confirming recruitment events that may be tied to physical conditions in the lake. The expanded program will be developed within 9 months of signing the BO and implemented by January 2002. Initial studies will extend for 5 years, followed by a review and determination of the scope of studies for the remaining 10 years of the Interim Surplus Guidelines (ISG). Reclamation will use the bathymetric surveys, to be conducted in fiscal year 2001, to gather

data in the areas of the identified spawning habitat, if not already available;

2. Reclamation will to the maximum extent practicable provide rising spring (February through April) water surface elevations of 5–10 feet on Lake Mead, to the extent hydrologic conditions allow. Hydrologic studies indicate that such conditions could occur once in 6 years, although no guarantee of frequency can be made. This operation plan will be pursued through BHBFs and/or equalization and achieved through the Adaptive Management Program and Annual Operating Plan processes, as needed for spawning razorback suckers;

3. Reclamation will continue existing operations in Lake Mohave that benefit native fish during the 15-year effective period of these Guidelines and will explore additional ways to provide benefits to native fish; and,

4. Reclamation will monitor water levels of Lake Mead from February through April of each year during the 15 years these Guidelines are in place. Should water levels reach 1160 feet because of the implementation of these Guidelines, Reclamation will implement a program to collect and rear larval razorbacks in Lake Mead the spawning season following this determination. If larvae cannot be captured from Lake Mead, wild larvae will be collected from Lake Mohave.

The implementation of these Guidelines is not likely to produce a condition resulting in a minimum February through April Lake Mead elevation at or below 1130 feet for more than 2 consecutive years during which surplus is being declared. Therefore, this condition has not been evaluated as an effect of the proposed action.

5. Recreation

Reclamation is initiating a bathymetric survey of Lake Mead in fiscal year 2001 and will coordinate with the Lake Mead National Recreation Area to identify critical recreation facility elevations and navigational hazards that would be present under various reservoir surface elevations.

Reclamation will continue to monitor river operations, reservoir levels and water supply and make this information available to the CRMWG, agencies and the public. This operational information will provide the Lake Mead National Recreation Area and the Glen Canyon National Recreation Area with probabilities for future reservoir elevations to aid in management of navigational aids, recreation facilities, other resources and fiscal planning.

Reclamation will continue its consultation and coordination with the Glen Canyon National Recreation Area and the Navajo Nation on the development of Antelope Point as a resort destination.

6. Cultural Resources

Reclamation shall continue to consult and coordinate with the State Historic Preservation Officer, the Advisory Council on Historic Preservation (Council), Glen Canyon National Recreation Area, Lake Mead National Recreation Area, Tribes and interested parties with regard to the potential effects of implementation of the Preferred Alternative as required by sections 106 and 110 of the National Historic Preservation Act following the Council's recommended approach for consultation for the Protection of Historic Properties found at 36 CFR 800.

7. Transboundary Impacts

A November 14, 2000, meeting of the International Boundary and Water Commission and Technical Advisors from the U.S. Bureau of Reclamation and Mexico's National Water Commission was held. At this meeting, Mexico expressed concern that a reduction of historic flows arriving in Mexico could impact: Mexico's use of those waters for recharge of ground waters; Mexico's use of those waters for leaching of soils to combat salinity; Mexico's use of those waters to dilute saline flows in the land boundary delivery point; endangered species that depend on use of those waters in Mexico; riparian habitat that depends on those waters in Mexico; and, fisheries in the upper Gulf of California. Though it is the position of the United States through the United States International Boundary and Water Commission that the United States does not mitigate for impacts in a foreign country, the United States is committed to participate with Mexico through the IBWC Technical Work Groups to develop cooperative projects beneficial to both countries concerning the issues expressed by Mexico. Significantly, IBWC Minute No. 306 (which was adopted by the IBWC's United States and Mexico sections on December 12, 2000), outlines a process that may lead to specific delta restoration measures.

XI. Implementing The Decision

1. Allocation of Colorado River Water—Basic Apportionment

Article II(B)(6) of the Decree authorizes the Secretary to release a lower division state's apportioned but unused water for consumptive use in another lower division state, but provides that no rights to the recurrent use of such apportioned water shall accrue to any state by reason of its previous use. The Decree leaves it to the Secretary to determine how any such unused apportionment shall be allocated, and to make such determinations either annually, or for a more extended period, though in neither situation can the Secretary's policy create a right in any state to the future use of such unused apportionment. In the course of establishing Interim Surplus Guidelines for the lower division states, the Secretary has determined that in order to make an accurate assessment of the amount of water available and reasonably needed to meet annual consumptive use in the lower division states, it is desirable to know in advance to which users, and for which uses, any unused apportionment will be made available. The Secretary is therefore including within the Interim Surplus Guidelines a statement of his intended method of distributing unused apportionment that may be available during the Interim period.

2. Forbearance and Reparation Arrangements

It is expected that Lower Division States and individual contractors for Colorado River water will adopt arrangements that will affect utilization of Colorado River water during the effective period of these guidelines. It is expected that water orders from Colorado River contractors will be submitted to reflect these forbearance and reparation arrangements by Lower Division states and individual contractors. The forbearance arrangements are expected to address California's Colorado River water demands while the anticipated reductions in California's Colorado River water use are implemented. The reparation arrangements are expected to address the circumstance where California contractors would limit their use of Colorado River water to mitigate the impacts of any declared shortage conditions on other Lower Division states. The reparation arrangements are also expected to address the circumstance where the anticipated reductions do not in fact occur and would require California contractors to limit their use of Colorado River water in order to repay the Colorado River system for previously stored water.

It is anticipated that MWD will enter into forbearance and reparation agreements with the State of Arizona and with the Southern Nevada Water Authority, which are necessary to provide for forbearance of water under Article II(B)(6) of the Decree. The Secretary may also, as appropriate, be a

party to those portions of the agreements concerning the allocation of forbearance of water under Article II(B)(6) of the Decree. It is anticipated that these agreements will be completed no later than December 31, 2001. In the event that the forbearance and reparation agreements are not completed by December 31, 2002, apportionment for use of surplus water shall be made according to the percentages provided in Article II(B)(2) of the Decree (without prejudice to the Secretary's authority under Article II(B)(6) of the Decree) until such time as the agreements are completed, or until December 31, 2015, whichever is earlier.

The Secretary will deliver Colorado River water to contractors in a manner consistent with these arrangements, provided, however, that any such arrangements are consistent with the BCPA, the Decree and do not infringe on the rights of third parties. Surplus water will only be delivered to entities with contracts for surplus water.

3. Definitions

For purposes of these guidelines, the following definitions apply:

a. *Domestic* use shall have the meaning defined in the Compact.

b. *Off-stream Banking* shall mean the diversion of Colorado River water to underground storage facilities for use in subsequent years from the facility used by a contractor diverting such water.

c. *Direct Delivery Domestic Use* shall mean direct delivery of water to domestic end users or other municipal and industrial water providers within the contractor's area of normal service, including incidental regulation of Colorado River water supplies within the year of operation but not including Off-stream Banking.

d. *Direct Delivery Domestic Use* for The Metropolitan Water District of Southern California (MWD) shall include delivery of water to end users within its area of normal service, incidental regulation of Colorado River water supplies within the year of operation, and Off-stream Banking only with water delivered through the Colorado River Aqueduct.

4. Relationship With Existing Law

These Guidelines are not intended to, and do not:

a. Guarantee or assure any water user a firm supply for any specified period.

b. Change or expand existing authorities under applicable federal law, except as specifically provided herein with respect to determinations of surplus conditions under the Long Range Operating Criteria and administration of surplus water supplies during the effective period of these Guidelines.

c. Address intrastate storage or intrastate distribution of water, except as may be specifically provided by Lower Division States and individual contractors for Colorado River water who may adopt arrangements that will affect utilization of Colorado River water during the effective period of these Guidelines.

d. Change the apportionments made for use within individual States, or in any way impair or impede the right of the Upper Basin to consumptively use water available to that Basin under the Colorado River Compact.

e. Affect any obligation of any Upper Division State under the Colorado River Compact.

f. Affect any right of any State or of the United States under Sec. 14 of the Colorado River Storage Project Act of 1956 (70 Stat. 105); Sec. 601(c) of the Colorado River Basin Project Act of 1968 (82 Stat. 885); the California Limitation Act (Act of March 4, 1929; Ch. 16, 48th Sess.); or any other provision of applicable federal law.

g. Affect the rights of any holder of present perfected rights or reserved rights, which rights shall be satisfied within the apportionment of the State within which the use is made in accordance with the Decree.

5. Interim Surplus Guidelines

These Guidelines, which shall implement and be used for determinations made pursuant to Article III(3)(b) of the Criteria for Coordinated Long-Range Operation of the Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act of September 30, 1968 (LROC) during the period identified in Section 4(A) are hereby adopted:

Section 1. Allocation of Unused Basic Apportionment Water Under Article II(B)(6)

A. Introduction

Article II(B)(6) of the Decree allows the Secretary to allocate water that is apportioned to one Lower Division State, but is for any reason unused in that State, to another Lower Division State. This determination is made for one year only and no rights to recurrent use of the water accrue to the state that receives the allocated water. Historically, this provision of the Decree has been used to allocate Arizona's and Nevada's apportioned but unused water to California.

Water use projections made for the analysis of these interim Guidelines indicate that neither California nor Nevada is likely to have significant volumes of apportioned but unused water during the effective period of these Guidelines. Depending upon the requirements of the Arizona Water Banking Authority (AWBA) for intrastate and interstate Off-Stream Banking, Arizona may have significant amounts of apportioned but unused water.

B. Application to Unused Basic Apportionment

Before making a determination of a surplus condition under these Guidelines, the Secretary will determine the quantity of apportioned but unused water from the basic apportionments under Article II(B)(6), and will allocate such water in the following order of priority:

1. Meet the Direct Delivery Domestic Use requirements of MWD and Southern Nevada Water Authority (SNWA), allocated as agreed by said agencies;

2. Meet the needs for Off-stream Banking activities in California by MWD and in Nevada by SNWA, allocated as agreed by said agencies; and

3. Meet the other needs for water in California in accordance with the California Seven-Party Agreement as supplemented by the Quantification Settlement Agreement.

Section 2. Determination of Lake Mead Operation During the Interim Period

A. Normal and Shortage Conditions

1. Lake Mead at or below elevation 1125 ft.

In years when available Lake Mead storage is projected to be at or below elevation 1125 ft. on January 1, the Secretary shall determine a Normal or Shortage year.

B. Surplus Conditions

1. Partial Domestic Surplus (Lake Mead between elevation 1125 ft. and 1145 ft.)

In years when Lake Mead storage is projected to be between elevation 1125 ft. and elevation 1145 ft. on January 1, the Secretary shall determine a Partial Domestic Surplus. The amount of such Surplus shall equal:

a. For Direct Delivery Domestic Use by MWD, 1.212 maf reduced by: (1) the amount of basic apportionment available to MWD and (2) the amount of its domestic demand which MWD offsets in such year by offstream groundwater withdrawals or other options. The amount offset under (2) shall not be less than 400,000 af in 2002 and will be reduced by 20,000 af/yr over the Interim Period so as to equal 100,000 af in 2016.

b. For use by SNWA, one half of the Direct Delivery Domestic Use within the SNWA service area in excess of the State of Nevada's basic apportionment.

c. For Arizona, one half of the Direct Delivery Domestic Use in excess of the State of Arizona's basic apportionment.

2. Full Domestic Surplus (Lake Mead above Elevation 1145 ft. and below 70R Strategy)

In years when Lake Mead content is projected to be above elevation 1145 ft., but less than the amount which would initiate a Surplus under B.3. 70R Strategy or B.4. Flood Control Surplus hereof on January 1, the Secretary shall determine a Full Domestic Surplus. The amount of such Surplus shall equal:

a. For Direct Delivery Domestic Use by MWD, 1.250 maf reduced by the amount of basic apportionment available to MWD.

b. For use by SNWA, the Direct Delivery Domestic Use within the SNWA service area in excess of the State of Nevada's basic apportionment.

c. For use in Arizona, the Direct Delivery Domestic Use in excess of Arizona's basic apportionment.

3. Quantified Surplus (70R Strategy)

In years when the Secretary determines that water should be released for beneficial consumptive use to reduce the risk of potential reservoir spills based on the 70R Strategy the Secretary shall determine and allocate a Quantified Surplus sequentially as follows:

a. Establish the volume of the Quantified Surplus.

b. Allocate and distribute the Quantified Surplus 50% to California, 46% to Arizona and 4% to Nevada, subject to c. through e. that follow.

c. Distribute California's share first to meet basic apportionment demands and MWD's Direct Delivery Domestic Use and Off-stream Banking demands, and then to California Priorities 6 and 7 and other surplus contracts. Distribute Nevada's share first to meet basic apportionment demands and then to the remaining Direct Delivery Domestic Use and Off-stream Banking demands. Distribute Arizona's share to surplus demands in Arizona including Off-stream Banking and interstate banking demands. Arizona, California and Nevada agree that Nevada would get first priority for interstate banking in Arizona.

d. Distribute any unused share of the Quantified Surplus in accordance with Section 1, Allocation of Unused Basic Apportionment Water Under Article II(B)(6).

e. Determine whether MWD, SNWA and Arizona have received the amount of water they would have received under Section 2.B.2., Full Domestic Surplus if a Quantified Surplus had not been declared. If they have not, then determine and meet all demands provided for in Section 2.B.2. Full Domestic Surplus (a), (b) and (c).

4. Flood Control Surplus

In years in which the Secretary makes space-building or flood control releases pursuant to the Field Working Agreement, the Secretary shall determine a Flood Control Surplus for the remainder of that year or the subsequent year as specified in Section 7. In such years, releases will be made to satisfy all beneficial uses within the United States, including unlimited off-stream banking. Under current practice, surplus declarations under the Treaty for Mexico are declared when flood control releases are made. Modeling assumptions used in the FEIS are based on this practice. The proposed action is not intended to identify, or change in any manner, conditions when Mexico may schedule up to an additional 0.2 maf. Any issues relating to the implementation of the Treaty, including any potential changes in approach relating to surplus declarations under the Treaty, must be addressed in a bilateral fashion with the Republic of Mexico.

C. Allocation of Colorado River Water and Forbearance and Reparation Arrangements

Colorado River water will continue to be allocated for use among the Lower Division States in a manner consistent with the provisions of the Decree. It is expected that Lower Division States and individual contractors for Colorado River water will adopt arrangements that will affect utilization of Colorado River water during the effective period of these guidelines. It is expected that water orders from Colorado River contractors will be submitted to reflect forbearance and reparation arrangements by Lower Division states and individual contractors. The Secretary will deliver Colorado River water to contractors in a manner consistent with these arrangements, provided that any such arrangements are consistent with the BCPA, the Decree and do not infringe on the rights of third parties. Surplus water will only be delivered to entities with contracts for surplus water.

D. Shortage

Two different shortage assumptions, including shortage guidelines submitted in the information presented by the Basin States, were modeled and compared in the FEIS. The Department and Reclamation intend to develop shortage guidelines, through the 5-year review of the LROC, when appropriate. These Guidelines are not intended to, and do not, change in any manner from current conditions the assumptions for conditions that may create a determination of shortage or the magnitude of shortage that could be imposed on Lower Basin diversions.

Section 3. Implementation of Guidelines

During the effective period of these Guidelines the Secretary shall utilize the currently established process for development of the Annual Operating Plan for the Colorado River System Reservoirs (AOP) and use these Guidelines to make determinations regarding Normal and Surplus conditions for the operation of Lake Mead and to allocate apportioned but unused water.

The operation of the other Colorado River System reservoirs and determinations associated with development of the AOP shall be in accordance with the Colorado River Basin Project Act of 1968, the Guidelines, and other applicable federal law.

In order to allow for better overall water management during the Interim Period, the Secretary shall undertake a ''mid-year review'' pursuant to Section I(2) of the LROC, allowing for the revision of the current AOP, as appropriate, based on actual runoff conditions which are greater than projected, or demands which are lower than projected. The Secretary shall revise the determination for the current year only to allow for additional deliveries. Any revision in the AOP may occur only after a re-initiation of the AOP consultation process as required by law.

As part of the AOP process during the effective period of these Guidelines, California shall report to the Secretary on its progress in implementing its California Colorado River Water Use Plan.

These Guidelines implement Article III(3) of the LROC and may be reviewed concurrently with the LROC 5-year review. The Secretary will base annual determinations of surplus conditions on these Guidelines, unless extraordinary circumstances arise. Such circumstances could include operations necessary for safety of dams or other emergency situations, or other unanticipated or unforseen activities arising from actual operating experience.

Section 4. Effective Period & Termination

A. Effective Period

These guidelines will be in effect 30 days from the publication of the Secretary's Record of Decision (ROD) in the **Federal Register**. These Guidelines will, unless subsequently modified, remain in effect through December 31, 2015 (through preparation of the 2016 AOP).

B. Termination of Guidelines

These Guidelines shall terminate on December 31, 2015 (through preparation of the 2016 AOP). At the conclusion of the effective period of these Guidelines, the modeled operating criteria are assumed to revert to the operating criteria used to model baseline conditions (*i.e.*, modeling assumptions used in the EIS are based upon a 70R strategy for the period commencing January 1, 2016 (for preparation of the 2017 AOP)).

At the conclusion of the effective period of these Guidelines, California shall have implemented sufficient measures to be able to limit total uses of Colorado River water within California to 4.4 maf, unless a surplus is determined under the 70R strategy.

Section 5. California's Colorado River Water Use Plan Implementation Progress

A. Introduction

The purpose of the California Colorado River Water Use Plan is to ensure that California limits its use of Colorado River water to no more than 4.4 maf in normal years at the end of the fifteen year period for these Guidelines, unless a surplus is determined under the 70R strategy. The Secretary will annually review the status of implementation of the California Colorado River Water Use Plan during the development of the AOP.

B. California's Quantification Settlement Agreement

It is expected that the California Colorado River contractors will execute the Quantification Settlement Agreement (and its related documents) among the Imperial Irrigation District (IID), Coachella Valley Water District (CVWD), MWD, and the San Diego County Water Authority by December 31, 2001. In the event that the California contractors and the Secretary have not executed such agreements by December 31, 2002, the interim surplus determinations under sections 2(B)(1) and 2(B)(2) of these Guidelines will be suspended and will instead be based upon the 70R Strategy, for either the remainder of the period identified in Section 4(A) or until such time as California completes all required actions and complies with reductions in water use reflected in section 5(C) of these Guidelines, whichever occurs first.

C. California's Colorado River Water Use Reductions

California will need to reduce its need for surplus Colorado River water through the period identified in Section 4(A). The California Agricultural (Palo Verde Irrigation District (PVID), Yuma Project Reservation Division (YPRD), IID, and CVWD) usage plus 14,500 af of Present Perfected Right (PPR) use would need to be at or below the following amounts at the end of the calendar year indicated in years of quantified surplus (for Decree accounting purposes all reductions must be within 25,000 af of the amounts stated):

Benchmark date (*calendar year*)	Benchmark quantity (*California agricultural usage & 14,500 AF of PPR Use* in maf)
2003	3.74
2006	3.64
2009	3.53
2012	3.47

In the event that California has not reduced its use in amounts equal to the above Benchmark Quantities, the interim surplus determinations under sections 2(B)(1) and 2(B)(2) of these Guidelines will be suspended and will instead be based upon the 70R Strategy, for up to the remainder of the period identified in section 4(A). If however, California meets the missed Benchmark Quantity before the next Benchmark Date, the interim surplus determinations under sections 2(B)(1) and 2(B)(2) shall be reinstated as the basis for the surplus determinations under the AOP for the next following year(s). Upon such reinstatement, California's reductions shall return to the schedule identified above.

Section 6. Authority

These Guidelines are issued pursuant to the authority vested in the Secretary by federal law, including the Boulder Canyon Project Act of 1928 (28 Stat. 1057) (the ''BCPA''), and the Decree issued by the U.S. Supreme Court in *Arizona* v. *California*, 376 U.S. 340 (1964) (the ''Decree'') and shall be used to implement Article III of the Criteria for the Coordinated Long-Range Operation of Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act of September 30, 1968 (Pub. L. No. 90–537) (the ''LROC'').

Section 7. Modeling and Data

The August 24-Month Study projections for the January 1 system storage and reservoir water surface elevations, for the following year, will be used to determine the applicability of these Guidelines.

In preparation of the AOP, Reclamation will utilize the 24-Month Study and/or other modeling methodologies appropriate for the determinations and findings necessary in the AOP. Reclamation will utilize the best available data and information, including the National Weather Service forecasting to make these determinations.

[FR Doc. 01–2118 Filed 1–24–01; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–447]

Certain Aerospace Rivets 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 December 26, 2000, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Allfast Fastening Systems, Inc. of City of Industry, California. A supplement to the complaint was filed on January 11, 2001. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain aerospace rivets and products containing same by reason of infringement of common law trademarks ''BRFR'' and ''BRFZ,'' dilution of the ''BRFR'' and ''BRFZ'' trademarks, infringement of claims 1–6 of U.S. Letters Patent 5,580,202, and unfair competition by means of false designation of origin and false description. The complaint further alleges that there exists in the United States an industry as required by subsections (a)(1)(A) and (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, except for any confidential information contained therein, is 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 (http://www.usitc.gov).

FOR FURTHER INFORMATION CONTACT: Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2571.

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 (2000).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 18, 2001, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

(a) whether there is a violation of subsection (a)(1)(A) 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 aerospace rivets or products containing same by reason of infringement of common law trademarks ''BRFR'' or ''BRFZ,'' dilution of the ''BRFR'' or ''BRFZ'' trademarks, or unfair competition by means of false designation of origin or false description, the threat or effect of which is to destroy or substantially injure an industry in the United States; or

(b) 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 aerospace rivets or products containing same by reason of infringement of claims 1–6 of U.S. Letters Patent 5,580,202, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Allfast Fastening Systems, Inc., 15200 Don Julian Road, City of Industry, California 91745;

(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: Ateliers De La Haute Garonne ets Auriol et Cie., S.A., Z.I. Flourens, B.P. 3, F–31131, Balma-Toulouse, France;

(c) Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–O, 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.

A response 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 response 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 notice of investigation. Extensions of time for submitting a response 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 this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: January 19, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–2212 Filed 1–24–01; 8:45 am]

BILLING CODE 7020–02–U

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–446]

Certain Ink Jet Print Cartridges and Components Thereof; 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 December 22, 2000, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Hewlett-Packard of Palo Alto, California. An amendment to the Complaint was filed on January 17, 2001. The Complaint, as amended, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ink jet print cartridges and components thereof by reason of infringement of claims 1, 2 and 3 of U.S. Letters Patent 4,827,294; claims 4 and 5 of U.S. Letters Patent 4,635,073; claims 2 and 3 of U.S. Letters Patent 4,680,859; claim 4 of U.S. letters Patent 4,872,027; claims 1–4 and 12 of U.S. Letters Patent 4,992,802; and claims 8, 9, 12, 13, 14, 18, 19 and 20 of U.S. Letters Patent 5,409,134. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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.

FOR FURTHER INFORMATION CONTACT: James B. Coughlan, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2575. General

information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

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 (2000).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 18, 2000, Ordered That

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain ink jet print cartridges and components thereof by reason of infringement of claims 1, 2 or 3 of U.S. Letters Patent 4,827,294; claims 4 or 5 of U.S. Letters Patent 4,635,073; claims 2 or 3 of U.S. Letters Patent 4,680,859; claim 4 of U.S. Letters Patent 4,872,027; claims 1, 2, 3, 4 or 12 of U.S. Letters Patent 4,992,802; or claims 8, 9, 12, 13, 14, 18, 19 or 20 of U.S. Letters Patent 5,409,134; and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Hewlett-Packard Company, 3000 Hanover Street, Palo Alto, California 94304.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Microjet Technology Co., Ltd., No. 29 Tzu Chiang Street, Tu-Cheng Taipei, Hsien, Taiwan 236.

Printer Essentials.com, Inc., 895 East Patriot Blvd., Suite 109, Reno, Nevada 89511.

Price-Less Inkjet Cartridge Company, Omni Executive Center #33, 4055 Tamiami Trail, Port Charlotte, Florida 33952.

Cartridge Hut and Paperwork Plus, 29696 Via Naravilla, Sun City, California 92586.

ABCCo.net, Inc., 3890 Tamiami Trail, Port Charlotte, Florida 33952.

(c) James B. Coughlan, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–L, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 C.F.R. 210.13. Pursuant to 19 C.F.R. 201.16(d) and 210.13(a) of the Commission's Rules, such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: January 19, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–2211 Filed 1–24–01; 8:45 am]

BILLING CODE 7020–02–U

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Advisory Committees on Rules of Appellate, Civil, and Criminal Procedure

AGENCY: Judicial Conference of the United States Advisory Committees on Rules of Appellate, Civil, and Criminal Procedure.

ACTION: Notice of cancellation and change of date of open hearings.

SUMMARY: The following public hearings have been canceled:

- Appellate Rules in San Francisco, California, on January 29, 2001;
- Civil Rules in San Francisco, California, on January 29, 2001; and
- Criminal Rules in New Orleans, Louisiana, on January 24, 2001; and in San Francisco, California, on January 29, 2001.

The following public hearing has a change of date:

- Criminal Rules in Washington, D.C., from February 12, 2001 to April 25, 2001.

(Original notice of hearings appeared in the **Federal Register** of September 13, 2000.)

Notice of Cancellation and Change of Date of Hearings

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC. 20544, telephone (202) 502–1820.

Dated: January 19, 2001.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 01–2216 Filed 1–24–01; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

National Drug Intelligence Center; Agency Information Collection Activities; Proposed Collection; Comments Requested.

ACTION: Notice of Information Collection Under Review; New Collection; National Drug Threat Survey.

The Department of Justice, National Drug Intelligence Center (NDIC) submits the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow 60 days for public comments. Comments are encouraged and will be accepted until March 26, 2001. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

1. *Type of Information Collection:* New Collection.

2. *Title of the Form/Collection:* National Drug Threat Survey.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form #A–34. National Drug Intelligence Center, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State and local law enforcement agencies. This survey is a critical component of the National Drug Threat Assessment. It provides direct access to detailed drug offense data from state and local law enforcement agencies.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,500 responses at 3 hours per response.

6. *An estimate of the total public burden (in hours) associated with the collection:* 7,500 annual burden hours.

If you have comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Manuel A. Rodriguez at (814) 532–4601, General Counsel, National Drug Intelligence Center, 319 Washington Street, 5th Floor, Johnstown, PA 15901–1622. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be director Mr. Manuel A. Rodriguez.

If additional information is required contact: Mr. Robert B. Briggs, Department Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Dated: January 22, 2001.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 01–2301 Filed 1–24–01; 8:45 am]

BILLING CODE 4410–DC–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities; Comment Request

ACTION: Notice of information collection under review; Reinstatement with changes of a previously approved collection for which approval has expired: Survey of inmates in local jails pretest.

The Department of Justice, Office of Justice Programs, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed collection was previously published in the **Federal Register** on October 19, 2000, volume 65, page 62750, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comments, until February 26, 2001. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points;

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

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Overview of This Information Collection

(1) *Type of information collection:* Reinstatement with changes of a previously approved collection for which approval has expired.

(2) *The title of the Form/Collection:* The Survey of Inmates in Local Jails Pretest.

(3) *The agency form number and the applicable component of the Department sponsoring the collection:* Forms: SIJ–43(X) CAPI instrument; and SIJ–50(X) Sampling Questionnaire. Collections Statistics, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: Individuals and households. Others: State and local governments. The pretest will include an estimated 100 personal interviews with inmates held in local facilities. The pretest will approximate the national survey including a full scale implementation of the CAPI questionnaire, automated data control systems, sample selection instruments, and procedures related to the National Survey. This is a pretest for a survey that will profile jail inmates nationwide to determine trends in inmate composition, criminal history, drug abuse, mental and medical status, gun use and crime, and to report on victims of crime. This pretest will allow us to identify problems and to make improvements prior to the national survey to ensure an accurate data set. The data from the national survey will be used by the Bureau of Justice Statistics in published reports and the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, and others interested in criminal justice statistics. No other collection series provides these data.

(5) *An estimate of the total number of respondents and the amount of time needed for an average respondent to respond:* 100 personal interviews each taking an average of 1 hour to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 100 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instruction, or additional information, please contact Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Dated: January 18, 2001.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 01–2229 Filed 1–24–01; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2001–04; Exemption Application No. D–10538, et al.]

Grant of Individual Exemptions; SEI Investments Company (SEI Investments), SEI Investments Management Corporation (SIMC) and SEI Private Trust Company (STC)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

SEI Investments Company (SEI Investments), SEI Investments Management Corporation (SIMC) and SEI Private Trust Company (STC), Located in Oaks, PA

[Prohibited Transaction Exemption 2001–04; Exemption Application No. D–10538]

Exemption

Section I. Exemption for the Purchase of Fund Shares With Assets Transferred in Kind From a Plan Account

The restrictions of section 406(a) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply, effective June 19, 1996, to the purchase of shares of one or more open-end management investment companies (the Fund or Funds) registered under the Investment Company Act of 1940 (the ICA), to which SEI Investments, SIMC, STC, or any of their affiliates (collectively, SEI) serve as investment adviser and may provide other services, by an employee benefit plan (the Plan or Plans) whose assets are held by SEI as trustee, investment manager, or as a discretionary fiduciary, in exchange for securities held by the Plan in an account (the Account) with SEI (the Purchase Transaction), provided the following conditions are met:

(a) A fiduciary (the Second Fiduciary) who is acting on behalf of each affected Plan and who is independent of and unrelated to SEI, as defined in paragraph (g) of Section III below, receives advance written notice of the Purchase Transaction and full and written information concerning the Funds which includes the following:

(1) A current prospectus for each Fund to which the Plan's assets may be transferred;

(2) A statement describing the fees to be charged to, or paid by, the Plan and the Funds to SEI, including the nature and extent of any differential between the rates of the fees paid by the Fund and the rates of the fees otherwise payable by the Plan to SEI;

(3) A statement of the reasons why SEI may consider the Purchase Transaction to be appropriate for the Plan;

(4) A statement of whether there are any limitations on SEI with respect to which Plan assets may be invested in the Funds;

(5) The identity of all securities that are deemed suitable by the Funds' sub-advisers for transfer to the Funds;

(6) The identity of all such securities that will be valued in accordance with the procedures set forth in Rule 17a–7(b)(4) under the ICA; and

(7) Upon such fiduciary's request, copies of the proposed and final exemptions pertaining to the exemptive relief provided herein for Purchase Transactions occurring after the date of the final exemption.

(b) On the basis of the foregoing information, the Second Fiduciary gives SEI prior written approval with respect to—

(1) Each Purchase Transaction, consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act;

(2) The transaction date proposed by SEI; and

(3) The receipt of confirmation statements, described below in paragraph (g)(1) and (g)(2), by facsimile or electronic mail.

(c) No sales commissions or other fees are paid by the Plans in connection with a Purchase Transaction.

(d) All transferred assets are securities for which market quotations are readily available, or cash.

(e) The transferred assets consist of assets transferred to the Plan's Account at the direction of the Second Fiduciary and constitute all of the assets held in the Account immediately prior to the transfer (other than Fund shares already held in the Account). With respect to any Plan assets transferred in-kind to an Account which are not suitable for acquisition by the Funds, such assets are liquidated as soon as reasonably practicable and the cash proceeds are invested directly in Fund shares.

(f) With respect to assets transferred in-kind, each Plan receives shares of a Fund which have a total net asset value that is equal to the value of the assets of the Plan exchanged for such shares, based on the current market value of such assets at the close of the business day on which such Purchase Transaction occurs, using independent sources in accordance with the procedures set forth in Rule 17a–7b (Rule 17a–7) under the ICA and the procedures established by the Funds pursuant to Rule 17a–7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized

securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the last business day prior to the Purchase Transaction determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of SEI.

(g) SEI sends by regular mail or personal delivery or, if applicable, by facsimile or electronic mail to the Second Fiduciary of each Plan that engages in a Purchase Transaction, the following information:

(1) Not later than 30 business days after completion of each Purchase Transaction, a written confirmation which contains—

(A) The identity of each of the assets that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4) under the ICA;

(B) The current market price, as of the date of the Purchase Transaction, of each of the assets involved in the Purchase Transaction; and

(C) The identity of each pricing service or market maker consulted in determining the value of such assets.

(2) Not later than 90 days after completion of each Purchase Transaction, a written confirmation which contains—

(A) The aggregate dollar value of the assets held in the Account immediately before the Purchase Transaction; and

(B) The number of shares of the Funds that are held by the Account following the Purchase Transaction (and the related per share net asset value and the aggregate dollar value of the shares received).

(h) With respect to each of the Funds in which a Plan continues to hold shares acquired in connection with a Purchase Transaction, SEI provides the Second Fiduciary with—

(1) A copy of an updated prospectus of such Fund, at least annually; and

(2) Upon request of the Second Fiduciary, a report or statement (which may take the form of the most recent financial report, the current statement of additional information, or some other statement) containing a description of all fees paid by the Fund to SEI.

(i) As to each Plan, the combined total of all fees received by SEI for the provision of services to the Plan, and in connection with a Purchase Transaction, is not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(j) All dealings in connection with the Purchase Transaction between the Plan and the Fund are on a basis no less favorable to the Plan than dealings between the Fund and other shareholders.

(k) Between June 19, 1996 and the date this final exemption is granted, no Plan may enter into more than one Purchase Transaction with the Funds. However, subsequent to the granting of this exemption, a Second Fiduciary may engage in more than one Purchase Transaction provided that such Second Fiduciary allocates additional securities representing a different asset class to a Plan Account.

(l) SEI maintains for a period of six years, in a manner that is accessible for audit and examination, the records necessary to enable the persons, as described in paragraph (m) of this Section I, to determine wither the conditions of this proposed exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of SEI, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest, other than SEI, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (m) of this Section I.

(m)(1) Except as provided in paragraph (m)(2) of this Section II and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (l) of Section I above are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission;

(B) Any fiduciary of each of the Plans who has authority to acquire or dispose of shares of any of the Funds owned by such a Plan, or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of the Plans or duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in paragraph (m)(1)(B) or (C) of this Section I shall be authorized to examine the trade secrets of SEI or commercial or financial information which is privileged or confidential.

Section II. Availability of PTE 77–4

Any purchase of Fund shares that complies with the conditions of Section I of this exemption shall be treated as a ''purchase or sale'' of shares of an open-end investment company for purposes of PTE 77–4 and shall be deemed to have satisfied paragraphs (a), (d) and (e) of Section II of PTE 77–4 (42 FR 18732, April 3, 1977).[1]

Section III. Definitions

For purposes of this exemption,

(a) The term ''SEI'' means SEI Investments Company, SEI Investments Management Corporation, SEI Private Trust Company and any affiliate of SEI, as defined in paragraph (b) of this Section III.

(b) An ''affiliate'' of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term ''Fund'' or ''Funds'' means any open-end investment company or companies registered under the ICA for which SEI serves as investment adviser, and may also provide custodial or other services as approved by such Funds.

(e) The term ''net asset value'' means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in a Fund's prospectus and statement of additional information, and other assets belonging to each of the portfolios in such Fund, less the liabilities charged to each portfolio, by the number of outstanding shares.

(f) The term ''relative'' means a ''relative'' as that term is defined in section 3(15) of the Act (or a ''member

[1] In relevant part, PTE 77–4 permits the purchase and sale by an employee benefit plan of shares of a registered open-end investment company when a fiduciary with respect to such plan is also the investment adviser for the mutual fund. Section II(a) of PTE 77–4 requires that a plan does not pay a sales commission in connection with such purchase or sale. Section II(d) describes the disclosures that are to be received by an independent plan fiduciary. For example, the plan fiduciary must receive a current prospectus for the mutual fund as well as full and detailed written disclosure of the investment advisory and other fees that are charged to or paid by the plan and the investment company. Section II(e) requires that the independent plan fiduciary approve, in writing, purchases and sales of mutual fund shares on the basis of the disclosures given.

of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term ''Second Fiduciary'' means a fiduciary of a plan who is independent of and unrelated to SEI. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to SEI if—

(1) Such Second Fiduciary directly or indirectly controls, is controlled by, or is under common control with SEI;

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of such Second Fiduciary is an officer, director, partner, or employee of SEI (or is a relative of such persons); or

(3) Such Second Fiduciary directly or indirectly receives any compensation or other consideration from SEI for his or her own personal account in connection with any transaction described in this proposed exemption.

If an officer, director, partner, or employee of SEI (or a relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's investment manager/adviser; (B) the approval of any purchase, continued holding or redemption by the Plan of shares of the Funds; and (C) the approval of any change of fees charged to or paid by the Plan, in connection with the transactions described above in Section I, then paragraph (g)(2) of this Section III, shall not apply.

EFFECTIVE DATE: This exemption is effective as of June 19, 1996, with the exception of Section I(a)(7), which is applicable for Purchase Transactions occurring after the date of the final exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on October 11, 2000 at 65 FR 60456.

Written Comments

The Department received one written comment with respect to the Notice and no requests for a public hearing. The comment, which was submitted on behalf of SEI suggested certain clarifications or modifications to the operative language and the Summary of Facts and Representations (the Summary) of the Notice. Following are a discussion of SEI's comments and the Department's responses with respect thereto.

1. *STC.* On page 60459 of the Notice, Representation 3 of the Summary contains a description of STC, a wholly owned subsidiary of SEI. SEI wishes to clarify that the name ''SEI Trust Company'' has been changed to ''SEI Private Trust Company'' and that STC serves as trustee of the Plans but not as an investment manager.

The Department has noted the foregoing revisions to Representation 3 of the Summary. In addition, on page 60457 of the Notice, in the caption identifying SEI and its affiliates, the Department has revised the name ''SEI Trust Company'' to read ''SEI Private Trust Company.'' The Department has also made a corresponding change to Section III(a) of the final exemption in the definition of the term ''SEI.''

2. *The Funds—The Managed Trust.* On page 60459 of the Notice, Representation 5(b) of the Summary identifies twelve Fund portfolios comprising the Managed Trust. SEI represents that, in addition to the listed portfolios, the Managed Trust also includes the ''Tax-Managed Small Cap Fund'' portfolio.

In response to this comment, the Department has noted the revision to Representation 5(b).

3. *The Asset Allocation Strategy.* On pages 60459 and 60460 of the Notice, Representation 7 of the Summary describes SEI's asset allocation strategy (the Strategy). SEI states that the sixth and seventh paragraphs of Representation 7 refer to ''no separate fee being charged for an asset allocation'' and to the allocation ''to only one asset allocation.'' SEI points out that the term ''asset allocation'' should refer instead to the term ''Strategy,'' as previously denoted in Representation 7.

In response to this comment, the Department has noted this change to Representation 7.

4. *Footnote 8.* On page 60460 of the Notice, in Representation 8 of the Summary, Footnote 8 states, in relevant part, that ''Although the requested exemption currently covers unaffiliated sub-advisers, SEI represents that it may wish to retain affiliated sub-advisers for the Funds in the future so that the benefits of the Purchase Transactions will not be diluted.'' However, SEI wishes to clarify that since this representation was originally made to the Department, it has retained an affiliated sub-adviser which it has a 47 percent ownership interest.

In response to this comment, the Department has noted this clarification to Representation 8.

5. *Footnote 12.* On page 60461 of the Notice, in Representation 10 of the Summary, Footnote 12 describes the circumstances under which SIMC and SEI would become fiduciaries. SEI represents that the language set forth in the footnote is ambiguous. Therefore, it suggests the following language (shown in italics) be substituted to clarify the precise nature of SIMC's or SEI's potential fiduciary status:

> It is represented that SIMC does not become a discretionary investment management fiduciary until after the Second Fiduciary has specified which portion of the Plan's assets (including which specific assets) will be allocated to the Account. It is also represented that SEI may become a non-discretionary investment advisory fiduciary with respect to a particular pool of assets (e.g., helping the Plan develop its Strategy) before those assets are ''converted'' into Fund shares.

In response to this comment, the Department has noted this revision to Footnote 12.

6. *Footnote 14.* On page 60461 of the Notice, in Representation 10 of the Summary, Footnote 14 states, in part, that SIMC had accepted two or three new Plan clients which elected to engage in the Purchase Transactions. SEI explains that since this representation was originally made to the Department, approximately 18 new Plan clients have also elected to engage in the Purchase Transactions. However, SEI states that in no event has there been more than one such Purchase Transaction per Plan.

SEI also represents that it has attempted to structure its client agreements to avoid undertaking fiduciary responsibility until after the completion of the Purchase Transactions. Therefore, it believes no exemptive relief is necessary. However, because of previously noted uncertainty on whether its services prior to the completion of a Purchase Transaction might involve the provision of investment advice, SEI maintains its request that the exemption be made retroactive to June 19, 1996 to cover all of the Purchase Transactions that have occurred since that time.

In response to this comment, the Department has noted the revision to Footnote 14 and the fact that there has been no change in the retroactivity date of the exemption.

7. *Footnote 18.* On page 60462 of the Notice, in Representation 14 of the Summary, Footnote 18 describes the performance fees that may be charged to SEI. The footnote states, in part, that ''Both the weighting and the choice of indices are negotiated between the Plan and SEI.'' However, SEI wishes to clarify that these performance fee factors are not actively negotiated with each client Plan. Rather, SEI points out that the use of a performance fee and its

terms are always open to negotiation at the request of the client Plan.

In response, the Department has noted this clarification to Footnote 18.

8. *Representation 14.* On page 60463 of the Notice, the sixth paragraph of Representation 14 of the Summary states, in part, that SEI's current practice is to credit back to the Plans fees for Secondary Services in the same manner as SEI credits back its Fund-level investment advisory fees. The paragraph also states that SEI reserves the right to retain such fees for Secondary Services in the future in accordance with the Department's advisory opinions involving PNC Financial Corp. (ERISA Advisory Opinion 93–12A, April 27, 1993) and the Frank Russell Company (ERISA Advisory Opinion 93–13A, April 27, 1993). However, SEI states that since the original representation was made to the Department, it has exercised its right to retain some fees for Secondary Services in accordance with the referenced advisory opinions.

In response to this comment, the Department has noted this clarification to Representation 14.

10. *Footnote 20.* On page 60463 of the Notice, in Representation 15 of the Summary, Footnote 20 sets forth the following notice provisions to be provided to a Plan's Second Fiduciary with respect to securities brokerage transactions that may be executed by SEI or its affiliates with respect to Fund portfolios.

In some cases, SEI executes brokerage transactions for the investment portfolios of certain of the Funds as a Secondary Service. To the extent that SEI does not presently execute securities brokerage transactions with respect to any Fund for which an investment advisory fee is paid to SEI, but proposes to do so in the future, for any Plan that invests in the Fund (other than an SEI-sponsored Plan investing in the Fund pursuant to PTE 77–3), SEI will, at least 30 days in advance of the implementation of such additional service, provide a written notice to the Plan's Second Fiduciary which explains the nature of such additional brokerage service and the amount of the fees. Further, with respect to any Fund for which SEI does or will provide such brokerage services, SEI will provide, at least annually to each such Plan, a written disclosure indicating (a) the total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid to SEI by such Fund; (b) the total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid by such Fund to brokerage firms unrelated to SEI; (c) the average brokerage commissions per share, expressed as cents per share, paid to SEI by each portfolio of a Fund; and (d) the average brokerage commissions per share, expressed as cents per share, paid by each portfolio of a Fund to brokerage firms unrelated to SEI.

SEI maintains that this type of disclosure is overly burdensome and unnecessary. Once Plans have invested in the Funds, SEI represents that it is relying on PTE 77–4 to address the fee issue. In the event brokerage services are added as Secondary Services, SEI maintains that it will comply with the provisions of PTE 77–4 by providing, at least 30 days in advance of the implementation of such additional service, a written notice to the Plan's Second Fiduciary. Although the notice will explain the nature of the additional brokerage service and the amount of the fees, SEI explains that it does not wish to provide the annual notice as further described in the footnote.

In response to this comment, the Department does not object to SEI's decision not to provide a Second Fiduciary with an annual disclosure pertaining to brokerage services. Although SEI proposed this additional disclosure in its application in order to provide the Second Fiduciary with information to assist such fiduciary in monitoring Fund investments that are made by a client Plan, the Department notes that SEI is relying on the provisions of PTE 77–4 which contain separate disclosure requirements as they pertain to fees and that no relief is provided under this exemption for SEI's receipt of fees from the Funds.

Finally, the Department notes that SEI did not inform interested persons of the proposed exemption within the time frame specified in the proposed exemption. Therefore, the Department requested that SEI extend the comment period. Subsequently, SEI complied with the Department's request.

For further information regarding SEI's comment letter and other matters discussed therein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–10538) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Accordingly, after giving full consideration to the entire record, including the SEI's comment, the Department has decided to grant the exemption subject to the modifications described above.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

DuPont Capital Management Corporation, Located in Wilmington, DE

[Prohibited Transaction Exemption 2001–05, Exemption Application Nos.: D–10744 through D–10746]

Exemption

I. Transactions

The restrictions of section 406(a)(1)(A) through (D) and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D),[2] shall not apply to a transaction between a party in interest with respect to certain plans (the Former DuPont Related Plans), as defined in Section II(e), below, and an investment fund in which such plans have an interest (Investment Fund), as defined in Section II(k), below, provided that DuPont Capital Management Corporation (DCMC) has discretionary authority or control with respect to the plan assets involved in the transaction and the following conditions are satisfied:

(a) DCMC is an investment adviser registered under the Investment Advisers Act of 1940 that has, as of the last day of its most recent fiscal year, total assets, including in-house plan assets (In-house Plan Assets), as defined in Section II(g), below, under its management and control in excess of $100 million and either:

(1) shareholders' or partners' equity, as defined in Section II(j), below, in excess of $750,000; or

(2) payment of all its liabilities, including any liabilities that may arise by reason of a breach or violation of a duty described in sections 404 or 406 of the Act, is unconditionally guaranteed by a person with a relationship to DCMC, as described in Section II(a)(1), below, if DCMC and such affiliate have, as of the last day of their most recent fiscal year, shareholders' or partners' equity, in the aggregate, in excess of $750,000;

(b) At the time of the transaction, as defined in Section II(m), below, the party in interest or its affiliate, as defined in Section II(a), below, does not have, and during the immediately preceding one (1) year has not exercised, the authority to—

(1) Appoint or terminate DCMC as a manager of any of the Former DuPont Related Plans' assets, or

(2) Negotiate the terms of the management agreement with DCMC (including renewals or modifications

[2] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer to the corresponding provisions of the Code.

thereof) on behalf of the Former DuPont Related Plans;

(c) The transaction is not described in—

(1) Prohibited Transaction Class Exemption 81–6 (PTCE 81–6) [3] (relating to securities lending arrangements);

(2) Prohibited Transaction Class Exemption 83–1 (PTCE 83–1) [4] (relating to acquisitions by plans of interests in mortgage pools), or

(3) Prohibited Transaction Class Exemption 82–87 (PTCE 82–87) [5] (relating to certain mortgage financing arrangements);

(d) The terms of the transaction are negotiated on behalf of the Investment Fund by, or under the authority and general direction of, DCMC, and either DCMC, or (so long as DCMC retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by DCMC, makes the decision on behalf of the Investment Fund to enter into the transaction;

(e) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of DCMC, the terms of the transaction are at least as favorable to the Investment Fund as the terms generally available in arm's length transactions between unrelated parties;

(f) Neither DCMC nor any affiliate thereof, as defined in Section II(b), below, nor any owner, direct or indirect, of a 5 percent (5%) or more interest in DCMC is a person who, within the ten (10) years immediately preceding the transaction, has been either convicted or released from imprisonment, whichever is later, as a result of:

(1) any felony involving abuse or misuse of such person's employee benefit plan position or employment, or position or employment with a labor organization;

(2) any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company, or fiduciary;

(3) income tax evasion;

(4) any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or (5) any other crime described in section 411 of the Act.

For purposes of this Section I(f), a person shall be deemed to have been ''convicted'' from the date of the judgment of the trial court, regardless of whether the judgment remains under appeal;

(g) The transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest;

(h) The party in interest dealing with the Investment Fund:

(1) Is a party in interest with respect to the Former DuPont Related Plans (including a fiduciary) solely by reason of providing services to the Former DuPont Related Plans, or solely by reason of a relationship to a service provider described in section 3(14)(F),(G),(H), or (I) of the Act;

(2) Does not have discretionary authority or control with respect to the investment of plan assets involved in the transaction and does not render investment advice (within the meaning of 29 CFR § 2510.3–21(c)) with respect to those assets; and (3) Is neither DCMC nor a person related to DCMC, as defined in Section II(i), below;

(i) DCMC adopts written policies and procedures that are designed to assure compliance with the conditions of the exemption;

(j) An independent auditor, who has appropriate technical training or experience and proficiency with the fiduciary responsibility provisions of the Act and who so represents in writing, conducts an exemption audit, as defined in Section II(f), below, on an annual basis. Following completion of the exemption audit, the auditor shall issue a written report to the Former DuPont Related Plans presenting its specific findings regarding the level of compliance with the policies and procedures adopted by DCMC in accordance with Section I(i), above, of this exemption; and (k)(1) DCMC or an affiliate maintains or causes to be maintained within the United States, for a period of six (6) years from the date of each transaction, the records necessary to enable the persons described in Section I(k)(2), below, to determine whether the conditions of this exemption have been met, except that (a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of DCMC and/or its affiliates, the records are lost or destroyed prior to the end of the six (6) year period, and (b) no party in interest or disqualified person other than DCMC shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by Section I(k)(2), below, of this exemption.

(2) Except as provided in Section I(k)(3), below, of this exemption, and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in Section I(k)(1), above, of this exemption are unconditionally available for examination at their customary location during normal business hours by:

(A) any duly authorized employee or representative of the Department of Labor (the Department) or of the Internal Revenue Service;

(B) any fiduciary of any of the Former DuPont Related Plans investing in the Investment Fund or any duly authorized representative of such fiduciary;

(C) any contributing employer to any of the Former DuPont Related Plans investing in the Investment Fund or any duly authorized employee representative of such employer;

(D) any participant or beneficiary of any of the Former DuPont Related Plans investing in the Investment Fund, or any duly authorized representative of such participant or beneficiary; and, (E) any employee organization whose members are covered by such Former DuPont Related Plans;

(3) None of the persons described in Section I(k)(2)(B) through (E), above, of this exemption shall be authorized to examine trade secrets of DCMC or its affiliates or commercial or financial information which is privileged or confidential.

II. Definitions

(a) For purposes of Section I (a) and (b), above, of this exemption, an ''affiliate'' of a person means—

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, 5 percent (5%) or more partner, or employee (but only if the employer of such employee is the plan sponsor), and (3) Any director of the person or any employee of the person who is a highly compensated employee, as defined in section 4975(e)(2)(H) of the Code, or who has direct or indirect authority, responsibility, or control regarding the custody, management, or disposition of plan assets. A named fiduciary, within the meaning of section 402(a)(2) of the Act, of a plan, and an employer any of whose employees are covered by the plan, will also be considered affiliates with respect to each other for purposes of Section I(b), if such employer or an affiliate of such

[3] 46 FR 7527, January 23, 1981.

[4] 48 FR 895, January 7, 1984.

[5] 47 FR 21331, May 18, 1982.

employer has the authority, alone or shared with others, to appoint or terminate the named fiduciary or otherwise negotiate the terms of the named fiduciary's employment agreement.

(b) For purposes of Section I(f), above, of this exemption, an ''affiliate'' of a person means—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any director of, relative of, or partner in, any such person,

(3) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, or a 5 percent (5%) or more partner or owner, and

(4) Any employee or officer of the person who—

(A) Is a highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) or officer (earning 10 percent (10%) or more of the yearly wages of such person), or

(B) Has direct or indirect authority, responsibility or control regarding the custody, management, or disposition of plan assets.

(c) For purposes of Section II(e) and (g), below, of this exemption an ''affiliate'' of DCMC includes a member of either:

(1) a controlled group of corporations, as defined in section 414(b) of the Code, of which DCMC is a member, or

(2) a group of trades or businesses under common control, as defined in section 414(c) of the Code, of which DCMC is a member; provided that ''50 percent'' shall be substituted for ''80 percent'' wherever ''80 percent'' appears in section 414(b) or 414(c) of the rules thereunder.

(d) The term, ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) ''Former DuPont Related Plans'' mean:

(1) CONSOL Inc. Employee Retirement Plan (the CONSOL Plan);

(2) the Pension Plan for Consolidation Coal Company Local 5400 Union Employees (the CONSOL Union Plan);

(3) the Investment Plan for Salaried Employees of CONSOL Inc. (the CONSOL DC Plan);

(4) the Thrift Plan for Employees of Conoco Inc. (the Conoco DC Plan);

(5) any plan the assets of which include or have included assets that were managed by DCMC, as an in-house asset manager (INHAM), pursuant to Prohibited Transaction Class Exemption 96–23 (PTCE 96–23)[6] but as to which PTCE 96–23 is no longer available because such assets are no longer held under a plan maintained by an affiliate of DCMC (as defined in Section II(c), above, of this exemption); and

(6) any plan (the Add-On Plan) that is sponsored or becomes sponsored by an entity that was, but has ceased to be, an affiliate of DCMC (as defined in Section II(c), above, of this exemption); provided that: (A) the assets of the Add-On Plan are invested in a commingled fund (the Commingled Fund), as defined in Section II(n), below, of this exemption, with the assets of a plan or plans, described in Section II(e)(1)–(5), above, of this exemption; and (B) the assets of the Add-On Plan in the Commingled Fund do not comprise more than 25 percent (25%) of the value of the aggregate assets of such fund, as measured on the day immediately following the commingling of their assets (the 25% Test);

For purposes of the 25% Test, as set forth in Section II(e)(6), above:

(i) in the event that less than all of the assets of an Add-On Plan are invested in a Commingled Fund on the date of the initial transfer of such Add-On Plan's assets to such fund, and if such Add-On Plan subsequently transfers to such Commingled Fund some or all of the assets that remain in such plan, then for purposes of compliance with the 25% Test, the sum of the value of the initial and each additional transfer of assets of such Add-On Plan shall not exceed 25 percent (25%) of the value of the aggregate assets in such Commingled Fund, as measured on the day immediately following the addition of each subsequent transfer of such Add-On Plan's assets to such Commingled Fund;

(ii) where the assets of more than one Add-On Plan are invested in a Commingled Fund with the assets of plans described in Section II(e)(1)–(5), above, of the exemption, the 25% Test will be satisfied, if the aggregate amount of the assets of such Add-On Plans invested in such Commingled Fund do not represent more than 25 percent (25%) of the value of all of the assets of such Commingled Fund, as measured on the day immediately following each addition of Add-On Plan assets to such Commingled Fund;

(iii) if the 25% Test is satisfied at the time of the initial and any subsequent transfer of an Add-On Plan's assets to a Commingled Fund, as provided in Section II(e), above, this requirement shall continue to be satisfied notwithstanding that the assets of such Add-On Plan in the Commingled Fund exceed 25 percent (25%) of the value of the aggregate assets of such fund solely as a result of: (AA) a distribution to a participant in a Former DuPont Related Plan; (BB) periodic employer or employee contributions made in accordance with the terms of the governing plan documents; (CC) the exercise of discretion by a Former DuPont Related Plan participant to re-allocate an existing account balance in a Commingled Fund managed by DCMC or to withdraw assets from a Commingled Fund; or (DD) an increase in the value of the assets of the Add-On Plan held in such Commingled Fund due to investment earnings or appreciation;

(iv) if, as a result of a decision by an employer or a sponsor of a plan described in Section II(e)(1)–(5) of the exemption to withdraw some or all of the assets of such plan from a Commingled Fund, the 25% Test is no longer satisfied with respect to any Add-On Plan in such Commingled Fund, then the exemption will immediately cease to apply to all of the Add-On Plans invested in such Commingled Fund; and

(v) where the assets of a Commingled Fund include assets of plans other than Former DuPont Related Plans, as defined in Section II(e), above, of this exemption, the 25% Test will be determined without regard to the assets of such other plans in such Commingled Fund.

(f) ''Exemption audit'' of any of the Former DuPont Related Plans must consist of the following:

(1) A review of the written policies and procedures adopted by DCMC, pursuant to Section I(i), above, of this exemption for consistency with each of the objective requirements of this exemption, as described in Section II(f)(5), below;

(2) A test of a representative sample of the subject transactions in order to make findings regarding whether DCMC is in compliance with:

(A) the written policies and procedures adopted by DCMC, pursuant to Section I(i), above, of this exemption; and

(B) the objective requirements of this exemption;

(3) A determination as to whether DCMC has satisfied the requirements of Section I(a), above, of this exemption;

(4) Issuance of a written report describing the steps performed by the auditor during the course of its review and the auditor's findings; and

(5) For purposes of Section II(f) of this exemption, the written policies and procedures must describe the following

[6] 61 FR 15975 (April 10, 1996)

objective requirements of the exemption and the steps adopted by DCMC to assure compliance with each of these requirements:

(A) the requirements of Section I(a), above, of this exemption regarding registration under the Investment Advisers Act of 1940, total assets under management, and shareholders' or partners' equity;

(B) the requirements of Part I and Section I(d) of this exemption regarding the discretionary authority or control of DCMC with respect to the assets of the Former DuPont Related Plans involved in the transaction, in negotiating the terms of the transaction, and with regard to the decision on behalf of the Former DuPont Related Plans to enter into the transaction;

(C) the transaction is not entered into with any person who is excluded from relief under Section I(h)(1), above, of this exemption, or Section I(h)(2) to the extent such person has discretionary authority or control over the plan assets involved in the transaction, or Section I(h)(3); and

(D) the transaction is not described in any of the class exemptions listed in Section I(c), above, of this exemption.

(g) ''In-house Plan Assets'' means the assets of any plan maintained by an affiliate of DCMC, as defined in Section II(c), above, of this exemption and with respect to which DCMC exercises discretionary authority or control.

(h) The term, ''party in interest,'' means a person described in section 3(14) of the Act and includes a ''disqualified person,'' as defined in section 4975(e)(2) of the Code.

(i) DCMC is ''related'' to a party in interest for purposes of Section I(h)(3) of this exemption, if the party in interest (or a person controlling, or controlled by, the party in interest) owns a 5 percent (5%) or more interest in DCMC, or if DCMC (or a person controlling, or controlled by DCMC) owns a 5 percent (5%) or more interest in the party in interest.

For purposes of this definition:

(1) the term, ''interest,'' means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation,

(B) The capital interest or the profits interest of the entity if the entity is a partnership; or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(2) A person is considered to own an interest held in any capacity if the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest.

(j) For purposes of Section I(a) of this exemption, the term, ''shareholders'' or partners' equity,'' means the equity shown in the most recent balance sheet prepared within the two (2) years immediately preceding a transaction undertaken pursuant to this exemption, in accordance with generally accepted accounting principles.

(k) ''Investment Fund'' includes single customer and pooled separate accounts maintained by an insurance company, individual trust and common, collective or group trusts maintained by a bank, and any other account or fund to the extent that the disposition of its assets (whether or not in the custody of DCMC) is subject to the discretionary authority of DCMC.

(l) The term, ''relative,'' means a relative as that term is defined in section 3(15) of the Act, or a brother, sister, or a spouse of a brother or sister.

(m) The ''time'' as of which any transaction occurs is the date upon which the transaction is entered into. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after the date when the grant of this exemption is published in the **Federal Register** or a renewal that requires the consent of DCMC occurs on or after such publication date and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, the requirements will continue to be satisfied thereafter with respect to the transaction. Nothing in this subsection shall be construed as exempting a transaction entered into by an Investment Fund which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of this exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption. In determining compliance with the conditions of the exemption at the time that the transaction was entered into for purposes of the preceding sentence, Section I(h) of this exemption will be deemed satisfied if the transaction was entered into between a plan and a person who was not then a party in interest.

(n) ''Commingled Fund'' means a trust fund managed by DCMC containing assets of some or all of the plans, described in Section II(e)(1)–(5), above, of this exemption, plans other than Former DuPont Related Plans, and, if applicable, any Add-On Plan, as to which the 25% Test, provided in Section II(e)(6), above, of this exemption has been satisfied; provided that: (1) where DCMC manages a single sub-fund or investment portfolio within such trust, the sub-fund or portfolio will be treated as a single Commingled Fund; and (2) where DCMC manages more than one sub-fund or investment portfolio within such trust, the aggregate value of the assets of such sub-funds or portfolios managed by DCMC within such trust will be treated as though such aggregate assets were invested in a single Commingled Fund.

Temporary Nature of Exemption

The Department has determined that the relief provided by this exemption is temporary in nature. The exemption is effective upon the date this exemption is published in the **Federal Register** and expires on the day which is six (6) years from the date of such publication. Accordingly, the relief provided by this exemption will not be available upon the expiration of such six-year period for any new or additional transactions, as described herein, after such date, but would continue to apply beyond the expiration of such six-year period for continuing transactions entered into within the six-year period; provided the conditions of the exemption continue to be satisfied. Should the applicant wish to extend, beyond the expiration of such six-year period, the relief provided by this exemption to new or additional transactions, the applicant may submit another application for exemption. In this regard, the Department expects that prior to filing another exemption application seeking relief for new or additional transactions, the applicant would be prepared to document compliance with the conditions of this exemption.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing on the proposed exemption. As set forth in the Notice, interested persons consist of the investment committee or trustees of each of the Former DuPont Related Plans. The deadline for submission of such comments and requests for hearing was within forty-five (45) days of the date of the publication of the Notice in the **Federal Register** on August 17, 2000. All comments and requests for a hearing were due on October 2, 2000.

During the comment period, the Department received no requests for a hearing. However, the Department did receive several comment letters from DCMC, the applicant. In this regard, in a letter dated September 25, 2000, DCMC requested that the Department make certain substantive changes to the operant language of the exemption and correct various typographical errors found in the Notice. Subsequently, in a letter dated October 17, 2000, DCMC withdrew the comment submitted on September 25, 2000, and instead requested clarification concerning certain aspects of the exemption and sought confirmation from the Department that the final exemption would still apply in certain factual circumstances. Thereafter, in follow-up letters dated October 18, and October 23, 2000, DCMC suggested certain changes to the contents of its October 17 letter. DCMC's comments and suggested changes and the Department's responses, thereto, are summarized below.

(A) DCMC asserts that the exemption would apply to trust assets managed by DCMC (assuming all other requirements of the exemption are met) in the case of a trust that has more than one asset portfolio, with participating plans having pro-rata undivided interests in all of the trust's assets, if: (a) DCMC manages assets within one or more of such asset portfolios, and (b) the plans utilizing the trust are all plans described in Section II(e)(1)–(5) of the exemption or any Add-On Plan, described in Section II(e)(6) of the exemption, as to which the 25 percent (25%) test (the 25% Test) is satisfied by treating the trust as a single Commingled Fund.

In response to this comment, it is the Department's view that for purposes of calculating compliance with the 25% Test with respect to assets of any Add-On Plan to be added to such trust, a single portfolio within the trust managed by DCMC shall be treated as a single Commingled Fund, and where DCMC manages more than one portfolio within such trust, the aggregate value of the assets of such portfolios managed by DCMC within such trust shall be treated as though such aggregate assets were invested in a single Commingled Fund.

(B) DCMC asserts that the exemption would apply to trust assets managed by DCMC (assuming all other applicable requirements of the exemption are met) in the case of a single trust that has multiple separately valued investment sub-funds, with covered plan participants generally having the right to allocate the amounts held for them among the sub-funds in their discretion, if: (a) DCMC manages assets within one or more of such sub-funds, and (b) the plans participating in the trust are all plans described in Section II(e)(1)–(5) of the exemption or any Add-On Plan as to which the 25% Test, provided in Section II(e)(6) of the exemption, is satisfied by treating the trust as a single Commingled Fund.

In response to this comment, it is the Department's position that, under the circumstances described above, the exemption will apply to the assets managed by DCMC within the trust, assuming all other requirements of the exemption are met. Further, it is the Department's view that for purposes of calculating compliance with the 25% Test with respect to assets of any Add-On Plan to be added to such trust under the circumstances described above, that each sub-fund within such trust managed by DCMC shall be treated as a single Commingled Fund and where DCMC manages more than one sub-fund within such trust, the aggregate value of the assets of such sub-funds managed by DCMC within such trust shall be treated as though such aggregate assets were invested in a single Commingled Fund.

With respect to the two comments above, for purposes of clarity, the Department has added a new definition at paragraph (n), as set forth below, to Section II of the exemption:

(n) ''Commingled Fund'' means a trust fund managed by DCMC containing assets of some or all of the assets of plans, described in Section II(e)(1)–(5), above, of this exemption, plans other than Former DuPont Related Plans, and, if applicable, any Add-On Plan, as to which the 25% Test, provided in Section II(e)(6), above, of this exemption has been satisfied; provided that: (1) where DCMC manages a single sub-fund or investment portfolio within such trust, the sub-fund or portfolio will be treated as a single Commingled Fund; and (2) where DCMC manages more than one sub-fund or investment portfolio within such trust, the aggregate value of the assets of such sub-funds or portfolios managed by DCMC within such trust will be treated as though such aggregate assets were invested in a single Commingled Fund.

Further, the Department has amended the language of Section II(e)(6) to include a reference to the definition of a Commingled Fund and a reference to the 25% Test, as indicated below by the underlined passages:

(6) any plan (the Add-On Plan) that is sponsored or becomes sponsored by an entity that was, but has ceased to be, an affiliate of DCMC (as defined in Section II(c), above, of this exemption); provided that: (A) the assets of the Add-On Plan are invested in a commingled fund *(the Commingled Fund), as defined in Section II(n), below, of this exemption,* with the assets of a plan or plans, described in Section II(e)(1)–(5), above, *of this exemption;* and (B) the assets of the Add-On Plan in the Commingled Fund do not comprise more than 25 percent (25%) of the value of the aggregate assets of such fund, as measured on the day immediately following the commingling of their assets (*the 25% Test*).

(C) DCMC asserts that it is not necessary, in order for the exemption to apply with respect to assets of a Commingled Fund which are managed by DCMC, that the assets of plans described in Section II(e)(1)–(5) of the exemption and/or the assets of any Add-On Plan invested in such Commingled Fund represent all of the assets of such plans. In this regard, the applicant believes that the exemption will apply (if all other applicable requirements of the exemption are satisfied) where only a portion of the assets of a plan described in Section II(e)(1)–(5) of the exemption are invested in a Commingled Fund.

In response to this comment, the Department agrees with DCMC. In this regard, it is the Department's view that it is not necessary for all the assets of plans described in Section II(e) of the exemption to be invested in a Commingled Fund in order for the exemption to apply, assuming all applicable requirements of the exemption are satisfied. However, in the event that less than all of the assets of an Add-On Plan are invested in a Commingled Fund on the date of the initial transfer of such Add-On Plan's assets to such fund, it is the Department's view that subsequent transfers to such Commingled Fund of some or all of the assets that remain in such plan would trigger a re-calculation of the 25% Test. Accordingly, the Department has decided to amend Section II(e)(6) of the exemption to include a new sub-paragraph (i), as follows:

(i) in the event that less than all of the assets of an Add-On Plan are invested in a Commingled Fund on the date of the initial transfer of such Add-On Plan's assets to such fund, and if such Add-On Plan subsequently transfers to such Commingled Fund some or all of the assets that remain in such plan, then for purposes of compliance with the 25% Test, the sum of the value of the initial and each additional transfer of assets of such Add-On Plan shall not exceed 25 percent (25%) of the value of the aggregate assets in such Commingled Fund, as measured on the day immediately following the addition of each subsequent transfer of such Add-On Plan's assets to such Commingled Fund.

(D) DCMC maintains that where the assets of more than one Add-On Plan are invested in a Commingled Fund with the assets of plans described in Section II(e)(1)–(5) of the exemption, the 25% Test will be satisfied, if the

aggregate amount of the assets of such Add-On Plans invested in such Commingled Fund do not represent more than 25 percent (25%) of the value of all of the assets of such Commingled Fund, as measured on the day immediately following each addition of Add-On Plan assets to such Commingled Fund.

The Department concurs with DCMC's comment. Accordingly, the Department has decided for purposes of clarity to amend Section II(e)(6) of the exemption to include a new sub-paragraph (ii), as set forth below:

(ii) where the assets of more than one Add-On Plan are invested in a Commingled Fund with the assets of plans described in Section II(e)(1)–(5), above, of the exemption, the 25% Test will be satisfied, if the aggregate amount of the assets of such Add-On Plans invested in such Commingled Fund do not represent more than 25 percent (25%) of the value of all of the assets of such Commingled Fund, as measured on the day immediately following each addition of Add-On Plan assets to such Commingled Fund.

(E) DCMC has expressed concern over the application of the 25% Test in a type of arrangement normally used for 401(k)Plans. Specifically, DCMC describes a situation where a trust is established with a single trustee under a single trust agreement: (a) with provision for separate sub-funds representing different types of investment portfolios; and (b) plan participants generally having the right to allocate amounts contributed for them among the sub-funds as well as the right to transfer existing account balances among such sub-funds in such a trust. DCMC indicates that participants may make these choices at their discretion and often through telephonic contact with the trustee without the employer's personnel having any involvement in or knowledge of such transactions. DCMC maintains that where a number of plans are funded through such a trust, the proportionate interest of a particular plan will be different for the various sub-funds, because of differing investment choices made by participants in such plans using the trust. Because these investment choices can be made by participants on a daily basis, a particular plan's proportionate interest in a particular sub-fund can change over a short period of time.

Further, DCMC has expressed concern over the application of the 25% Test with regard to increases in the value of Add-On Plan assets in a Commingled Fund. In this regard, DCMC maintains that investment earnings on Add-On Plan assets held in such Commingled Fund should not be considered to involve an addition of assets for purposes of compliance with the 25% Test. It is DCMC's position that, if the 25% Test is met at the time assets of an Add-On Plan are added to a Commingled Fund, the 25% Test will not thereafter fail to be satisfied merely because the assets of the Add-On Plan held in the Commingled Fund have appreciated to a greater extent than the assets of the other plans (described in Section II(e)(1)–(5) of the exemption) that are held in such Commingled Fund.

To address this issue, DCMC, as a follow-up to its comment letters of October 17 and October 18, 2000, requested that the Department consider the following language:

If during any calendar year DCMC manages assets within fewer than all of the sub-funds and the 25% test, is not satisfied for such year (on a weighted-average basis) taking into account only the sub-funds as to which DCMC has asset management responsibilities, the Exemption will not apply to such Commingled Fund during the next following calendar year.

The Department has decided not to accept DCMC's suggestion, as set forth above. However, the Department recognizes that with respect to Add-On Plan Assets in a Commingled Fund, it would be burdensome to require continual testing of the percentage of Add-On Plan assets to the total assets in a Commingled Fund, as a result of events that occur in the ordinary operation of a plan or as a result of increases in the value of an Add-On Plan's assets held in a Commingled Fund. Accordingly, the Department has decided to clarify the language of the exemption by adding the following new sub-paragraph (iii) to Section II(e)(6) of the exemption:

(iii) if the 25% Test is satisfied at the time of the initial and any subsequent transfer of an Add-On Plan's assets to a Commingled Fund, as provided in Section II(e), above, this requirement shall continue to be satisfied notwithstanding that the assets of such Add-On Plan in the Commingled Fund exceed 25 percent (25%) of the value of the aggregate assets of such fund solely as a result of: (AA) a distribution to a participant in a Former DuPont Related Plan; (BB) periodic employer or employee contributions made in accordance with the terms of the governing plan documents; (CC) the exercise of discretion by a Former DuPont Related Plan participant to re-allocate an existing account balance in a Commingled Fund managed by DCMC or to withdraw assets from a Commingled Fund; or (DD) an increase in the value of the assets of the Add-On Plan held in such Commingled Fund due to investment earnings or appreciation.

(F) DCMC acknowledges that where a Commingled Fund includes assets of Add-On Plans, the 25% Test is to be applied to such Commingled Fund on the next day immediately following each addition of Add-On Plan assets to such Commingled Fund. However, DCMC maintains that, if the 25% Test is met at the time the assets of an Add-On Plan are transferred to a Commingled Fund, the 25% Test will not thereafter fail to be satisfied merely because the assets of plans (described in Section II(e)(1)–(5) of the exemption) that are held in such Commingled Fund are withdrawn from such fund. In this regard, DCMC believes that after such a withdrawal, if Add-On Plan assets are added to such Commingled Fund, the exemption would cease to apply, if the 25% Test were not then satisfied.

In response to this comment, it is the position of the Department that other than, as set forth, above, in Section II(e)(6)(iii)of this exemption, the 25% Test is to be satisfied each time assets of an Add-On Plan are transferred to or invested in a Commingled Fund. Failure to satisfy the 25% Test or any other condition of this exemption would cause the exemption immediately to become unavailable to Add-On Plans. The Department notes that, if as a result of a decision by an employer or a sponsor of a plan (described in Section II(e)(1)–(5) of the exemption), the assets of such plan are withdrawn from a Commingled Fund, and if as a result of such withdrawal the 25% Test is no longer satisfied with respect to any Add-On Plan in such Commingled Fund, then it is the position of the Department that the exemption would immediately cease to apply to all of the Add-On Plans invested in such Commingled Fund. Accordingly, the Department has decided to clarify the language of the exemption by adding the following new sub-paragraph (iv) to Section II(e)(6) of the exemption:

(iv) if, as a result of a decision by an employer or a sponsor of a plan described in Section II(e)(1)–(5) of the exemption to withdraw some or all of the assets of such plan from a Commingled Fund, the 25% Test is no longer satisfied with respect to any Add-On Plan in such Commingled Fund, then the exemption will immediately cease to apply to all of the Add-On Plans invested in such Commingled Fund.

(G) DCMC asserts that where the assets of a Commingled Fund include assets of plans, other than Former DuPont Related Plans, the inclusion of the assets of such other plans in such Commingled Fund will not prevent the application of the exemption to Former DuPont Related Plans, provided that the assets of such other plans will be disregarded in applying the 25% Test to any Add-On Plan whose assets are held in such Commingled Fund.

With respect to this comment, the Department concurs with DCMC. Accordingly, for purposes of clarity, the Department has decided to amend Section II(e)(6) of the exemption to include a new paragraph (v) as follows:

(v) where the assets of a Commingled Fund include assets of plans other than Former DuPont Related Plans, as defined in Section II(e), above, of this exemption, the 25% Test will be determined without regard to the assets of such other plans in such Commingled Fund.

After giving full consideration to the entire record, including the written comments from DCMC, the Department has decided to grant the exemption, as amended by the Department herein. The comment letters submitted to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on August 17, 2000, at 65 FR 50226.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (this is not a toll-free number).

General Motors Investment Management Corporation, Located in New York, NY

[Prohibited Transaction Exemption 2001–06, Exemption Application Nos.: D–10782 through D–10785]

Exemption

I. Transactions

The restrictions of section 406(a)(1)(A) through (D) and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D),[7] shall not apply, as of May 28, 1999, to a transaction between a party in interest with respect to certain plans (the Transition Plans), as defined in Section II(e), below, and an investment fund in which such plans have an interest (the Investment Fund), as defined in Section II(k), below, provided that General Motors Investment Management Corporation or its successor (collectively, GMIMCO) has discretionary authority or control with respect to the plan assets involved in the transaction and the following conditions are satisfied:

(a) GMIMCO or its successor is an investment adviser registered under the Investment Advisers Act of 1940 that has, as of the last day of its most recent fiscal year, total assets, including in-house plan assets (the In-house Plan Assets), as defined in Section II(g), below, under its management and control in excess of $100 million and shareholders' or partners' equity, as defined in Section II(j), below, in excess of $750,000;

(b) At the time of the transaction, as defined in Section II(m), below, the party in interest or its affiliate, as defined in Section II(a), below, does not have, and during the immediately preceding one (1) year has not exercised, the authority to—

(1) Appoint or terminate GMIMCO as a manager of any of the Transition Plans' assets, or

(2) Negotiate the terms of the management agreement with GMIMCO (including renewals or modifications thereof) on behalf of the Transition Plans;

(c) The transaction is not described in—

(1) Prohibited Transaction Class Exemption 81–6 (PTCE 81–6)[8] (relating to securities lending arrangements);

(2) Prohibited Transaction Class Exemption 83–1 (PTCE 83–1)[9] (relating to acquisitions by plans of interests in mortgage pools), or

(3) Prohibited Transaction Class Exemption 82–87 (PTCE 82–87)[10] (relating to certain mortgage financing arrangements);

(d) The terms of the transaction are negotiated on behalf of the Investment Fund by, or under the authority and general direction of, GMIMCO, and either GMIMCO, or (so long as GMIMCO retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by GMIMCO, makes the decision on behalf of the Investment Fund to enter into the transaction;

(e) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of GMIMCO, the terms of the transaction are at least as favorable to the Investment Fund as the terms generally available in arm's length transactions between unrelated parties;

(f) Neither GMIMCO nor any affiliate thereof, as defined in Section II(b), below, nor any owner, direct or indirect, of a 5 percent (5%) or more interest in GMIMCO is a person who, within the ten (10) years immediately preceding the transaction, has been either convicted or released from imprisonment, whichever is later, as a result of:

(1) any felony involving abuse or misuse of such person's employee benefit plan position or employment, or position or employment with a labor organization;

(2) any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company, or fiduciary;

(3) income tax evasion;

(4) any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or

(5) any other crime described in section 411 of the Act.

For purposes of this Section I(f), a person shall be deemed to have been ''convicted'' from the date of the judgment of the trial court, regardless of whether the judgment remains under appeal;

(g) The transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest;

(h) The party in interest dealing with the Investment Fund:

(1) Is a party in interest with respect to the Transition Plans (including a fiduciary) solely by reason of providing services to the Transition Plans, or solely by reason of a relationship to a service provider described in section 3(14)(F),(G),(H), or (I) of the Act;

(2) Does not have discretionary authority or control with respect to the investment of plan assets involved in the transaction and does not render investment advice (within the meaning of 29 CFR § 2510.3–21(c)) with respect to those assets; and

(3) Is neither GMIMCO nor a person related to GMIMCO, as defined in Section II(i),below;

(i) GMIMCO adopts written policies and procedures that are designed to assure compliance with the conditions of the exemption;

(j) An independent auditor, who has appropriate technical training or experience and proficiency with the

[7] For purposes of this exemption, references to specific provisions of Title I of the Act unless otherwise specified, refer to the corresponding provisions of the Code.

[8] 46 FR 7527, January 23, 1981.

[9] 48 FR 895, January 7, 1983.

[10] 47 FR 21331, May 18, 1982.

fiduciary responsibility provisions of the Act and who so represents in writing, conducts an exemption audit, as defined in Section II(f), below, on an annual basis. Following completion of the exemption audit, the auditor shall issue a written report to the Transition Plans presenting its specific findings regarding the level of compliance with the policies and procedures adopted by GMIMCO in accordance with Section I(i), above, of this exemption; and

(k)(1) GMIMCO or an affiliate maintains or causes to be maintained within the United States, for a period of six (6) years from the date of each transaction, the records necessary to enable the persons described in Section I(k)(2) to determine whether the conditions of this exemption have been met, except that (a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of GMIMCO and/or its affiliates, the records are lost or destroyed prior to the end of the six (6) year period, and (b) no party in interest or disqualified person other than GMIMCO shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination, as required by Section I(k)(2), below, of this exemption.

(2) Except as provided in Section I(k)(3),below, of this exemption, and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in Section I(k)(1),above, of this exemption are unconditionally available for examination at their customary location during normal business hours by:

(A) any duly authorized employee or representative of the Department of Labor (the Department) or of the Internal Revenue Service;

(B) any fiduciary of any of the Transition Plans investing in the Investment Fund or any duly authorized representative of such fiduciary;

(C) any contributing employer to any of the Transition Plans investing in the Investment Fund or any duly authorized employee representative of such employer;

(D) any participant or beneficiary of any of the Transition Plans investing in the Investment Fund, or any duly authorized representative of such participant or beneficiary; and

(E) any employee organization whose members are covered by such Transition Plans;

(3) None of the persons described in Section I(k)(2)(B) through (E), above, of this exemption shall be authorized to examine trade secrets of GMIMCO or its affiliates or commercial or financial information which is privileged or confidential.

II. Definitions

(a) For purposes of Section I(b) of this exemption, an ''affiliate'' of a person means—

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, 5 percent (5%) or more partner, or employee (but only if the employer of such employee is the plan sponsor), and

(3) Any director of the person or any employee of the person who is a highly compensated employee, as defined in section 4975(e)(2)(H) of the Code, or who has direct or indirect authority, responsibility, or control regarding the custody, management, or disposition of plan assets. A named fiduciary (within the meaning of section 402(a)(2) of the Act) of a plan, and an employer any of whose employees are covered by the plan, will also be considered affiliates with respect to each other for purposes of Section I(b) if such employer or an affiliate of such employer has the authority, alone or shared with others, to appoint or terminate the named fiduciary or otherwise negotiate the terms of the named fiduciary's employment agreement.

(b) For purposes of Section I(f), above, of this exemption, an ''affiliate'' of a person means—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any director of, relative of, or partner in, any such person,

(3) Any corporation, partnership, trust, or unincorporated enterprise of which such person is an officer, director, or a 5 percent (5%) or more partner or owner, and

(4) Any employee or officer of the person who —

(A) Is a highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) or officer (earning 10 percent (10%) or more of the yearly wages of such person), or

(B) Has direct or indirect authority, responsibility or control regarding the custody, management, or disposition of plan assets.

(c) For purposes of Section II(e) and (g), below, of this exemption an ''affiliate'' of GMIMCO includes a member of either:

(1) a controlled group of corporations, as defined in section 414(b) of the Code, of which GMIMCO is a member, or

(2) a group of trades or businesses under common control, as defined in section 414(c) of the Code, of which GMIMCO is a member; provided that ''50 percent'' shall be substituted for ''80 percent'' wherever ''80 percent'' appears in section 414(b) or 414(c) of the rules thereunder.

(d) The term, ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) ''Transition Plans'' mean:

(1) the Delphi Retirement Program for Salaried Employees; Delphi Hourly-Rate Employees Pension Plan; Delphi Automotive Systems Corporation Personal Savings Plan, Delphi Automotive Systems Corporation Income Security Plan, Delphi Automotive Systems Corporation Savings-Stock Purchase Program, Packard-Hughes Interconnect Non-Bargaining Retirement Plan, Packard-Hughes Interconnect Bargaining Retirement Plan, Packard-Hughes Interconnect Foley-Alabama Facility Retirement Plan, and ASEC Manufacturing Retirement Program (collectively, the Delphi Plans);

(2) any plan the assets of which include or have included assets that were managed by GMIMCO, as an in-house asset manager (INHAM), pursuant to Prohibited Transaction Class Exemption 96–23 (PTCE 96–23);[11] but as to which PTCE 96–23 is no longer available because such assets are no longer held under a plan maintained by an affiliate of GMIMCO (as defined in Section II(c), above, of this exemption); and

(3) any plan (the Add-On Plan) that is sponsored or becomes sponsored by an entity that was, but has ceased to be, an affiliate of GMIMCO (as defined in Section II(c), above, of this exemption); provided that: (A) The assets of the Add-On Plan are invested in a commingled fund (the Commingled Fund), as defined in Section II(n), below, of this exemption, with the assets of a plan or plans, described in Section II(e)(1)–(2), above, of this exemption; and (B) the assets of the Add-On Plan in the Commingled Fund do not comprise more than 25 percent (25%) of the value of the aggregate assets of such fund, as measured on the day immediately following the commingling of their assets (the 25% Test);

[11] 61 FR 15975 (April 10, 1996).

For purposes of the 25% Test, as set forth in Section II(e)(3), above:

(i) in the event that less than all of the assets of an Add-On Plan are invested in a Commingled Fund on the date of the initial transfer of such Add-On Plan's assets to such fund, and if such Add-On Plan subsequently transfers to such Commingled Fund some or all of the assets that remain in such plan, then for purposes of compliance with the 25% Test, the sum of the value of the initial and each additional transfer of assets of such Add-On Plan shall not exceed 25 percent (25%) of the value of the aggregate assets in such Commingled Fund, as measured on the day immediately following the addition of each subsequent transfer of such Add-On Plan's assets to such Commingled Fund;

(ii) where the assets of more than one Add-On Plan are invested in a Commingled Fund with the assets of plans described in Section II(e)(1)–(2), above, of the exemption, the 25% Test will be satisfied, if the aggregate amount of the assets of such Add-On Plans invested in such Commingled Fund do not represent more than 25 percent (25%) of the value of all of the assets of such Commingled Fund, as measured on the day immediately following each addition of Add-On Plan assets to such Commingled Fund;

(iii) if the 25% Test is satisfied at the time of the initial and any subsequent transfer of an Add-On Plan's assets to a Commingled Fund, as provided in Section II(e), above, this requirement shall continue to be satisfied notwithstanding that the assets of such Add-On Plan in the Commingled Fund exceed 25 percent (25%) of the value of the aggregate assets of such fund solely as a result of: (AA) a distribution to a participant in a Transition Plan; (BB) periodic employer or employee contributions made in accordance with the terms of the governing plan documents; (CC) the exercise of discretion by a Transition Plan participant to re-allocate an existing account balance in a Commingled Fund managed by GMIMCO or to withdraw assets from a Commingled Fund; or (DD) an increase in the value of the assets of the Add-On Plan held in such Commingled Fund due to investment earnings or appreciation;

(iv) if, as a result of a decision by an employer or a sponsor of a plan described in Section II(e)(1)–(2) of the exemption to withdraw some or all of the assets of such plan from a Commingled Fund, the 25% Test is no longer satisfied with respect to any Add-On Plan in such Commingled Fund, then the exemption will immediately cease to apply to all of the Add-On Plans invested in such Commingled Fund; and

(v) where the assets of a Commingled Fund include assets of plans other than Transition Plans, as defined in Section II(e), above, of this exemption, the 25% Test will be determined without regard to the assets of such other plans in such Commingled Fund.

(f) ''Exemption audit'' of any of the Transition Plans must consist of the following:

(1) A review of the written policies and procedures adopted by GMIMCO, pursuant to Section I(i), above, of this exemption, for consistency with each of the objective requirements of this exemption, as described in Section II(f)(5), below;

(2) A test of a representative sample of the subject transactions in order to make findings regarding whether GMIMCO is in compliance with:

(A) the written policies and procedures adopted by GMIMCO, pursuant to Section I(i), above, of this exemption; and

(B) the objective requirements of this exemption;

(3) A determination as to whether GMIMCO has satisfied the requirements of Section I(a), above, of this exemption;

(4) Issuance of a written report describing the steps performed by the auditor during the course of its review and the auditor's findings; and

(5) For purposes of Section II(f) of this exemption, the written policies and procedures must describe the following objective requirements of the exemption and the steps adopted by GMIMCO to assure compliance with each of these requirements:

(A) the requirements of Section I(a), above, of this exemption regarding registration under the Investment Advisers Act of 1940, total assets under management, and shareholders' or partners' equity;

(B) the requirements of Part I and Section I(d) of this exemption regarding the discretionary authority or control of GMIMCO with respect to the assets of the Transition Plans involved in the transaction, in negotiating the terms of the transaction, and with regard to the decision on behalf of the Transition Plans to enter into the transaction;

(C) the transaction is not entered into with any person who is excluded from relief under Section I(h)(1), above, of this exemption, Section I(h)(2) to the extent such person has discretionary authority or control over the plan assets involved in the transaction, or Section I(h)(3); and

(D) the transaction is not described in any of the class exemptions listed in Section I(c), above, of this exemption.

(g) ''In-house Plan Assets'' means the assets of any plan maintained by an affiliate of GMIMCO, as defined in Section II(c), above, of this exemption and with respect to which GMIMCO exercises discretionary authority or control.

(h) The term, ''party in interest,'' means a person described in section 3(14) of the Act and includes a ''disqualified person,'' as defined in section 4975(e)(2) of the Code.

(i) GMIMCO is ''related'' to a party in interest for purposes of Section I(h)(3) of this exemption, if the party in interest (or a person controlling, or controlled by, the party in interest) owns a 5 percent (5%) or more interest in GMIMCO, or if GMIMCO (or a person controlling, or controlled by GMIMCO) owns a 5 percent (5%) or more interest in the party in interest.

For purposes of this definition:

(1) the term, ''interest,'' means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation,

(B) The capital interest or the profits interest of the entity if the entity is a partnership; or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(2) A person is considered to own an interest held in any capacity if the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest.

(j) For purposes of Section I(a) of this exemption, the term, ''shareholders' or partners' equity,'' means the equity shown in the most recent balance sheet prepared within the two (2) years immediately preceding a transaction undertaken pursuant to this exemption, in accordance with generally accepted accounting principles.

(k) ''Investment Fund'' includes single customer and pooled separate account maintained by an insurance company, individual trust and common, collective or group trusts maintained by a bank, and any other account or fund to the extent that the disposition of its assets (whether or not in the custody of GMIMCO) is subject to the discretionary authority of GMIMCO.

(l) The term, ''relative,'' means a relative as that term is defined in

section 3(15) of the Act, or a brother, sister, or a spouse of a brother or sister.

(m) The ''time'' as of which any transaction occurs is the date upon which the transaction is entered into. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after the date when the grant of this exemption is published in the **Federal Register** or a renewal that requires the consent of GMIMCO occurs on or after such publication date and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, the requirements will continue to be satisfied thereafter with respect to the transaction. Nothing in this subsection shall be construed as exempting a transaction entered into by an Investment Fund which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of this exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption. In determining compliance with the conditions of the exemption at the time that the transaction was entered into for purposes of the preceding sentence, Section I(h) of this exemption will be deemed satisfied if the transaction was entered into between a plan and a person who was not then a party in interest.

(n) ''Commingled Fund'' means a trust fund managed by GMIMCO containing assets of some or all of the assets of plans, described in Section II(e)(1)-(2), above, of this exemption, plans other than Transition Plans, and, if applicable, any Add-On Plan, as to which the 25% Test, provided in Section II(e)(3), above, of this exemption has been satisfied; provided that: (1) where GMIMCO manages a single sub-fund or investment portfolio within such trust, the sub-fund or portfolio will be treated as a single Commingled Fund; and (2) where GMIMCO manages more than one sub-fund or investment portfolio within such trust, the aggregate value of the assets of such sub-funds or portfolios managed by GMIMCO within such trust will be treated as though such aggregate assets were invested in a single Commingled Fund.

Temporary Nature of Exemption

The Department has determined that the relief provided by this exemption is temporary in nature. The exemption is effective May 28, 1999, and expires on the day which is five (5) years from the date of the publication of the final exemption in the **Federal Register**. Accordingly, the relief provided by this exemption will not be available upon the expiration of such five-year period for any new or additional transactions, as described herein, after such date, but would continue to apply beyond the expiration of such five-year period for continuing transactions entered into within the five-year period; provided the conditions of this exemption continue to be satisfied. Should the applicant wish to extend, beyond the expiration of such five-year period, the relief provided by this exemption to new or additional transactions, the applicant may submit another application for exemption. In this regard, the Department expects that prior to filing another exemption application seeking relief for new or additional transactions, the applicant would be prepared to demonstrate compliance with the conditions of this exemption.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing on the proposed exemption. As set forth in the Notice, interested persons consist of the investment committee of each of the Delphi Plans. The deadline for submission of such comments was within forty-five (45) days of the date of the publication of the Notice in the **Federal Register** on August 17, 2000. All comments and requests for a hearing were due on October 2, 2000.

By letter dated September 1, 2000, the applicant confirmed that a copy of the Notice and a copy of the supplemental statement (the Supplemental Statement), described at 29 CFR § 2570.43.(b)(2) were delivered by first class mail via Federal Express on August 31, 2000, to the Executive Committee of the Board of Directors of Delphi Automotive Systems Corporation. As the committee responsible for appointing GMIMCO, as named fiduciary and investment manager for the Transition Plans, the Executive Committee of the Board of Directors of Delphi Automotive Systems Corporation is an interested person with respect to the Transition Plans.

Subsequently, the applicant represented that the ASEC Manufacturing Benefits Committee, and the Packard-Hughes Interconnect Administrative Committee, are also interested persons, as the committees responsible for appointing GMIMCO, as named fiduciary and investment manager, respectively for the ASEC Manufacturing Retirement Program and the Packard-Hughes Interconnect Non-Bargaining Retirement Plan, the Packard-Hughes Interconnect Bargaining Retirement Plan, and the Packard-Hughes Interconnect Foley-Alabama Facility Retirement Plan. By letter dated September 14, 2000, the applicant confirmed that a copy of the Notice and a copy of the Supplemental Statement were delivered by first class mail via Federal Express on September 11, 2000, to the ASEC Manufacturing Benefits Committee, and the Packard-Hughes Interconnect Administrative Committee.

In light the fact that the notification to ASEC Manufacturing Benefits Committee, and the Packard-Hughes Interconnect Administrative Committee was delayed until September 11, 2000, and in order to give all interested persons the benefit of the full thirty (30) day comment period the Department required, and the applicant agreed to, an extension of the deadline when comments and requests for hearing would be due on the proposed exemption. In a letter dated October 16, 2000, the applicant confirmed that ASEC Manufacturing Benefits Committee, and the Packard-Hughes Interconnect Administrative Committee were informed that all comments and requests for a hearing were due by October 11, 2000.

During the comment period, the Department received no requests for a hearing. However, the Department did receive a comment letter from GMIMCO relating to a Notice of Proposed Exemption published in the **Federal Register** on August 17, 2000, for DuPont Capital Management Corporation (DCMC).[12] Because, GMIMCO requested a similar exemption, the Department has determined to treat GMIMCO's submission, as though the comments were filed by GMIMCO with respect to its own Notice of Proposed Exemption[13] which was published on the same date. Because the two proposals provide identical relief, the Department believes that, in the interest of clarity and consistency, both exemptions should operate in the same manner. In this regard, the Department has summarized below its position with respect to certain issues which may affect both exemptions. GMIMCO's comments and the Department's responses thereto, are also summarized below.

(A) Questions have arisen as to what constitutes a Commingled Fund for purposes of compliance with the 25%

[12] 65 FR 50226, August 17, 2000.

[13] 65 FR 50232, August 17, 2000.

Test and how the exemption should apply where a trust has multiple separately valued sub-funds, with covered plan participants generally having the right to allocate the amounts held among the sub-funds at their discretion, or where a trust has one or more investment portfolios with participating plans having pro-rata undivided interests in all of the trust's assets, if: (a) GMIMCO manages assets within one or more of such sub-funds or portfolios, and (b) the plans utilizing the trust are plans described in Section II(e)(1)-(2) of the exemption or any Add-On Plan, described in Section II(e)(3), as to which the 25 percent(25%) test (the 25% Test), is satisfied.

It is the Department's view that for purposes of calculating compliance with the 25% Test with respect to the assets of any Add-On Plan to be added to such trust, a single sub-fund or portfolio within such trust managed by GMIMCO shall be treated as a single Commingled Fund, and where GMIMCO manages more than one sub-fund or portfolio within such trust, the aggregate value of the assets of such sub-funds or portfolios managed by GMIMCO within such trust shall be treated as though such aggregate assets were invested in a single Commingled Fund. Accordingly, for purposes of clarity, the Department has added a new definition at paragraph (n), as set forth below, to Section II of the exemption:

(n) ''Commingled Fund'' means a trust fund managed by GMIMCO containing assets of some or all of the assets of plans, described in Section II(e)(1)–(2), above, of this exemption, plans other than Transition Plans, and, if applicable, any Add-On Plan, as to which the 25% Test, provided in Section II(e)(3), above, of this exemption has been satisfied; provided that: (1) where GMIMCO manages a single sub-fund or investment portfolio within such trust, the sub-fund or portfolio will be treated as a single Commingled Fund; and (2) where GMIMCO manages more than one sub-fund or investment portfolio within such trust, the aggregate value of the assets of such sub-funds or portfolios managed by GMIMCO within such trust will be treated as though such aggregate assets were invested in a single Commingled Fund.

Further, the Department has amended the language of Section II(e)(3) of the exemption to include a reference to the definition of a Commingled Fund and a reference to the 25% Test, as indicated below, by the underlined passages:

(3) any plan (the Add-On Plan) that is sponsored or becomes sponsored by an entity that was, but has ceased to be, an affiliate of GMIMCO (as defined in Section II(c), above, of this exemption); provided that: (A) the assets of the Add-On Plan are invested in a commingled fund *(the Commingled Fund), as defined in Section II(n),below, of this exemption,* with the assets of a plan or plans, described in Section II(e)(1)–(2), above; and (B) the assets of the Add-On Plan in the Commingled Fund do not comprise more than 25 percent (25%) of the value of the aggregate assets of such fund, as measured on the day immediately following the commingling of their assets (the *25% Test*).

(B) Questions have arisen whether, in order for the exemption to apply with respect to assets of a Commingled Fund, it is necessary for the assets of plans described in Section II(e)(1)–(2) of the exemption and/or the assets of any Add-On Plan invested in such Commingled Fund to represent all of the asset of such plans.

It is the Department's view that it is not necessary for all the assets of plans described in Section II(e) of the exemption to be invested in a Commingled Fund in order for the exemption to apply, assuming all applicable requirements of the exemption are satisfied. However, in the event that less than all of the assets of an Add-On Plan are invested in a Commingled Fund on the date of the initial transfer of such Add-On Plan's assets to such fund, it is the Department's view that subsequent transfers to such Commingled Fund of some or all of the assets that remain in such plan would trigger a re-calculation of the 25% Test. Accordingly, the Department has decided to amend Section II(e)(3) of the exemption to include a new sub-paragraph (i), as follows:

(i) in the event that less than all of the assets of an Add-On Plan are invested in a Commingled Fund on the date of the initial transfer of such Add-On Plan's assets to such fund, and if such Add-On Plan subsequently transfers to such Commingled Fund some or all of the assets that remain in such plan, then for purposes of compliance with the 25% Test, the sum of the value of the initial and each additional transfer of assets of such Add-On Plan shall not exceed 25 percent (25%) of the value of the aggregate assets in such Commingled Fund, as measured on the day immediately following the addition of each subsequent transfer of such Add-On Plan's assets to such Commingled Fund;

(C) Questions have arisen as to the calculation of the 25% Test where the assets of more than one Add-On Plan are invested in a Commingled Fund with the assets of plans described in Section II(e)(1)–(2) of the exemption. In this regard, the Department has decided for purposes of clarity to amend Section II(e)(3) of the exemption to include a new sub-paragraph (ii),as set forth below:

(ii) where the assets of more than one Add-On Plan are invested in a Commingled Fund with the assets of plans described in Section II(e)(1)–(2), above, of the exemption, the 25% Test will be satisfied, if the aggregate amount of the assets of such Add-On Plans invested in such Commingled Fund do not represent more than 25 percent (25%) of the value of all of the assets of such Commingled Fund, as measured on the day immediately following each addition of Add-On Plan assets to such Commingled Fund;

(D) GMIMCO believes that, for purposes of compliance with the 25% Test, it would be burdensome to require continual testing of the percentage of Add-On Plan assets to the total assets in a Commingled Fund. In GMIMCO's view, whether or not an Add-On Plan is covered by the exemption should be determined at the time such plan is brought into a Commingled Fund and not on a continuing basis. In this regard, GMIMCO believes that re-calculation of compliance with the 25% Test should be required in the event that all of the assets of an Add-On Plan are not initially invested in such Commingled Fund and to the extent that additional Add-On Plan assets are later added to or removed from the assets in such Commingled Fund for reasons other than: (i) normal contributions to or distributions from the plans in a Commingled Fund made under the terms of such plans, (ii) changes in specific investment selections within a Commingled Fund, or (iii) changes in the amount of plan assets in such Commingled Fund resulting from investment performance.

As indicated above, the Department concurs with GMIMCO that re-calculation of the 25% Test must occur where less than all of the assets of an Add-On Plan are initially invested in a Commingled Fund. Further, the Department recognizes that it would be administratively burdensome to require continuous recalculation of the 25% Test as a result of events that occur in the ordinary operation of a plan or as a result of increases in the value of an Add-On Plan's assets held in a Commingled Fund. Accordingly, the Department has decided to clarify the language of the exemption by adding the following new sub-paragraph (iii) to Section II(e)(3) of the exemption:

(iii) if the 25% Test is satisfied at the time of the initial and any subsequent transfer of an Add-On Plan's assets to a Commingled Fund, as provided in Section II(e),above, this requirement shall continue to be satisfied notwithstanding that the assets of such Add-On Plan in the Commingled Fund exceed 25 percent (25%) of the value of the aggregate assets of such fund solely as a result of: (AA) a distribution to a participant in a Transition Plan; (BB) periodic employer or employee contributions made in accordance with the terms of the governing plan documents; (CC) the exercise of discretion by a Transition

Plan participant to re-allocate an existing account balance in a Commingled Fund managed by GMIMCO or to withdraw assets from a Commingled Fund; or (DD) an increase in the value of the assets of the Add-On Plan held in such Commingled Fund due to investment earnings or appreciation;

(E) GMIMCO maintains that failure to satisfy the 25% Test should only cause the exemption to become unavailable for the Add-On Plans in a Commingled Fund but should not cause the exemption to be unavailable for the entire Commingled Fund.

In response to this comment, it is the position of the Department that other than, as set forth, above, in Section II(e)(3)(iii)of this exemption, the 25% Test is to be satisfied each time assets of an Add-On Plan are transferred to or invested in a Commingled Fund. Failure to satisfy the 25% Test or any other condition of this exemption would cause the exemption immediately to become unavailable for Add-On Plans. The Department notes that, if as a result of a decision by an employer or a sponsor of a plan (described in Section II(e)(1)–(2) of the exemption), the assets of such plan are withdrawn from a Commingled Fund, and if as a result of such withdrawal the 25% Test is no longer satisfied with respect to any Add-On Plan in the Commingled Fund, then it is the Department's position that the exemption will immediately cease to apply to all of the Add-On Plans invested in such Commingled Fund. Accordingly, the Department has decided to clarify the language of the exemption by adding the following new sub-paragraph (iv) to Section II(e)(3) of the exemption:

(iv) if, as a result of a decision by an employer or a sponsor of a plan described in Section II(e)(1)–(2) of the exemption to withdraw some or all of the assets of such plan from a Commingled Fund, the 25% Test is no longer satisfied with respect to any Add-On Plan in such Commingled Fund, then the exemption will immediately cease to apply to all of the Add-On Plans invested in such Commingled Fund;

(F) Questions have arisen whether the inclusion of the assets of plans, other than plans described in Section II(e) of this exemption, in a Commingled Fund would result in the exemption being unavailable for assets of plans described in Section II(e) of this exemption which are held in such Commingled Fund.

It is the Department's view that, under the circumstances described above, the inclusion of the assets of other plans in a Commingled Fund will not result in the exemption being unavailable for assets of Transition Plans, described in Section II(e) of this exemption, held in such Commingled Fund, provided that the assets of such other plans are disregarded for purposes of applying the 25% Test to any Add-On Plan whose assets are held in such Commingled Fund. Accordingly, for purposes of clarification, the Department has decided to amend Section II(e)(3) of the exemption to include a new sub-paragraph (v) as follows:

(v) where the assets of a Commingled Fund include assets of plans other than Transition Plans, as defined in Section II(e), above, of this exemption, the 25% Test will be determined without regard to the assets of such other plans in such Commingled Fund.

After giving full consideration to the entire record, including the written comment from the applicant, the Department has decided to grant the exemption, as amended by the Department, herein. The comment letter submitted by the applicant has been included as part of the public record of the exemption application. The complete application file, including the supplemental submission received by the Department, is made available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on August 17, 2000, at 65 FR 50232.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (this is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 19th day of January, 2001.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 01–2162 Filed 1–24–01; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10856, et al.]

Proposed Exemptions; Trenam, Kemker, Scharf, Barkin, Frye, O'Neill & Mullis Professional Association Section 401(k) Profit Sharing Plan (the Plan)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and

include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. ____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Trenam, Kemker, Scharf, Barkin, Frye, O'Neill & Mullis Professional Association Section 401(k) Profit Sharing Plan (the Plan) Located in Tampa, Florida

[Application No. D–10856]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sales by the individually directed accounts of certain participants (the Participants) in the Plan of certain limited partnership units (the Units) to the Participants, provided the following conditions are satisfied: (a) Each sale is a one-time transaction for cash; (b) no commissions are charged in connection with the sales; (c) the Plan receives not less than the fair market value of the Units at the time of the transactions; and (d) the fair market value of the Units is determined by a qualified entity independent of the Plan and the Participants.

Summary of Facts and Representations

1. The Plan is a 401(k) profit sharing plan which is sponsored by Trenam, Kemker, Scharf, Barkin, Frye, O'Neill & Mullis Professional Association (Trenam), a law firm in Tampa, Florida. The Plan has 183 participants and had total assets of $10,688,388 as of September 30, 1999. Until June 18, 1999, the date of the most recent Plan amendment, the Plan was designed to allow for almost unlimited flexibility and choice by its participants to direct the Plan's trustee to invest the vested portion of their accounts in various investments, in which case the Plan provided for separate individual accounting of the participants' accounts. Therefore, each participant bore the sole risk of loss attributable to his or her investment decision. As of June 30, 1999, approximately one-third of the Plan's participants were choosing to self-direct at least some of their individual accounts.

2. Recently, SouthTrust Asset Management Company of Florida, N.A., the Plan's custodian and directed trustee (the Trustee) advised Trenam that it was no longer willing to perform its current function, unless the Plan provisions allowing unlimited flexibility and choice of self-directed investment options for Plan participants were modified. The Trustee felt that the administration and record-keeping of the Plan had become far too complex. Trenam accordingly amended the self-directed investment provision of the Plan so that participants will still be able to direct their investments, but among a more limited universe of investment options. This change was also intended to alleviate the difficulty that certain of the investments cause in fully complying with the Department's reporting requirements.

3. In order to accomplish this necessary change in Plan design, all participants must liquidate their directed investments that they have ''earmarked'' to their accounts. This Plan change created no problems in relation to those participants that held marketable investments in their ''earmarked'' accounts; however, it does present a problem for the Participants, who hold non-marketable or worthless investments. Thus, the applicant has requested an exemption to permit these Participants to buy these investments from their accounts in the Plan for cash at an amount equal to their independently determined fair market value on the date of sale.

4. The limited partnerships involved in the proposed transactions are as follows: (a) Fishhawk Investment Fund, Ltd. Real Estate Florida Limited Partnership (Fishhawk); (b) Florida Crossroads, Ltd., Real Estate Florida Limited Partnership (Crossroad); and (c) Williams Road Investment Fund, Ltd., Real Estate Florida Limited Partnership (Williams). The Units were acquired from each limited partnership in connection with the original syndication thereof. The arrangement usually called for payments of the cost of the Units to be provided in installments on a specified payment schedule. The terms were the same for all investors, and the Participants were only a few of the investors. In some instances, additional funds were requested at a later date as a result of a capital call to all partners, and in some instances the Participant's account provided the extra funds, but in other cases the Participant's account's ownership was diluted for failure to respond to the capital call (as permitted under the Partnership Agreement). The following chart describes the Participants involved in the subject transactions and provides information concerning the Units:

Participant	Partnership	No. of units	Directed account value (9/30/99)	Total account value	Percent of participants total account
Marvin Barkin	Fishhawk	1.357	53,407	548,468	13.4
	Crossroad	.951	19,972		
William Frye	Fishhawk	.905	35,618	659,303	8.4
	Crossroad	.952	19,993		
Harold Mullis, Jr	Fishhawk	.587	17,238	570,708	12.0
	Crossroad	.453	9,513		
	Williams	1.0	42,000		
K. Rounsaville	Fishhawk	.360	14,168	95,123	14.9
Richard Sollner	Fishhawk	.307	6,415	132,958	4.8
William Zewadski	Fishhawk	.145	5,707	96,625	5.9

5. The specific terms of the transaction are as follows: (a) Marvin E. Barkin, a shareholder in and Vice President of Trenam, will purchase 1.357 Units of Fishhawk for $53,407 and 0.951 Units of Crossroad for $19,972 from his individual account in the Plan. Mr. Barkin's account has had a cost for the Units of Fishhawk of $225,000, and a cost of $34,191 for the Units of Crossroad;

(b) William C. Frye, a shareholder in and Treasurer of Trenam, will purchase 0.905 Units of Fishhawk for $35,618, and 0.952 Units of Crossroad for $19,993 from his individual account in the Plan. Mr. Frye's account has had a cost for the Units of Fishhawk of $150,000, and a cost of $34,191 for the Units of Crossroad;

(c) Harold W. Mullis, Jr., a shareholder in and President of Trenam, will purchase 0.587 Units of Fishhawk for $17,238, 0.453 Units of Crossroad for $9,513, and 1.0 Unit of Williams for $42,000 from his individual account in the Plan. Mr. Mullis's account has had a cost for the Units of Fishhawk of $97,143, a cost of $42,000 for the Unit of Williams, and a cost of $16,281 for the Units of Crossroad;

(d) Keith E. Rounsaville, a former shareholder in Trenam, will purchase 0.360 Units of Fishhawk for $14,168 from his individual account in the Plan. Mr. Rounsaville's account has had a cost for the Units of Fishhawk of $60,000;

(e) Richard H. Sollner, a shareholder in Trenam who heads up the Real Estate Department, will purchase 0.307 units of Fishhawk for $12,082 from his individual account in the Plan. Mr. Sollner's account has had a cost for the Units of Fishhawk of $60,000; and

(f) William K. Zewadski, a shareholder in Trenam who works in the Litigation Department, will purchase 0.145 units of Fishhawk for $5,707 from his individual account in the Plan. Mr. Zewadski's account has had a cost for the Units of Fishhawk of $24,286.

6. The proposed sales prices for the Units were determined by the general partners (the GPs) of each of the partnerships involved. The GPs will update their appraisals as of the dates of the sales so that the Plan will receive not less than the fair market value of the Units as of the dates of the sales.

Mr. Glen E. Cross (Mr. Cross) is the GP of both Fishhawk and Crossroad. Mr. Cross represents that as of September 9, 1999, a one (1) percent interest in Fishhawk would have a fair market value of $35,000. Mr. Cross also represents that as of September 9, 1999, a one (1) percent interest in Crossroad would have a fair market value of $21,000. Mr. Cross, who serves as a general partner in other Florida limited partnerships involved in the ownership and development of land, has been in the real estate development business since 1965.

Mr. David A. Kennedy (Mr. Kennedy) is the GP of Williams. Mr. Kennedy represents that as of June 30, 1999, a one Unit interest in Williams would have a fair market value of $42,000. Mr. Kennedy, who serves as a general partner in other limited partnerships involved in the ownership and development of land, has been in the real estate development business since 1970. The applicant represents that Mr. Cross and Mr. Kennedy (and/or their respective business enterprises) are clients of Trenam, but the combined fees paid by the two of them together, and all business interests of either, constitute less than 1% of Trenam's total gross fee income for any fiscal year. The applicant further represents that neither has any relationship to Trenam, the Plan or the Participants, other than as GP for the partnerships and clients as described above.

7. The applicant represents that the proposed transactions are in the best interests of the Plan and the affected participants and beneficiaries. Each of the Participants' individual accounts in the Plan (the Accounts) will receive an amount in cash equal to the fair market value of the Units which it owns, as determined by an independent, qualified appraiser at the time of the transaction. The Accounts will be able to sell the Units without having to pay any commissions or other expenses for the transactions. The proposed transactions will enable the plan to effectively modify the current self-directed investment options of the Plan in order to simplify the Plan's administrative and record-keeping requirements. Thus, the proposed transactions will help reduce the Plan's expenses and enable the Plan to continue to utilize the services of the Trustee.[1]

8. In summary, the applicant represents that the proposed transactions will satisfy the criteria contained in section 408(a) of the Act because: (a) the sales are one-time transactions for cash; (b) no commissions or other fees will be charged in connection with the transactions; (c) the sales prices for the Units will be at fair market value at the time of the sale based on the appraisals of the Units performed by the GPs of the respective partnerships.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Indianapolis Life Insurance Company (Indianapolis Life) Located in Indianapolis, IN

[Application No. D–10930]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[2]

[1] The Department is providing no opinion in this proposed exemption as to whether the current arrangement by the Plan with the Trustee, or the proposed new arrangement for more limited investment options for Plan participants, is appropriate for the Plan at this time.

[2] For purposes of this proposed exemption, references to provisions of Title I of the Act, unless

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) the receipt of common stock (Common Stock) issued by AmerUs Group Co. (AmerUs Group), the parent of Indianapolis Life, or (2) the receipt of cash (Cash) or policy credits (Policy Credits), by or on behalf of a policyowner of Indianapolis Life (the Eligible Member), which is an employee benefit Plan, including an employee benefit plan that is sponsored by Indianapolis Life and its affiliates for their own employees (the Indianapolis Life Plans; collectively, the Plans), in exchange for such Eligible Member's membership interest in Indianapolis Life, in accordance with the terms of a plan of conversion (the Plan of Conversion), implemented under Indiana law.

In addition, the restrictions of section 406(a)(1)(E) and (a)(2) and section 407(a)(2) of the Act shall not apply to the receipt or holding, by the Indianapolis Life Insurance Company Group Term Life Insurance Plan for Employees, Plan No. 505 (the IL Group Term Life Insurance Plan), of employer securities in the form of excess AmerUs Group Common Stock, in accordance with the terms of the Plan of Conversion.

This proposed exemption is subject to the following conditions set forth below in Section II.

Section II. General Conditions

(a) The Plan of Conversion is subject to approval, review and supervision by the Commissioner of Insurance of the Indiana Department of Insurance (the Commissioner) and is implemented in accordance with procedural and substantive safeguards imposed under Indiana law.

(b) The Commissioner reviews the terms and options that are provided to Eligible Members as part of such Commissioner's review of the Plan of Conversion, and the Commissioner approves the Plan of Conversion following a determination that such Plan is fair and equitable to Eligible Members.

(c) Each Eligible Member has an opportunity to vote to approve the Plan of Conversion after full written disclosure is given to the Eligible Member by Indianapolis Life.

(d) Any determination to receive Common Stock, Cash or Policy Credits by an Eligible Member which is a Plan, pursuant to the terms of the Plan of Conversion, is made by one or more Plan fiduciaries which are independent of Indianapolis Life and its affiliates and neither Indianapolis Life nor any of its affiliates exercises any discretion or provides ''investment advice'' within the meaning of 29 CFR 2510.3–21(c), with respect to such decisions.

(e) After each Eligible Member entitled to receive shares of AmerUs Group Common Stock is allocated at least 12 shares, additional consideration is allocated to Eligible Members who own participating policies based on actuarial formulas that take into account each participating policy's contribution to the surplus and asset valuation reserve of Indianapolis Life, which formulas have been approved by the Commissioner.

(f) In the case of the Indianapolis Life Plans, the independent fiduciary—

(1) Votes on whether to approve or not to approve the proposed restructuring process (the Restructuring);

(2) Elects between consideration in the form of AmerUs Group Common Stock or Cash;

(3) Determines how to apply the Cash or AmerUs Group Common Stock received for the benefit of the participants and beneficiaries of the Indianapolis Life Plans;

(4) Votes shares of AmerUs Group Common Stock held by the IL Group Term Life Insurance Plan and disposes of such stock exceeding the limitation of section 407(a)(2) of the Act as reasonably as practicable, but in no event later than six months after the effective date of the Plan of Conversion.

(5) Provides the Department with a complete and detailed final report as it relates to the Indianapolis Life Plans prior to the effective date of the Restructuring; and

(6) Takes all actions that are necessary and appropriate to safeguard the interests of the Indianapolis Life Plans and their participants and beneficiaries.

(g) All Eligible Members that are Plans participate in the transactions on the same basis as all Eligible Members that are not Plans.

(h) No Eligible Member pays any brokerage commissions or fees in connection with their receipt of AmerUs Group Common Stock or Policy Credits or in connection with the implementation of the commission-free purchase and sale program.

(i) All of Indianapolis Life's policyholder obligations remain in force and are not affected by the Plan of Conversion.

Section III. Definitions

(a) The term ''Indianapolis Life'' means the Indianapolis Life Insurance Company and any affiliate of Indianapolis Life, as defined in paragraph (b) of this Section III.

(b) An ''affiliate'' of Indianapolis Life includes —

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Indianapolis Life. (For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any officer, director or partner in such person, and

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(c) A ''policy'' is defined as (1) any contract of insurance, annuity contract, or supplemental contract in each case, that has been issued by Indianapolis Life; (2) each certificate issued under any of Indianapolis Life's group annuity contracts as part of a custodial 403(b) or IRA arrangement, or as part of a non-ERISA 403(b) arrangement (the custodian or employer-sponsor holding such group annuity contracts shall not be considered the Eligible Member or owner); and (3) each certificate issued under the group plan established as a convenience by Indianapolis Life to provide life insurance to self-employed agents and under which all premiums were paid by such agents. The following policies and contracts are deemed not to be policies for purposes of the Plan of Conversion: (1) A certificate issued to an individual pursuant to a group life insurance policy (except as set forth in the preceding sentence); (2) a certificate issued under a group annuity contract (except as set forth in the preceding sentence); and (3) any reinsurance assumed on an indemnity basis (but certificates of assumption constitute policies).

(d) The term ''Eligible Member'' means a policyholder whose name appears on Indianapolis Life's records as the owner of one or more policies issued by Indianapolis Life on both the date the Board of Directors adopts the Plan of Conversion and the effective date of the Plan of Conversion.

(e) A ''supplemental contract'' is a policy or contract that has been issued pursuant to a Plan participant.

(f) ''Policy Credits'' will consist of an increase in the dividend accumulation on an Indianapolis Life policy or

otherwise specified, refer also to corresponding provisions of the Code.

contract (to which no sales, surrender, or similar charges will be applied), an increase in the accumulation account value of the Indianapolis Life policy or contract (to which no sales, surrender, or similar charge will be applied), an increase in the premium deposit fund under the Indianapolis Life policy or contract, an increase in the amount of the payments distributed under an Indianapolis Life policy or contract that is a supplemental contract, or an extension of the expiry date on an Indianapolis Life policy or contract that is in force as extended term life insurance pursuant to a non-forfeiture provision of a life insurance policy.

Summary of Facts and Representations

1. Indianapolis Life, which maintains its principal place of business in Indianapolis, Indiana, is a mutual life insurance company that was organized in 1905 under the laws of the State of Indiana. Indianapolis Life owns a majority interest in Indianapolis Life Group of Companies, a stock holding company, which wholly owns four operating subsidiaries—IL Annuity and Insurance Company, Bankers Life Insurance Company of New York, Western Security Life Insurance Company, and IL Securities, Inc. All of the operating subsidiaries are involved in the business of providing life insurance or in related financial services. Indianapolis Life and its affiliates are licensed to transact business in all 50 states and the District of Columbia. As of June 30, 2000, Indianapolis Life had approximately $1.8 billion in assets. Currently, Indianapolis Life has the following ''financial-strength'' ratings: A.M. Best Company ''A''; Fitch ''AA''; Moody's Baa1; and Standard & Poor's ''A''.

2. As a mutual insurance company, Indianapolis Life does not have stockholders. Instead, it has mutual members who are owners of insurance policies and contracts it has issued. As mutual members, Indianapolis Life's policyholders have the right to vote in the election of its Board of Directors and to vote on any proposition that the Board submits to a vote of the members in accordance with Indiana law, including the right to vote on the conversion of Indianapolis Life from a mutual life insurance company to a stock company. The voting rights of members are equal, with each member having only one vote regardless of the number or size of policies owned by that member. Indianapolis Life's policyholders also have the right to participate in the voluntary dissolution or liquidation of the insurer and to receive consideration in the event of such insurer's demutualization.

3. Indianapolis Life's principal products include life insurance and annuity contracts. Some of these contracts are sold to Plans subject to ERISA and to other Plans described in section 4975(e)(1) of the Code. The Plans include defined benefit pension plans, defined contribution pension and profit sharing plans (including 401(k) plans and Keogh plans); individual retirement accounts (IRAs) described in section 408 of the Code (including simplified employee pensions); Roth IRAs described in section 408A of the Code; tax-sheltered annuities described in section 403(b) of the Code; and welfare benefit plans.

Indianapolis Life currently has approximately 5,500 outstanding contracts held in connection with Plans. As Indianapolis Life policyholders, the Plans have membership interests in Indianapolis Life. In certain cases, Indianapolis Life or one of its affiliates may provide limited administrative or recordkeeping services to the Plans. These services include the preparation of tax forms (e.g., IRS Forms 1099–R and 5498), the tracking of regular contributions made to IRAs or Roth IRAs, and, in prior years, the provision of prototype plan documents.

In general, neither Indianapolis Life nor any of its affiliates is in the business of providing administrative, recordkeeping, or fiduciary services to Plans, other than serving as a fiduciary for four Indianapolis Life Plans. However, as a service provider, Indianapolis Life may still be considered a party in interest with respect to one or more Plans that are its policyholders.

4. The Plans maintained by Indianapolis Life and its affiliate, Bankers Life Insurance Company of New York, for their own employees are all policyholders of Indianapolis Life. These Plans include the—

(a) *Indianapolis Life Insurance Company Salary Reduction Plan, Plan No. 007 (the IL Salary Reduction Plan).* The IL Salary Reduction Plan is a defined contribution plan. As of June 20, 2000, the IL Salary Reduction Plan had total assets of approximately $18 million and 457 participants. The trustees make investment decisions for this Plan.

(b) *Indianapolis Life Insurance Company Employees Pension Plan, Plan No. 001 (the IL Employees Pension Plan).* The IL Employees Pension Plan is a defined benefit plan. As of January 1, 2000, the IL Employees Pension Plan had total assets of approximately $27.8 million and 774 participants. Indianapolis Life, acting through the Investment Committee of its Board of Directors, makes investment decisions on behalf of this Plan.

(c) *IL Group Term Life Insurance Plan.* The IL Group Term Life Insurance Plan is a welfare plan that is fully insured. As of September 12, 2000, the IL Group Term Life Insurance Plan had 381 participants.

(d) *Bankers Life Insurance Company of New York Profit Sharing and Salary Deferral Plan, Plan No. 001 (the BL Profit Sharing/Salary Deferral Plan).* The BL Profit Sharing/Salary Deferral Plan is a defined contribution plan. As of June 30, 2000, the BL Profit Sharing/Salary Deferral Plan had total assets of approximately $3.3 million and 105 participants. The trustees make investment decisions for this Plan.

5. AmerUs Group is a corporation that resulted from the recent conversion of American Mutual Holding Company (AMHC), an Iowa mutual insurance holding company, into an Iowa stock business corporation.[3] Upon its conversion, AMHC changed its name to ''AmerUs Group Co.'' AmerUs Group is a publicly-held company, with its common capital stock registered under the Securities Exchange Act of 1934, as amended. As described herein below, Indianapolis Life and its affiliates will become wholly owned subsidiaries of AmerUs Group upon Indianapolis Life's conversion.

The Indianapolis Life Restructuring

6. On September 18, 2000, Indianapolis Life's Board of Directors adopted a Plan of Conversion under which Indianapolis Life will convert to a stock life insurance company. The Plan of Conversion is part of a larger transaction involving the combination of Indianapolis Life with AmerUs Group in a ''sponsored demutualization.'' The steps involved in this process are collectively referred to as the ''Restructuring.''

The principal purpose of the Restructuring is to enhance Indianapolis Life's financial strength and access to capital through an affiliation with AmerUs Group that will result in a larger combined organization. Indianapolis Life represents that access to capital markets will enable it to invest in new technology, improve customer service, and develop new products and new channels of distribution.

In addition, Indianapolis Life asserts that the Restructuring will allow it to

[3] For a discussion of AMHC's demutualization, see Prohibited Transaction Exemption 2000–53 (65 FR 65332, November 1, 2000).

obtain more financial flexibility with which to maintain its ratings and financial stability. In this regard, Indianapolis Life anticipates that the flexibility to pay compensation in the form of stock options, in the same manner as do other publicly-held companies, will enhance the insurer's ability to attract and retain qualified officers and directors. Further, Indianapolis Life explains that its combination with AmerUs Group will create an opportunity to leverage its corporate capacity and strength and to reduce expenses through economics of scale.

7. The Restructuring will provide Eligible Members with shares of AmerUs Group Common Stock (which will be traded on the New York Stock Exchange [4], Cash, or Policy Credits in exchange for their otherwise illiquid policyholders' membership interests. Thus, Eligible Members will realize economic value from their membership interests that is not currently available to them as long as Indianapolis Life remains a mutual company. The demutualization, however, will not in any way reduce the benefits, values, guarantees, or dividend eligibility of existing policies or contracts issued by Indianapolis Life.

As part of the Restructuring, Indianapolis Life and its affiliates will become subsidiaries of AmerUs Group. In exchange, AmerUs Group has agreed that upon Indianapolis Life's conversion to a stock company, it will pay policyholders, in exchange for their mutual membership interests in Indianapolis Life, the equivalent of 9.3 million shares of AmerUs Group Common Stock. Such consideration will be in the form of AmerUs Group Common Stock, Cash or Policy Credits. Following the Restructuring, Indianapolis Life's base of operations will remain in Indianapolis.

The Restructuring and the terms of the Plan of Conversion are subject to the approval of the Commissioner and the members of Indianapolis Life who are entitled to vote on such Plan.[5] However, market conditions, regulatory requirements, and business considerations may also influence the final sequence of events.

8. Accordingly, Indianapolis Life requests, on behalf of itself, its subsidiaries, and its future parent company, AmerUs Group, an administrative exemption from the Department that will permit certain of its Plan policyholders to engage in certain transactions relating to its proposed conversion. Specifically, Indianapolis Life requests an exemption that will cover the receipt of AmerUs Group Common Stock, Cash or Policy Credits by Eligible Members that are Plans, including the aforementioned Indianapolis Life Plans, in exchange for such Eligible Member's membership interest in Indianapolis Life.[6] Indianapolis Life represents that the receipt of AmerUs Group Common Stock, Cash, or Policy Credits by a Plan can be viewed as a prohibited sale or exchange of property between it (or AmerUs Group) and a Plan, or as a transfer or use of plan assets by or for the benefit of a party in interest in violation of section 406(a)(1)(A) and (D) of the Act.

In addition, Indianapolis Life has requested that the exemption apply to distributions of AmerUs Group Common Stock to the IL Group Term Life Insurance Plan. Indianapolis Life recognizes that there may be an ''excess'' holding problem with respect employer stock that is received and held by this Plan which would be in violation of section 406(a)(1)(E) and (a)(2) of the Act and section 407(a)(2) of the Act, in addition to section 406(a)(1)(A) and (D) of the Act.[7] Although the IL Group Life Insurance Plan is fully-insured and its sole asset is an insurance policy through which it is funded, Indianapolis Life states that if this Plan were to accept AmerUs Group Common Stock as demutualization consideration, the fair market value of such stock would cause the aforementioned violations of the Act. To avoid this problem, Indianapolis Life represents that U.S. Trust Company, N.A. (U.S. Trust), the independent fiduciary for the Indianapolis Life Plans, fully expects to elect Cash consideration for the IL Group Term Life Insurance Plan. However, to the extent the IL Group Term Life Insurance Plan is required to accept AmerUs Group Common Stock, Indianapolis Life requests that the exemption be expanded to cover this acquisition.

Finally, Indianapolis Life has confirmed that the shares of AmerUs Group Common Stock that are issued to the Indianapolis Life Plans will not violate the provisions of section 407(f) of the Act.[8] Therefore, no further exemptive relief is required.

The requested exemption is based on a number of procedural and substantive protections that Indiana state insurance law provides to all policyholders of a mutual life insurance company that is converting to a stock life insurance company. At present, the Indianapolis Life's conversion is scheduled to become effective in the first quarter of 2001, thereby making the time frame for distributing policyholder consideration as early as August 31, 2001. In the event the Department is unable to grant the final exemption by the statutory deadline described in Representation 16, Indianapolis Life requests that the Department issue the exemption retroactively and that the exemption be made effective as of the effective date of the Plan of Conversion.

Indiana Insurance Law

9. Indianapolis Life anticipates that the following steps of the Restructuring will occur pursuant to the Plan of Conversion:

• AmerUs Group will form a new Indiana corporation under Indiana's business corporation laws, as a wholly-owned subsidiary. The new corporation

[4] On December 11, 2000, the closing price for AmerUs Group Common Stock was $30.88 per share.

[5] According to the Plan of Conversion, those members eligible to vote are members of Indianapolis Life both (a) as of the date Indianapolis Life's Board of Directors adopts the Plan of Conversion and (b) the record date of the special members' meeting will be held.

[6] With respect to the Indianapolis Life Plans, Indianapolis Life represents that no Policy Credits will be paid to such Plans as a result of the Restructuring. Instead, as described in Representation 23, the Indianapolis Life Plans will receive consideration in the form of either Cash or shares of AmerUs Group Common Stock. Indianapolis Life is of the view that the AmerUs Group Common Stock that will be issued to certain of the Indianapolis Life Plans would constitute ''qualifying employer securities'' within the meaning of sections 407(d)(5) of the Act and that section 408(e) of the Act would apply to such distributions. (The Department however, expresses no opinion herein on whether such stock would constitute qualifying employer securities and whether such distributions would satisfy the terms and conditions of section 408(e) of the Act.) Nevertheless, Indianapolis Life has requested that the Department expand the scope of the exemption to include the distribution of both forms of consideration to the Indianapolis Life Plans.

[7] Section 406(a)(2)(E) of the Act prohibits the acquisition by a plan of any employer security which would be in violation section 407(a) of the Act. Section 406(a)(2) of the Act states that no fiduciary who has authority or discretion to control the assets of a plan shall permit the plan to hold any employer security if he [or she] knows that holding such security would violate section 407(a) of the act. Section 407(a)(1) of the Act prohibits the acquisition by a plan of any employer security which is not a qualifying employer security. Section 407(a)(2) of the Act provides that a plan may not acquire any qualifying employer security, if immediately after such acquisition, the aggregate fair market value of such securities exceeds 10 percent of the fair market value of the plan's assets.

[8] Section 407(f) of the Act, which is applicable to the holding of a qualifying employer security by a plan other than an eligible individual account plan, requires that (a) immediately following its acquisition by a plan, no more than 25 percent of the aggregate amount of stock of the same class issued and outstanding at the time of acquisition is held by the plan; and (b) at least 50 percent of the stock be held by persons who are independent of the issuer.

will serve as the ''Indiana parent corporation'' of Indianapolis Life upon its conversion to a stock company for purposes of Indiana law.

• Indianapolis Life will convert from a mutual company to a stock company under Indiana law. Under the Plan of Conversion, and as provided by Indiana law, the policyholder's membership interests in Indianapolis Life will be extinguished, and Eligible Members will receive shares of AmerUs Group Common Stock, Cash, or Policy Credits as compensation for termination of their membership interests.

• Concurrently with Indianapolis Life's conversion, CLA Assurance Company (CLA Assurance), a wholly owned subsidiary of AmerUs Group, will merge with and into Indianapolis Life. Indianapolis Life will be the surviving company and will continue its existence as an Indiana-domiciled insurer. By operation of law, all of the stock of CLA Assurance will be converted into all of the stock of Indianapolis Life, thereby making Indianapolis Life a wholly owned stock subsidiary of AmerUs Group.

• To satisfy Indiana law, immediately upon Indianapolis Life's conversion, AmerUs Group will transfer all of the stock of Indianapolis Life to the Indiana parent corporation as a capital contribution.

Procedural Requirements Under Indiana Demutualization Law

10. Indiana Code 27–15 *et seq.* (the Indiana Demutualization Law), establishes an approval process for the demutualization of domestic mutual insurance companies. In this regard, the conversion of a mutual insurance company to a stock company must be initiated by the board of directors of the mutual insurance company. The board of directors may adopt a plan of conversion only upon a finding that the proposed conversion is in the best interests of the converting mutual insurance company, the Eligible Members, and the other policyholders of the company. Once the plan of conversion is adopted by the company's board of directors, the company must submit an application for the approval of the plan of conversion with the Commissioner. The application must include the following information:

• The plan of conversion and a certificate of the secretary of the converting mutual insurance company certifying the adoption of the plan by the company's board of directors.

• A statement of the reasons for the proposed conversion and why the conversion is in the best interests of the converting mutual insurance company, the eligible members, and the other policyholders. The statement must include an analysis of the risks and benefits to the converting mutual insurance company and its members of the proposed conversion and a comparison of the risks and benefits of the conversion with the risks and benefits of reasonable alternatives to a conversion.

• A five year business plan and at least two years of financial projections of the former mutual insurance company and any parent company.

• Any plans that the former mutual insurance company or parent company may have to—

• Raise additional capital through the issuance of stock or otherwise;

• Sell or issue stock to any person, including any compensation or benefit plan for directors, officers, or employees under which stock may be issued;

• Liquidate or dissolve any company or sell any material assets;

• Merge or consolidate or pursue any other form of reorganization with any person; or

• Make any other material change in investment policy, business, corporate structure, or management.

• A plan of operation for a closed block, if a closed block is used for the preservation of the reasonable dividend expectations of eligible members and other policyholders with policies that provide for the distribution of policy dividends.

• Copies of the amendment to the articles of incorporation proposed by the board of directors and the proposed bylaws of the former mutual insurance company and copies of the existing and any proposed articles of incorporation and bylaws of any parent company.

• A list of all individuals who are or have been selected to become directors or officers of the former mutual insurance company and any parent company, or the individuals who perform or will perform duties customarily performed by a director or officer, as well as specific biographical information about those individuals.

• An actuarial opinion as to the following:

• The reasonableness and appropriateness of the methodology or formulas used to allocate consideration among eligible members, consistent with the statute.

• The reasonableness of the plan of operation and the sufficiency of the assets allocated to the closed block, if a closed block is used for the preservation of the reasonable dividend expectations of eligible members and other policyholders with policies that provide for the distribution of policy dividends.

• A copy of the form of trust agreement to be used in connection with a trust to be established to hold assets that are the subject of a claim described in Ind. Code 27–15–12–1 until that claim has been resolved. (In the present case, to the extent that such a claim is filed, the trust would hold consideration payable to Plan policyholders until the Department issues the requested exemption. See also Representation 16.)

• Any additional information, documents, or materials that the converting mutual insurance company determines to be necessary.

• Any other additional information, documents, or materials that the Commissioner requests in writing.

11. Upon determining that the application is complete, the Commissioner must conduct a public hearing on the plan of conversion. The purpose of the hearing is to receive comments and information to aid the Commissioner in considering and approving or disapproving the application for approval of the plan of conversion. The converting mutual insurance company must provide at least 30 days prior written notice of the hearing to its members and policyholders. Persons wishing to make comments and submit information may submit written statements before or at the public hearing and may also appear and be heard at the public hearing.

12. The converting mutual insurance company must also cause notice of the public hearing to be published in a newspaper of general circulation in the city where the principal office of the converting mutual insurance company is located and in any other city specified by the Commissioner. Both the written notice and the form and content of the published notice must be pre-approved by the Commissioner.

The Commissioner must fully consider any comments received at the public hearing consistent with Indiana's Administrative Rules and Procedures Act before making a determination on the Plan of Conversion. After the public hearing, the Commissioner must approve the application and permit the conversion under the plan of conversion if the Commissioner finds the following:

• That the amount and form of consideration are fair in the aggregate and to each member class;

• That the Plan of Conversion and the amendment to the articles of incorporation:

• Comply with the Indiana Demutualization Law and other applicable laws;

• Are fair, reasonable, and equitable to the eligible members; and

• Will not prejudice the interests of the other policyholders of the converting mutual insurance company; and

• That the total consideration provided to eligible members upon the extinguishing of the converting mutual's membership interests is equal to or greater than the surplus of the converting mutual.

A person who is aggrieved by an agency action of the Commissioner under the Indiana Demutualization Law may petition for judicial review of the action.

13. The Indiana Demutualization Law permits the Commissioner to employ accountants, actuaries, attorneys, financial advisers, investment bankers and other experts that are necessary to assist the Commissioner in reviewing all matters under the Indiana Demutualization Law. In the case of Indianapolis Life's proposed demutualization, the Commissioner has retained an actuarial firm, legal advisers and an investment banking firm as consultants.

14. In addition to being approved by the Commissioner, the plan of conversion must be approved by the converting mutual insurance company's policyholders. The policyholders must be provided with notice of the meeting called for the purpose of voting on the Plan of Conversion.

The converting mutual insurance company must also provide explanatory information about the conversion to policyholders. The form of the meeting notice, explanatory information, and any proxy solicitation materials must be approved in advance by the Commissioner. Further, the Plan of Conversion must be approved by at least two-thirds of the policyholders voting at the meeting.

15. As noted in Representation 6, the Indianapolis Life Board of Directors adopted Indianapolis Life's Plan of Conversion on September 18, 2000 following review and the receipt of comments by the Commissioner. In addition, on September 21, 2000, Indianapolis Life filed an application for approval of such Plan and amendments to its Articles of Incorporation with the Commissioner. On November 2, 2000, Indianapolis Life filed a revised version of the Plan of Conversion with the Commissioner to reflect changes requested by the Commissioner.

As for the policyholder meeting, Indianapolis Life indicates that the notice of the meeting was tentatively scheduled to be mailed on or about December 18, 2000. However, Indianapolis Life explains that the mailing did not occur due to delay in the regulatory process. Indianapolis Life also points out that the regulatory delay has moved back the date of the policyholder meeting, which was originally scheduled to occur on February 16, 2001. Once approval is obtained, Indianapolis Life states that the mailing and the meeting will be rescheduled.

Whenever the policyholder meeting occurs, approximately 152,000 Indianapolis Life policyholders (including 5,500 Plan policyholders) which are Eligible Members will be eligible to vote on the Plan of Conversion. Each Eligible Member will be entitled to only one vote regardless of the number of policies or certificates held by such Eligible Member.

Indianapolis Life expects that the Commissioner will approve the Plan of Conversion by mid-February 2001 and that the demutualization will become effective between March 15 and March 31, 2001. However, delays in the regulatory process could push these dates back further.

Trust Requirement

16. Indianapolis Life explains that Indiana Demutualization Law imposes unique and stringent time constraints on the distribution of consideration to policyholders in connection with a demutualization. In this regard, unless a special, very narrow exception applies, all consideration must be distributed within six months after the effective date of the insurer's conversion to a stock life insurance company. The exception applies in the event that, prior to the effective date of the demutualization, a claim is filed that meets certain requirements. In this event, a trust (the Trust) will be established to hold disputed or affected assets until the claim is resolved, even if the resolution occurs after the six month deadline.

According to Indianapolis Life, the Commissioner has indicated that the Trust exception will apply in the present exemption request to the extent that a claim is filed by or on behalf of one or more policyholders. The claim must assert, to the satisfaction of the Commissioner, that (a) irreparable harm will result if distribution occurs before the Department issues the requested exemption, and (b) a Trust should be established to hold consideration payable to Plan policyholders until the exemption is granted by the Department.

None of the trustees (the Trustees) of the Trust will be related to Indianapolis Life or its affiliates. Indianapolis Life will pay for all costs and expenses of the Trust and the Trustees. All consideration held in the Trust for the benefit of Plan policyholders will be placed in interest-bearing accounts. The interest generated from these investments will also be held in the Trust for the benefit of the Plan policyholders. Any earnings on the AmerUs Group Common Stock that is held in the Trust, which is in the form of cash or stock dividends, will similarly be held in the Trust.

The Trust will terminate when all claims with respect to the Trust assets have been resolved and all of the Trust assets have been distributed. If a claim remains unresolved three years after the effective date of the Trust, the Trust will contain a mechanism for (a) distributing the remaining Trust assets to a court of competent jurisdiction to make all decisions regarding the distribution; or (b) to the beneficiary, as long as the beneficiary agrees to accept any liability associated with the distribution. At that point, the Trustee will be discharged from all responsibility under the Trust, and the Trust will be terminated.[9]

Distributions to Indianapolis Life's Policyholders

17. Indianapolis Life's Plan of Conversion provides for Eligible Members to receive AmerUs Group Common Stock, Cash, or Policy Credits as consideration for giving up their membership interest in the mutual insurance company, which interests will be extinguished as a result of the demutualization.[10] For this purpose, an

[9] If the exemption requested herein is granted before the effective date of the demutualization, Indianapolis Life states that the Trust requirement will be moot.

[10] Indianapolis Life represents that in accordance with chapter 15 of the Indiana Insurance Code, the Plan of Conversion generally provides that the policyholder eligible to participate in the distribution of AmerUs Group Common Stock, Cash or Policy Credits resulting from the Plan of Conversion (*i.e.,* the Eligible Member) is the person whose name appears on Indianapolis Life's records as owner or holder of the policy. Indianapolis Life further represents that an insurance or annuity policy that provides benefits under an employee benefit plan, typically designates the employer that sponsors the plan, or a trustee acting on behalf of the plan, as the owner or holder of the policy. In regard to insurance or annuity policies that designate the employer or trustee as owner of the policy, Indianapolis Life represents that it is required under the Plan of Conversion to make distributions resulting from the Plan of Conversion to the employer or trustee as owner of the policy.

In general, it is the Department's view that, if an insurance policy (including an annuity contract) is purchased with assets of an employee benefit plan, including participant contributions, and if there exist any participants covered under the plan (as defined at 29 CFR 2510.3–3) at the time when Indianapolis Life incurs the obligation to distribute AmerUs Group Common Stock, Cash or Policy Credits, then such consideration would constitute an asset of such Plan. Under these circumstances,

Continued

''Eligible Member'' is a policyholder whose name appears on Indianapolis Life's records as the owner of one or more policies issued by Indianapolis Life as of both the date the Board of Directors adopts the Plan of Conversion and the effective date of the Plan of Conversion. Distributions under Indianapolis Life's Plan of Conversion will be made to Eligible Members that are Plans on the same basis as all Eligible Members which are not Plans.

As stated above, the total consideration to be distributed to Eligible Members will be equal in value to 9.3 million shares of AmerUs Group Common Stock [11]. Under Indiana law, this value will at least be equal to the value of Indianapolis Life's surplus. In this regard, each Eligible Member will be allocated a fixed component of consideration equal to 12 shares of AmerUs Group Common Stock. The remaining shares of AmerUs Group Common Stock will then be allocated to the Eligible Members based on the actuarial contribution that each Eligible Member's policy has made (and is expected to make) to Indianapolis Life's statutory surplus. The Plan of Conversion contains a detailed description of how the actuarial contribution of each policy or contract will be determined.

18. After shares of AmerUs Group Common Stock have been allocated to each Eligible Member, actual consideration will be paid as soon as practicable after the conversion date. As noted above, such consideration will be in the form of AmerUs Group Common Stock, Cash or Policy Credits. For each affected policy, combinations of different forms of consideration will not be permitted. The decision as to the form of consideration to be received in exchange for Indianapolis Life membership interests will be made by one or more independent Plan fiduciaries which is independent of Indianapolis Life and its affiliates. In this regard, neither Indianapolis Life nor its affiliates will provide a Plan with ''investment advice,'' within the meaning of 29 CFR 2510.3–21(c) of the Act or exercise discretion with respect to such decision.

19. In general, AmerUs Group Common Stock or Cash will be paid to an Eligible Member who affirmatively elects to receive such consideration. An Eligible Member electing to receive consideration in this form must complete a card, which will be included in the notice of the members' meeting, and return such card to Indianapolis Life prior to the date specified by Indianapolis Life for the receipt of proxies to be used at the members' meeting.

Some Eligible Members who own specific types of policies may not have a choice as to the form of consideration to be received. For example, an Eligible Member will receive consideration in the form of Policy Credits if such Eligible Member is the owner of a policy that is—

- An individual retirement annuity within the meaning of section 408 or 408A of the Code or a tax sheltered annuity within the meaning of section 403(b) of the Code; or
- An individual annuity contract, individual life insurance policy or a supplemental contract that has been issued directly to a plan participant pursuant to a plan qualified under section 401(a) or 403(b) of the Code.

In addition, each owner of a policy that is identified prior to the distribution as part of a tax-qualified plan will receive consideration in the form of Policy Credits if the receipt of Cash or AmerUs Common Stock would affect the tax-favored status accorded to the policy or result in penalties or any other adverse federal income tax consequences to the holders of such policies under the Code.

Further, Indianapolis Life's Plan of Conversion provides that an Eligible Member will receive consideration in the form of Cash if (a) the receipt of AmeriUs Group Common Stock would, in the judgment of Indianapolis Life, fail to comply with the securities registration requirements (or applicable exemptions) of the state of domicile of the Eligible Member; or (b) the Eligible Member's mailing address, as shown on such insurer's records is located outside of the United States.

The amount of Policy Credits or Cash will be determined by multiplying the number of shares of AmerUs Group Common Stock allocated to the Eligible Member by the ''stock price'' of such stock. The ''stock price'' will be the greater of closing price per share of AmerUs Group Common Stock on the effective date of the Plan of Conversion or the average of the closing price per share of such stock for each of the first ten trading days beginning with the effective date of the Plan of Conversion.

20. Cash will also be paid to an Eligible Member who fails to make any election as long as certain ''special rules'' in the Plan of Conversion for satisfying the Cash and Common Stock preferences of Eligible Members are satisfied. In this regard, the Plan of Conversion requires that the maximum amount of Cash distributed, together with the value of Policy Credits and the costs and expenses to be paid by AmerUs Group or Indianapolis Life for the benefit of Eligible Members, allow for the merger between CLA Assurance and Indianapolis Life to qualify as a tax-free reorganization under section 368(a)(2)(E) of the Code.[12]

The Plan of Conversion requires that at least 10 percent of all Eligible Members receive Cash. Indianapolis Life and AmerUs Group may agree to distribute Cash to more than 10 percent of all Eligible Members as long as the maximum amount of Cash under section 368(a)(2)(E) of the Code is not exceeded.

Further, the Plan of Conversion provides for the payment of Cash to those Eligible Members (other than those who are required to receive Cash) based on the number of shares of AmerUs Group Common Stock allocated to Eligible Members in increasing order until the total amount of available Cash has been fully distributed. Eligible Members with the least number of allocable shares will be paid in Cash first.[13]

21. AmerUs Group will issue shares of AmerUs Group Common Stock to an Eligible Member entitled to receive such consideration in book-entry form as uncertificated shares. AmeriUs Group will also mail a notice to the Eligible Member, thereby informing the Eligible Member, that a designated number of shares of AmerUs Group Common Stock

the appropriate Plan fiduciaries must take all necessary steps to safeguard the assets of the plan in order to avoid engaging in a violation of the fiduciary responsibility provsions of the Act.

[11] if the aggregate value of 9.3 million shares of AmerUs Group Common Stock is less than $186 million (with the stock price determined by averaging the daily closing price of the AmerUs Group Common Stock over the five trading days ending ten business days before the effective date of the Plan of Conversion), then Indianapolis Life will not be obligated to consummate the Plan of Conversion, unless AmerUs Group promptly agrees to increase the number of shares of AmerUs Group Common Stock allocable to Eligible Members or otherwise provide additional consideration so that the aggregate value of the shares is equal to $186 million.

[12] The distribution by AmerUs Group of its Common Stock to former members of Indianapolis Life is intended to be tax-free. Accordingly, the transaction must comply with the provisions of section 368(a)(2)(E) of the Code. Among other things, these requirements limit the extent to which the consideration paid to former Indianapolis Life members may be in a form other than AmerUs Group Common Stocks.

[13] If there are two or more Eligible Members having the same number of allocable shares of AmerUs Group Common Stock and there is insufficient Cash to pay all such Eligible Members, the Plan of Conversion provides, in relevant part, that the remaining available Cash will be distributed ''first to those Eligible Members with the earliest Policy Date.'' Therefore, in the event the allocation of Cash among Eligible Members results in a ''tie'' between two or more Eligible Members having the same number of allocable shares, Cash will be distributed to the Eligible Member with the earliest policy date.

has been registered in such Eligible Member's name. If an Eligible Member requests, AmerUs Group will mail the Eligible Member a stock certificate representing the shares. No Eligible Member will pay a brokerage commission or fee in connection with the receipt of AmerUs Group Common Stock.

Commission-Free Sales and Purchase Program

22. AmerUs Group will, within 12 months after the closing date of the combination of AmerUs Group with Indianapolis Life, offer a commission-free sales and purchase program to shareholders holding less than 100 shares of stock. The shareholders may sell their shares (or round up to 100 shares by purchase) without paying any brokerage commissions. The program will be made available for a minimum of 60 days.

Role of the Independent Fiduciary for the Indianapolis Life Plans

23. As noted above, the decision to vote for or against the Plan of Conversion and the decision as to the form of consideration to be received in exchange for Indianapolis Life membership interests will be made by one or more independent Plan fiduciaries. Pursuant to a letter agreement dated September 18, 2000, Indianapolis Life has appointed U.S. Trust to act as the independent fiduciary on behalf of each of the Indianapolis Life Plans with respect to certain aspects of Indianapolis Life's Plan of Conversion. Such transactions over which U.S. Trust will exercise investment discretion may result in the acquisition, holding or disposition of AmerUs Group Common Stock by the Indianapolis Life Plans. U.S. Trust has acknowledged and accepted the duties, responsibilities and liabilities, required of an independent fiduciary and it agrees to act on behalf of the Indianapolis Life Plans. In return for services rendered, Indianapolis Life will compensate U.S. Trust.

U.S. Trust is the principal subsidiary of U.S. Trust Corporation, which was founded in 1853 and is subject to regulation as a trust company by the State of New York. U.S. Trust is a member of the Federal Reserve System and the Federal Deposit Insurance Corporation. As of December 31, 1999, U.S. Trust had approximately $5 billion in assets and over $75 billion in assets under management. Of those assets under management, a significant portion consisted of the assets of ERISA-covered Plans. U.S. Trust has served as an independent fiduciary for a number of Plans that have acquired or held employer securities and it has managed over $20 billion in employer securities held by such Plans. In managing such investments, U.S. Trust has exercised discretionary authority over many transactions involving the acquisition, retention and disposition of employer securities.

U.S. Trust represents that it is independent of Indianapolis Life and its affiliates. In this regard, U.S. Trust asserts that it has no business, ownership or control relationship, nor is it otherwise affiliated with Indianapolis Life. Further, U.S. Trust represents that it derives less than one percent of its annual income from Indianapolis Life.

As the independent fiduciary for the Indianapolis Life Plans, U.S. Trust will be required to (a) vote on whether to approve or not to approve the proposed Restructuring; (b) elect between consideration in the form of AmerUs Group Common Stock or Cash; (c) determine how to apply the Cash or AmerUs Group Common Stock received for the benefit of the participants and beneficiaries of the Indianapolis Life Plans; (d) vote on shares of AmerUs Group Common Stock that are held by the IL Group Term Life Insurance Plan and dispose of such stock exceeding the limitation of section 407(a)(2) of the Act as reasonably as practicable, but in no event later than six months after the effective date of the Plan of Conversion; and (e) take all actions that are necessary and appropriate to safeguard the interests of the Indianapolis Life Plans and their participants and beneficiaries. In addition, U.S. Trust will provide the Department with a complete and detailed final report as it relates to the Indianapolis Life Plans prior to the effective date of the Restructuring. Finally, U.S. Trust states that it has conducted a preliminary review of Indianapolis Life's Plan of Conversion and it sees nothing in the Plan that would preclude the Department from proposing the requested exemption.

24. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Plan of Conversion will be implemented pursuant to stringent procedural and substantive safeguards imposed under Indiana law and supervised by the Commissioner.

(b) The Commissioner will only approve the Plan of Conversion following a determination that, among other things, such Plan is fair, reasonable, and equitable to all Eligible Members.

(c) One or more independent fiduciaries of each Plan (including the Indianapolis Life Plans) will have an opportunity to determine whether to vote to approve the terms of the Plan of Conversion and will also be solely responsible for any decisions that may be permitted under the Plan of Conversion regarding the form of consideration to be received in return for their respective membership interests.

(d) Because of all of the protections afforded the plans under Indiana law, no ongoing involvement by the Department will be required in order to safeguard the interests of the employee benefit plan policyholders.

(e) The Plan of Conversion will enable Plans to convert their illiquid membership interests in Indianapolis Life into AmerUs Group Common Stock, Cash, or Policy Credits.

(f) The insurance and annuity contracts affected by the Plan of Conversion will remain in force and there will be no changing of premiums or compromising any of the benefits, values, guarantees, or other policy obligations of Indianapolis Life to its policyholders and contractholders.

(g) Each Eligible Member that is a Plan policyholder will have an opportunity to comment on the Plan of Conversion and, if such Plan is a voting member, to vote for or against the Plan of Conversion after full disclosure by Indianapolis Life of the terms of the Plan of Conversion.

Notice to Interested Persons

Indianapolis Life will provide, by first-class mail, notice of the proposed exemption to all Plans that would be entitled to receive AmerUs Group Common Stock, Cash or Policy Credits under the Plan of Conversion, as determined on the basis of Indianapolis Life's review of its policyholder records. The notice will be provided to interested persons within 14 days after publication of a notice of proposed exemption in the **Federal Register**. The notice will include a copy of the proposed exemption, as published in the **Federal Register** and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2) which shall inform interested persons of their right to comment on the proposed exemption. Comments with respect to the proposed exemption are due within 44 days after the date of publication of this pendency notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

The Amalgamated Cotton Garment & Allied Industries Fund-Retirement Fund Located in New York, New York

[Exemption Application No.: D–10947]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[14] If the exemption is granted, the restrictions of sections 406(a)(1)(A), 406(a)(1)(D), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the proposed purchase by the Amalgamated Cotton Garment & Allied Industries Fund-Retirement Fund (the Cotton Pension Fund) from the Amalgamated Insurance Fund-Insurance Fund (the Clothing Welfare Fund), a party in interest with respect to the Cotton Pension Fund, of 100 percent (100%) of the outstanding shares of non-publicly traded common stock (the Common Stock) of ALICO Services Corporation (ASC), a service provider to the Cotton Pension Fund; provided that prior to the proposed transaction: (a) an independent fiduciary (the I/F), acting on behalf of the Cotton Pension Fund determines that the proposed transaction is feasible, in the interest of, and protective of the Cotton Pension Fund and its participants and beneficiaries; (b) the I/F determines, on behalf of the Cotton Pension Fund, that the ASC Common Stock should be purchased by the Cotton Pension Fund; (c) the I/F reviews, negotiates, and approves the terms of the purchase of the ASC Common Stock; (d) the I/F monitors the terms of the purchase of the ASC Common Stock and ensures that the Cotton Pension Fund and the Clothing Welfare Fund comply with the approved terms; (e) the I/F determines that the terms of the purchase of the ASC Common Stock are no less favorable to the Cotton Pension Fund than terms negotiated at arm's length with an unrelated third party under similar circumstances; (f) the I/F determines, as of the date the transaction is entered, that the purchase price for the ASC Common Stock paid by the Cotton Pension Fund is the fair market value of such stock, not to exceed $30 million; (g) an independent, qualified appraiser issues a fairness opinion as to the price of the ASC Common Stock and determines, as of the date the transaction is entered, that the Clothing Welfare Fund is receiving fair market value for such stock; (h) the Cotton Pension Fund incurs no fees, commissions, or other charges or expenses as a result of its participation in the proposed transaction other than the following: (1) the fees incurred in making this exemption request, (2) the fee payable to the I/F, and (3) the fees payable to the parties representing the Cotton Pension Fund in the proposed transaction; (i) the proposed transaction is a one-time occurrence for cash; and (j) a committee composed of members of the Board of Trustees of the Clothing Welfare Fund determines that such fund should engage in the proposed transaction and, if so, such committee is authorized to set the terms and conditions under which the Clothing Welfare Fund will engage in such transaction.

EFFECTIVE DATE: This proposed exemption, if granted, will be effective on the date that the subject transaction closes, or March 15, 2001, whichever is earlier.

Summary of Facts and Representations

1. The Clothing Welfare Fund and Cotton Pension Fund are interrelated, in that some of the same employers contribute to both the Clothing Welfare Fund and the Cotton Pension Fund. In this regard, approximately 18% of the active participants in the Clothing Welfare Fund are also participants of the Cotton Pension Fund. The Cotton Pension Fund is an ''employee pension benefit plan,'' as defined under section 3(2) of the Act. The Clothing Welfare Fund is an ''employee welfare benefit plan,'' as defined under section 3(1) of the Act. Accordingly, the Cotton Pension Fund and the Clothing Welfare Fund are ''employee benefit plans,'' as defined under section 3(3) of the Act. In this regard, there is jurisdiction under Title I of the Act with respect to both funds. It is also represented that the Cotton Pension Fund offers pension benefits covered under Title II of the Act. Accordingly, the Cotton Pension Fund is also subject to section 4975 of the Code.

2. The Cotton Pension Fund is a multiemployer pension plan jointly trusteed by individuals selected by the Union of Needletrades, Industrial and Textile Employees (UNITE) and by individuals selected by various employers who contribute to the Cotton Pension Fund. The Cotton Pension Fund provides pension benefits primarily to unionized workers in the cotton garment industry. As of December 31, 1999, the estimated number of participants and beneficiaries in the Cotton Pension Fund was approximately 72,105. The approximate aggregate fair market value of the total assets of the Cotton Pension Fund was $682.1 million, as of June 30, 2000.

The trustees of the Cotton Pension Fund have appointed an independent committee (the Cotton Committee) comprised of four trustees from the total number of trustees. Aside from appointing the Cotton Committee, the trustees of the Cotton Pension Fund have no other participation in the proposed transaction.

Two members of the Cotton Committee are UNITE representatives and two members are employer representatives. It is represented that the members on the Cotton Committee are trustees only of the Cotton Pension Fund. The Cotton Committee is prepared to assist the I/F with the proposed transaction.

3. The Clothing Welfare Fund is a multiemployer welfare plan jointly trusteed and administered by: (a) individuals selected by UNITE, and (b) individuals selected by the Clothing Manufacturing Association of the United States of America. The Clothing Welfare Fund provides health and life insurance benefits primarily to unionized workers of men's suit manufacturers. As of December 31, 1999, the estimated number of participants and beneficiaries in the Clothing Welfare Fund was approximately 39,910. The approximate aggregate fair market value of the total assets of the Clothing Welfare Fund was $31.6 million, as of June 30, 2000.

The trustees of the Clothing Welfare Fund have appointed an independent committee (the Clothing Committee) comprised of four trustees from the total number of trustees. Aside from appointing the Clothing Committee, the trustees of the Clothing Welfare Fund have no other participation in the proposed transaction.

Two members of the Clothing Committee are UNITE representatives and two members are employer representatives. It is represented that the members of the Clothing Committee are trustees only of the Clothing Welfare Fund. The Clothing Committee is empowered to determine whether the Clothing Welfare Fund should engage in the proposed transaction, and if so, the committee is authorized to set the terms and conditions under which the Clothing Welfare Fund will engage in such transaction.

[14] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer to the corresponding provisions of the Code.

4. ASC is a holding company that is wholly-owned by the Clothing Welfare Fund. As a holding company, ASC wholly owns four (4) subsidiaries: (a) Amalgamated Life Insurance Company (ALICO); (b) Alicare Inc. (Alicare); (c) Alicare Medical Management, Inc. (AMM); and (d) Amalgamated Fund Administrators, Inc. (AFA) (collectively, the ASC Subsidiaries). All of the ASC Subsidiaries are operated for profit, with the exception of AFA.

ALICO, a New York life insurance company, was established in 1943 to serve as the non-profit administrative arm of the Clothing Welfare Fund. At the time of ALICO's formation, the Clothing Welfare Fund was a self-funded health plan sponsored by the Amalgamated Clothing Workers' Union of America (ACWA), a predecessor of UNITE. Over time, ALICO began to serve a similar administrative role for other ACWA funds. In 1991, the Clothing Welfare Fund formed ASC in order to sell products and services on a commercial for-profit basis. Subsequently, the not-for-profit administrative services were handled by AFA. Currently, ALICO provides life and disability insurance primarily to unions and union-sponsored trust funds. ALICO also provides fully retrospectively rated group life insurance to various jointly administered funds, including the Clothing Welfare Fund.

It is represented that the proposed transaction will not close until it is approved by the Superintendent of Insurance of the State of New York. In this regard, it is represented that the reserves of ALICO are adequate to cover all future policy liabilities. Accordingly, no additional reserves shall be required as a result of the proposed transaction. In addition, it is represented that following the proposed transaction, ASC and ALICO are and shall continue to be going concerns.

Alicare is a full-service third-party fund administrator focusing on the Taft-Hartley market. Alicare also provides computer services, insurance brokerage, and printing services. Alicare's services are delivered through its four (4) divisions: (a) Alicare, (b) Alicomp, (c) Aligraphics, and (d) Amalgamated Agency.

AMM provides medical cost management services, including utilization management, comprehensive claims cost containment, and a 24 Hour Nurse HelpLine to provide health information and education to patients.

AFA is a not-for-profit, tax-exempt enterprise. In this regard, AFA provides third-party administration for the Clothing Welfare Fund, the Cotton Pension Fund, the Amalgamated Service and Allied Industries Fund, the Amalgamated Washable Clothing Sportswear and Allied Industries Fund, and the Amalgamated Retail Fund (collectively, the Patron Funds), on a cost allocation basis. The specific services provided by AFA include claims processing, distribution and preparation of plan documents, collections of contributions by employers, record retention, and reporting to government authorities.

5. ASC Subsidiaries provide services to the Cotton Pension Fund. If the proposed transaction is granted, certain ASC Subsidiaries also intend to continue to provide administrative services to the Clothing Welfare Fund. Accordingly, as service providers, the ASC Subsidiaries are or will be parties in interest with respect to the Cotton Pension Fund and the Clothing Welfare Fund under section 3(14)(B) of the Act. In addition, because the Clothing Welfare Fund currently owns all of the outstanding ASC Common Stock, the Clothing Welfare Fund is a party in interest with respect to the Cotton Pension Fund under section 3(14)(H) of the Act. The Clothing Welfare Fund may also be a disqualified person, pursuant to section 4975(e)(2) of the Code, because of its relationships to the Cotton Pension Fund.

6. The Clothing Welfare Fund has requested an individual exemption in order to sell to the Cotton Pension Fund all of the outstanding shares of ASC Common Stock. In this regard, the value of the ASC Common Stock constitutes a significant portion of the Clothing Welfare Fund's otherwise liquid investment portfolio. It is represented that the proposed transaction will provide the Clothing Welfare Fund with liquidity and allow for further diversification of its assets.

7. Absent an exemption, the proposed transaction would constitute a sale of property between a plan and a party in interest, and a transfer of assets from a plan to a party in interest in violation of section 406(a)(1)(A) and section 406(a)(1)(D) of the Act, respectively. Accordingly, the Cotton Pension Fund is seeking relief with respect to section 406(a)(1)(A) and 406(a)(1)(D) of the Act. Further, to the extent that the Clothing Welfare Fund is a disqualified person under the Code, the proposed transaction would also violate sections 4975(c)(1)(A) and 4975(c)(1)(D) of the Code, for which relief is requested.

The proposed transaction may also violate section 406(b)(2) of the Act, because certain trustees of the Clothing Welfare Fund are also trustees of the Cotton Pension Fund (the Overlapping Trustees). In this regard, the Overlapping Trustees, as fiduciaries of the Clothing Welfare Fund, could be viewed as acting on behalf of the Cotton Pension Fund, an adverse party to the Clothing Welfare Fund in connection with the proposed transaction. The Cotton Pension Fund has represented that the Cotton Pension Fund and the Clothing Welfare Fund intended to avoid a violation of section 406(b)(2) of the Act by employing the Cotton Committee and the Clothing Committee as decision makers for each committee's respective fund. However, because of the concerns that may be raised as a result of the Overlapping Trustees, the Cotton Pension Fund has also requested relief with respect to section 406(b)(2) of the Act.

8. For the purpose of determining the fair market value of Common Stock, the Clothing Welfare Fund sought the opinion of Willamette Management Associates (WMA), as an independent, qualified appraiser. WMA is experienced in that it has prepared valuations of ASC for the Clothing Welfare Fund for approximately the past four (4) years. In addition, Scott D. Levine (Mr. Levine), a senior manager of WMA who signed the appraisal report is a certified public accountant, a member of the Maryland Society of Certified Public Accountants, a Chartered Financial Analyst of the Association for Investment Management and Research, and a candidate for the accredited senior appraiser designation in business valuation of the American Society of Appraisers. Mr. Levine's primary areas of expertise are the appraisal of closely held companies and business interests and the appraisal of fractional and nonmarketable security interests in private and public corporations.

WMA is independent in that the average percentage of WMA's annual income derived from work for the Clothing Welfare Fund over the past four (4) year period is less than one percent (1%). Further, WMA's professional fees were not contingent upon the opinion expressed in the valuation report, and WMA represents that other than the services provided attendant to the valuation, neither it nor any of its employees has a present or intended financial interest in ASC.

At the request of the Clothing Welfare Fund, WMA prepared a preliminary valuation report of the fair market value of the shares of ASC Common Stock, as of December 31, 2000. In preparing the valuation report, WMA was asked to assume that projected results for fiscal year 2000 are achieved. Since these projected results had not been realized, as of October 17, 2000, the date on the

valuation report, WMA represents that the conclusions expressed in the valuation report were of a hypothetical nature.

In developing the valuation analysis, WMA conducted interviews with officers of ASC, reviewed and analyzed, among other things: (a) The audited financial statements of ASC for the fiscal years ended December 31, 1995–1999; (b) the financial statement projections for ASC for the fiscal years ending December 31, 2000–2004; and (c) the company profile for ASC completed by management. Further, WMA researched and analyzed, among other things: (a) guideline industry data; (b) economic information; (c) information related to publicly traded companies considered suitable for comparison to ASC; and (d) capital market evidence regarding investment rates of return.

In the opinion of WMA the hypothetical fair market value of ASC Common Stock on a controlling ownership interest basis, as of December 31, 2000, is $25.3 million. WMA represents that this conclusion was reached after giving proper consideration to the historical and prospective operating characteristics of ASC, as well as the after-tax expected cash flows and earnings attributable to ASC, the current and forecasted capital structure of ASC, the risk/return relationship reflected for comparable companies having securities traded in the public market, capital market and related industry macroeconomic evidence available as of the date of the report and other relevant factors.

In addition, it is represented that WMA will offer a fairness opinion as to the price of the ASC Common Stock and will determine that the Clothing Welfare Fund is receiving no less than the fair market value for its ASC Common Stock. WMA's fairness opinion will also assess whether the proposed transaction is fair and reasonable from a financial standpoint.

9. It is represented that the actual sale price for the Cotton Pension Fund's proposed purchase of the ASC Common Stock shall be negotiated by the I/F, ASA Fiduciary Counselors, Inc. (ASA Fiduciary), which is acting on behalf of the Cotton Pension Fund, and by George Cochran, (Mr. Cochran), a principal at Cochran, Caronia & Co. (Cochran), who is negotiating on behalf of the Clothing Welfare Fund. In this regard, the Clothing Welfare Fund engaged Mr. Cochran, an investment banker with significant experience in mergers and acquisitions in the insurance industry, to act as an investment advisor.

On behalf of the Clothing Welfare Fund, Cochran has conducted a valuation of ASC. On behalf of the Cotton Pension Fund, ASA Fiduciary, with the aid of American Express Tax and Business Services (AmEx), a party independent of the Cotton Pension Fund, has conducted its own valuation of ASC. In this regard, AmEX has been retained by the Cotton Committee to assist ASA Fiduciary in evaluating the ASC Subsidiaries for the purpose of valuing the ASC Common Stock. Prior to the publication of the final exemption, it is represented that ASA Fiduciary will provide an oral report to the Department, containing ASA Fiduciary's determination of whether the ASC Common Stock should be purchased by the Cotton Pension Fund based on the final terms of such sale. Such report shall include, among other things, a summary of the activities ASA Fiduciary conducted on behalf of the Cotton Pension Fund in connection with its determination, as well as an affirmation that the purchase price for the ASC Common Stock paid by the Cotton Pension Fund is no greater than the fair market value of such stock on the date of the purchase. The applicant represents that a final written report will be provided to the Department by ASA Fiduciary following the completion of the transaction.

Using the WMA valuation ($25.3 million, as of December 31, 2000) as an estimate, the percentage of the fair market value of the total assets of the Cotton Pension Fund expected to be involved in the proposed transaction will be approximately 3.71 percent (3.71%). The percentage of the fair market value of the total assets of the Clothing Welfare Fund expected to be involved in the proposed transaction will be approximately 70.67 percent (70.67%).

10. It is represented that the proposed transaction is feasible in that the sale of the ASC Common Stock by the Clothing Welfare Fund to the Cotton Pension Fund will be a one-time occurrence for cash with no ongoing oversight requirements.

11. It is represented that the proposed transaction is in the interest of the Cotton Pension Fund, because the ownership by such fund of the ASC Common Stock will ensure the continuity of the unique, highly specialized and low cost customized services provided by ASC Subsidiaries to the Cotton Pension Fund. In this regard, the allocation of overhead to profit making activities will benefit the Cotton Pension Fund directly by offsetting user fees and further will ensure that the low cost services continue to all of the Patron Funds.

It is represented that a significant part of the value of ASC is its niche in the Taft-Hartley and labor communities. This niche is enhanced by ASC being owned by an entity affiliated with the labor movement in general and with UNITE in particular. Were ASC to be controlled by other than an entity that is affiliated with labor, it is represented that the value of ASC might diminish significantly.

12. The proposed transaction is protective of the participants and beneficiaries of the Cotton Pension Fund. In this regard, it is represented that the proposed transaction is prudent, will be priced at fair market value, not to exceed $30 million, and offers a limited risk of capital loss relative to most other equity investments.

Additional protections are provided to the Cotton Pension Fund by the appointment of ASA Fiduciary. In this regard, the Cotton Pension Fund has entered into an engagement letter, dated October 26, 2000, as amended (the Agreement) with ASA Fiduciary, a registered investment advisor, in order to retain ASA Fiduciary to provide independent fiduciary services in connection with the purchase of all of the outstanding shares of the ASC Common Stock. In this regard, ASA Fiduciary has acknowledged and agreed to serve as an I/F to the Cotton Pension Fund with respect to such fund's decision to purchase the ASC Common Stock. It is represented that the Cotton Pension Funds's obligation to pay ASA Fiduciary a fee for its services is not contingent upon either the completion of the contract for purchase of the ASC Common Stock or the close of the proposed transaction.

ASA Fiduciary has acknowledged and agreed that it is a fiduciary, under section 3(21) of the Act with respect to any actions taken pursuant to its Agreement with the Cotton Pension Fund. Further, ASA Fiduciary has represented that it is independent and unrelated to the parties to the proposed transaction.

Pursuant to the terms of the Agreement, ASA Fiduciary has undertaken the following duties and responsibilities: (a) To determine whether the purchase of the ASC Common Stock is a prudent private equity investment by the Cotton Pension Fund; (b) to negotiate and approve the terms of the purchase of all of the outstanding shares of ASC Common Stock; (c) to monitor the terms of the purchase of the ASC Common Stock and ensure that the Cotton Pension Fund and the Clothing Welfare Fund comply with the approved purchase terms; (d)

to determine that the purchase price for the ASC Common Stock is no less favorable to the Cotton Pension Fund than to any third party under similar circumstances; and (e) to affirm that the purchase price for the ASC Common Stock paid by the Cotton Pension Fund is no greater than the fair market value of such stock on the date of the purchase.

It is represented that Nell Hennessy, Esq., President of ASA Fiduciary, shall be the lead individual from ASA Fiduciary in the execution of the duties set forth above. Further, under the terms of the Agreement, ASA Fiduciary is responsible for maintaining records with respect to the performance of its duties for a period of six (6) years from the date on which the proposed transaction closes or ASA Fiduciary determines that the Cotton Pension Fund should not purchase the ASC Common Stock or the Clothing Welfare Fund will not sell such stock.

13. As an additional protection, the trustees of the Cotton Pension Fund will determine based on a written opinion from the Marco Consulting Group (Marco) whether the investment in ASC, as negotiated and approved by ASA Fiduciary, is consistent with the overall investment policies and overall portfolio composition of the Cotton Pension Fund and that with such an investment the Cotton Pension Fund will be sufficiently diversified to satisfy the requirements of the Act. In this regard, Marco, an independent investment consultant, has been providing consulting services for the Cotton Pension Fund for approximately the past four (4) years. It is represented that Marco will issue a written opinion as to whether the purchase of the Common Stock by the Cotton Pension Fund is consistent with the overall investment policies and portfolio composition of such fund, so that the investment portfolio will remain diversified to minimize the risk of large losses in accordance with section 404(a)(1)(C) of the Act.

14. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) the Clothing Committee will determine whether the Clothing Welfare Fund will engage in the proposed transaction, and, if so, such committee will be authorized to determine the terms and conditions under which the Clothing Welfare Fund will engage in such transaction; (b) prior to entry into the proposed transaction, ASA Fiduciary, the I/F acting on behalf of the Cotton Pension Fund, will determine that such transaction is feasible, in the interest of, and protective of the Cotton Pension Fund and its participants and beneficiaries; (c) ASA Fiduciary will determine, on behalf of the Cotton Pension Fund, whether the ASC Common Stock should be purchased by the Cotton Pension Fund; (d) the Cotton Committee will assist ASA Fiduciary; (e) ASA Fiduciary will review, negotiate, and approve the terms of the proposed transaction; (f) ASA Fiduciary will monitor the terms of the purchase of the ASC Common Stock and ensure that the Cotton Pension Fund and the Clothing Welfare Fund comply with the approved terms; (g) ASA Fiduciary will determine that the terms of the purchase of the ASC Common Stock are no less favorable to the Cotton Pension Fund than terms negotiated at arm's length with an unrelated third party under similar circumstances; (h) ASA Fiduciary will determine that the purchase price for the ASC Common Stock paid by the Cotton Pension Fund is no greater than the fair market value of such stock, as of the date the proposed transaction is entered; (i) an independent, qualified appraiser will issue a fairness opinion as to the price of the ASC Common Stock and will determine, as of the date the proposed transaction is entered, that the Clothing Welfare Fund is receiving no less than the fair market value for such stock; (j) the Cotton Pension Fund will incur no fees, commissions, or other charges or expenses as a result of its participation in the proposed transaction other than the fees incurred in making this exemption request, the fee payable to ASA Fiduciary, and the fees payable to the parties representing the Cotton Pension Fund in the proposed transaction; and (k) the proposed transaction is a one-time occurrence for cash.

Notice to Interested Persons

Those persons who may be interested in the pendency of the requested exemption include the trustees of the Cotton Pension Fund and the trustees of the Clothing Welfare Fund, all of the participants and beneficiaries of such funds, UNITE, whose members are participants in the Funds, all contributing employers of such funds, ASC, and the ASC Subsidiaries. These various classes of interested persons will be notified as follows. Notice will be provided to all participants and beneficiaries of the Cotton Pension Fund and the Clothing Welfare Fund, the trustees of the Cotton Pension Fund, the trustees of the Clothing Welfare Fund, UNITE, all contributing employers to such funds, and members of the board of ASC, and the ASC Subsidiaries by sending a copy of the notice of pendency of this proposed exemption (the Notice) plus a copy of the supplemental statement (the Supplemental Statement), as required, pursuant to 29 CFR 2570.43(b)(2). The Notice and the Supplemental Statement will be delivered by first class mail within fifteen (15) days of the publication of the Notice in the **Federal Register**. For the purpose of sending the Notice and Supplemental Statement by mail, current addresses maintained by the Cotton Pension Fund and the Clothing Welfare Fund will be used.

In addition, the Notice and the Supplemental Statement will be provided to all locals, joint boards, and regional offices of UNITE who represent members who are participants in either the Cotton Pension Fund or the Clothing Welfare Fund and to contributing employers which employ members who are participants in either the Cotton Pension Fund or the Clothing Welfare Fund. The Cotton Pension Fund shall request that such parties post the Notice and Supplemental Statement immediately upon receipt at their respective locations.

All written comments and requests for a hearing must be received by the Department no later than forty-five (45) days from the date that the Notice and the Supplemental Statement are published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act

and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 19th day of January, 2001.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 01–2163 Filed 1–24–01; 8:45 am]

BILLING CODE 4510–29–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Wednesday, January 24, 2001.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. 552B(C)(10)].

MATTERS TO BE CONSIDERED: It was determined by a majority vote of the Commission that the Commission consider and act upon the following in closed session:

1. Disciplinary Matter, Docket No. D 2000–1
2. Disciplinary Matter, Docket No. D 2001–1

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629 / (202) 708–9300 for TDD Relay / 1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 01–2382 Filed 1–23–01; 12:09 pm]

BILLING CODE 6735–01–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; President's Committee on the Arts and the Humanities: Meeting #50

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the President's Committee on the Arts and the Humanities will be held on February 9, 2001 from 8:30 a.m. to approximately 1:30 p.m. The meeting will be held at the Dallas Museum of Art, 1717 N. Harwood, Dallas, TX 75201.

The Committee meeting will begin at 8:30 a.m. with opening remarks by Chairman Dr. John Brademas, a welcome from Mayor Roland Kirk, and an Executive Director's update from Bunny Cornell Burson. The Committee will hear presentations from the National Endowment for the Arts and from representatives of the Saguaro Institute, Harvard University. There will also be a presentation and discussion regarding National Arts and Humanities Day.

The President's Committee on the Arts and the Humanities was created by Executive Order in 1982 to advise the President, the two Endowments, and the Institute of Museum and Library Services on measures to encourage private sector support for the nation's cultural institutions and to promote public understanding of the arts and the humanities.

If, in the course of discussion, it becomes necessary for the Committee to discuss non-public commercial or financial information of intrinsic value, the Committee will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b.

Any interested persons may attend as observers, on a space available basis, but seating is limited. Therefore, for this meeting, individuals wishing to attend must contact Georgianna Paul of the President's Committee in advance at (202) 682–5409 or write to the Committee at 1100 Pennsylvania Avenue, NW., Suite 526, Washington, DC 20506. Further information with reference to this meeting can also be obtained from Ms. Paul.

If you need special accommodations due to a disability, please contact Ms. Paul through the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Dated: January 19, 2001.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 01–2258 Filed 1–24–01; 8:45 am]

BILLING CODE 7537–01–U

NUCLEAR REGULATORY COMMISSION

[DOCKET NO. 50–354]

PSEG Nuclear LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License (OL) No. NPF–57, issued to PSEG Nuclear LLC (the licensee), for operation of the Hope Creek Generating Station (Hope Creek), located in Salem County, New Jersey.

The proposed amendment would change the OL and Technical Specifications for Hope Creek to reflect an increase in the licensed core power level to 3339 megawatts (thermal), 1.4% greater than the current level.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By February 26, 2001, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in a proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the

Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated December 1, 2000, which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*).

Dated at Rockville, Maryland, this 18th day of January 2001.

For the Nuclear Regulatory Commission.

Richard B. Ennis,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–2305 Filed 1–24–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[DOCKET NO. 50–341]

Detroit Edison Company; Fermi 2 Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. NPF–43 issued to Detroit Edison Company (the licensee), for operation of Fermi 2, located in Monroe County, Michigan.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the Fermi 2 Technical Specifications (TSs) by changing (1) the design features description of the fuel storage equipment and configuration to allow an increase in the spent fuel pool (SFP) storage capacity and (2) the description of the high-density spent fuel racks program to clarify that the surveillance program is applicable only to racks containing Boraflex as a neutron absorber.

Currently, the SFP for Fermi 2 has 14 freestanding high-density (Boraflex) fuel racks, four General Electric (GE) low-density racks, and a rack for defective fuel, for a total storage capacity of 2414 fuel assemblies. As part of a proposed modification, the licensee plans to increase Fermi 2's spent fuel storage capacity by 2194 spaces in a three-phase operation. In phase one, four additional high-density racks will be added to open spaces in the SFP. In phase two, the GE racks, the rack for defective fuel, and one high-density rack would be replaced with five new high-density racks. In phase three, the remaining 13 existing racks would be replaced with 14 new high-density racks. At the completion of phase three, the entire available floor space of the pool would be occupied with fuel storage racks providing for a total storage capacity of 4608 assemblies. Two platforms will be installed above the new high-density fuel storage racks to accommodate storage of miscellaneous activated components.

The proposed action is in accordance with the licensee's application for

amendment dated November 19, 1999, as supplemented on May 31, August 2, October 19, and November 21, 2000.

The Need for the Proposed Action

The proposed action is needed to maintain full core offload capability by expanding the spent fuel storage capacity. The licensee estimates that it will lose the ability to fully offload the reactor fuel by June 2001. The expanded storage capacity would extend full core offload capability to the year 2015. The current Fermi 2 operating license authorizes plant operations through March 20, 2025.

Environmental Impacts of the Proposed Action

Radioactive Wastes

The existing contaminated fuel storage racks will be the main source of radioactive waste for the proposed modification. The racks will be washed prior to being removed from the pool to remove as much contamination as possible. The racks will then be shipped, using a special Department of Transportation approved container, to a volume reduction facility for processing and subsequent disposal at an authorized burial site.

In order to maintain the SFP water as clean as possible, underwater vacuuming of the SFP will be used to remove radioactive crud, sediment, and other debris generated in the rack replacement. Filters from use of this underwater vacuum system will also be a source of solid radwaste.

The impact of the expanded fuel storage capacity on the production and release of radioactive waste during normal operations is not expected to be significant. The level of radioactive contamination in the pool water impacts the amount of solid waste produced by pool purification system resins, as well as the liquid effluents originating from SFP water. Radioactive gases that evolve from the surface of the pool also contribute to the plant's gaseous effluents. However, the levels of gaseous and particulate radioactivity in the pool water are dominated by the most recent reactor core offload to the SFP, not the older cooled fuel stored in the pool. Therefore, the storage of additional aged spent fuel assemblies resulting from this proposed design change will have a minimal contribution to the levels of radioactivity in the pool water.

On the basis of its review of the Fermi 2 license amendment request, the NRC staff concludes that the proposed increase in spent fuel storage capacity (1) is not expected to result in an increase in the amount of gaseous tritium released from the SFP; (2) will result in a negligible increase in the amount of radioactive liquid released to the environment; and, (3) will not result in a significant increase in the volume of solid radioactive waste. Finally, small amounts of additional waste resin may be generated by the SFP's clean-up systems on a one-time basis. Shipping containers for these resins, the old racks, and debris generated by reracking will conform to 10 CFR part 71, ''Packaging and Transportation of Radioactive Material,'' and the requirements of States through which shipments may pass. Therefore, the NRC staff finds that, with regard to radioactive waste, the proposed increase in spent fuel storage capacity at Fermi 2 is acceptable.

Radiological Impact Assessment

The NRC staff has reviewed the licensee's plan for the replacement of the existing SFP storage racks at Fermi 2 with respect to occupational radiation exposure. As stated above, the licensee plans to replace the existing fuel storage racks in the SFP with 23 new high-density racks. A number of facilities have performed similar operations in the past. On the basis of the lessons learned from these operations, the licensee estimates that the proposed fuel rack installation can be performed within a radiological dose estimate of approximately 12 person-rem. This estimate includes the rad-waste processing of the existing contaminated racks, as well as the projected dose to divers, in the event they are used, consistent with the licensee's contingency plan.

All of the operations involved in the fuel rack installations will utilize detailed procedures prepared with full consideration of as low as reasonably achievable (ALARA) principles. Workers performing the SFP re-racking operation will be given pre-job briefings to ensure that they are aware of their job responsibilities and precautions associated with the job. The licensee will monitor and control work, personnel traffic, and equipment movement in the SFP area to minimize contamination and to assure that exposures are maintained ALARA. Personnel will wear protective clothing and respiratory protective equipment, if necessary. Alarming dosimeters will be used as needed to confirm exposure and dose rates, while thermal luminescent dosimeters (TLDs) will be used to officially document the dose received. Additional personnel monitoring equipment (such as extremity TLDs or multiple TLDs) will be issued for appropriate tasks.

As indicated previously, the licensee intends to complete the three-phase fuel rack replacement without the use of divers in the pool. Removal of existing racks and installation of the new racks are expected to be completed remotely from the surface of the pool. However, if diving is necessary, the licensee has developed a contingency plan that includes diving procedures that are consistent with Regulatory Guide 8.38, Appendix A, in terms of diver restraint, radiological monitoring, physical monitoring, and standard SFP diving operations.

Prior to any diving operations, the radioactive sources in the pool will be configured to maximize the distance and shielding of the divers. Three dimensional radiation surveys will be performed with appropriate equipment. In addition, the divers will be equipped with monitors to survey the work area during each dive. The licensee will utilize underwater TV cameras to maintain visual contact with the divers during all diving operations. The divers will also be physically restrained by a dive tender with a tether contained in the dive umbilical. The SFP water will be continuously filtered through the SFP purification system in order to maintain water clarity. In addition, the licensee will vacuum the SFP floor prior to initiation of the diving operation and will vacuum the pool additional times during the diving operation, if it should become necessary, to maintain diver doses ALARA. Each diver will be equipped with whole body and extremity dosimetry (including alarming dosimetry) with remote, above surface, readouts that will be continuously monitored by radiation protection personnel.

All items removed from the pool, as well as divers, if used, will be monitored for radiation and contamination. This monitoring will be performed in isolated ''bull pens'' that separate the potentially contaminated areas from the rest of the refueling floor. The bull pens will minimize the possible spread of contamination, including ''hot particles'' (or discrete radioactive particles (DRPs)). Based on the Fermi 2 operating history and fuel integrity experience, the licensee does not anticipate any significant radiological challenges from DRPs.

The licensee assessed the radiological exposure impact of the proposed SFP design change on areas of the plant during normal operations. Revised shielding calculations indicate that the dose rates through the east and west walls of the pool would have only a modest increase (to 0.6 mrem/hr compared to the previous maximum of

0.5 mrem/hr). The maximum dose rates in the equipment storage room, adjacent to the north wall of the pool, increased to 400 mrem/hr. These calculations are based on the conservative assumption that all assemblies in the storage array have cooled for only 60 hours. The actual operational dose rates in this area will depend upon the age of the fuel stored in the north end of the pool. In addition, this area is not a normally occupied room and can be controlled as a high radiation area consistent with the requirement in 10 CFR part 20. The licensee has provided marked up radiation zoning maps from the Fermi 2 Updated Safety Analysis Report to reflect these design changes.

On the basis of the NRC staff review of the Fermi 2 license amendment, the NRC staff concludes that the proposed increase in spent fuel storage capacity at Fermi 2 can be performed in a manner that will ensure that doses to the workers will be maintained ALARA. The NRC staff finds that the projected dose for the project of 12 person-rem is in the range of doses for similar modifications at other plants and is, therefore, acceptable.

Accident Considerations

The proposed modification increases the spent fuel storage capacity, but it does not change the method for handling spent fuel assemblies.

The proposed expansion of the SFP will not affect any of the assumptions or inputs used in evaluating the dose consequences of a fuel handling accident and, therefore, will not result in an increase in the doses from a postulated fuel handling accident.

Environmental Impact Conclusions

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off-site, and there is no significant increase in occupational or public exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impacts. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed

Shipping Fuel to a Permanent Federal Fuel Storage/Disposal Facility

Shipment of spent fuel to a high-level radioactive storage facility is an alternative to increasing the onsite spent fuel storage capacity. However, the U.S. Department of Energy's (DOE's) high-level radioactive waste repository is not expected to begin receiving spent fuel until approximately 2010, at the earliest. To date, no interim Federal storage facility has yet to be approved in advance of a decision on a permanent repository. Therefore, shipping the spent fuel to the DOE repository is not considered an alternative to increasing the onsite fuel storage capacity at this time.

Shipping Fuel to a Reprocessing Facility

Reprocessing of spent fuel from Fermi 2 is not within the reasonable range of alternatives since there are no operating commercial reprocessing facilities in the United States. Therefore, spent fuel would have to be shipped to an overseas facility for reprocessing. However, this approach has never been used and it would require approval by the Department of State as well as other entities. Additionally, the cost of spent fuel reprocessing is not offset by the salvage value of the residual uranium; reprocessing represents an added cost.

Shipping the Fuel Offsite to Another Utility or Private Fuel Storage Facility

The shipment of fuel to another utility or transferring fuel to another of the licensee's facilities would provide short-term relief at Fermi 2. The Nuclear Waste Policy Act of 1982, Subtitle B, Section 131(a)(1), however, clearly places the responsibility for the interim storage of spent fuel with each owner or operator of a nuclear plant. The SFPs at the other reactor sites were designed with capacity to accommodate spent fuel from those particular sites. Therefore, transferring spent fuel from Fermi 2 to other sites would create storage capacity problems at those locations. The shipment of spent fuel to another site is not an acceptable alternative because of increased fuel handling risks and additional occupational radiation exposure, as well as the fact that no additional storage capacity would be created.

The shipment of fuel to a private fuel storage facility is an alternative to increasing the onsite spent fuel storage capacity. However, a private fuel storage facility is not licensed at this time. Therefore, shipping the spent fuel to a private fuel storage facility is not considered an alternative to increased onsite fuel storage capacity at this time.

Alternatives Creating Additional Storage Capacity

Alternative technologies that would create additional storage capacity include rod consolidation, dry cask storage, modular vault dry storage, and constructing a new pool. Rod consolidation involves disassembling the spent fuel assemblies and storing the fuel rods from two or more assemblies into a stainless steel canister that can be stored in the spent fuel racks. Industry experience with rod consolidation is currently limited, primarily due to concerns for potential gap activity release due to rod breakage, the potential for increased fuel cladding corrosion due to some of the protective oxide layer being scraped off, and because the prolonged consolidation activity could interfere with ongoing plant operations. Dry cask storage is a method of transferring spent fuel, after storage in the pool for several years, to high capacity casks with passive heat dissipation features. After loading, the casks are stored outdoors on a seismically qualified concrete pad. Concerns for dry cask storage include the need for special security provisions and high cost. Vault storage consists of storing spent fuel in shielded stainless steel cylinders in a horizontal configuration in a reinforced concrete vault. The concrete vault provides missile and earthquake protection and radiation shielding. Concerns for vault dry storage include security, land consumption, eventual decommissioning of the new vault, the potential for fuel or clad rupture due to high temperatures, and high cost. The alternative of constructing and licensing new spent fuel pools is not practical for Fermi 2 because such an effort would require about 10 years to complete and would be an expensive alternative.

The alternative technologies that could create additional storage capacity involve additional fuel handling with an attendant opportunity for a fuel handling accident, involve higher cumulative dose to workers affecting the fuel transfers, require additional security measures that are significantly more expensive, and would not result in a significant improvement in environmental impacts compared to the proposed reracking modifications.

Reduction of Spent Fuel Generation

Generally, improved usage of the fuel and/or operation at a reduced power level would be an alternative that would decrease the amount of fuel being stored in the SFPs and, thus, increase the

amount of time before the maximum storage capacities of the SFPs are reached. With extended burnup of fuel assemblies, the fuel cycle would be extended and fewer off-loads would be necessary. This is not an alternative for resolving the loss of full core off-load capability that will occur as a result of Fermi 2 receiving new fuel for Cycle 9 in June 2001. In addition, operating the plant at a reduced power level would not make effective use of available resources and would cause unnecessary economic hardship on the licensee and its customers. Therefore, reducing the amount of spent fuel generated by increasing burnup further or reducing power is not considered a practical alternative.

The No-Action Alternative

The NRC staff, also, considered denial of the proposed action (i.e., the ''no-action'' alternative). Denying the application would result in no significant change in current environmental impacts. The environmental impacts of the proposed action and the alternative actions are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Fermi 2.

Agencies and Persons Contacted

In accordance with its stated policy, on December 11, 2000, the NRC staff consulted with the Michigan State official, M. Eldsman of the Michigan Public Service Commission, regarding the environmental impact of the proposed action. The state official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 19, 1999, as supplemented by letters dated May 31, August 2, October 19, and November 21, 2000, which are available for public inspection at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 19th day of January, 2001.

For the Nuclear Regulatory Commission.

Claudia M. Craig,

Section Chief, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–2304 Filed 1–24–01; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Budget Analysis Branch; Sequestration Update Report

AGENCY: Office of Management and Budget—Budget Analysis Branch.

ACTION: Notice of Transmittal of the Final Sequestration Report for fiscal year 2001 to the President and Congress.

SUMMARY: Pursuant to Section 254(b) of the Balanced Budget and Emergency Control Act of 1985, as amended, the Office of Management and Budget hereby reports that it has submitted its Final Sequestration Report for fiscal year 2001 to the President, the Speaker of the House of Representatives, and the President of the Senate.

FOR FURTHER INFORMATION CONTACT: Sarah Lee, Budget Analysis Branch—202/395–3674.

Dated: January 18, 2001.

Robert Nabors,

Executive Secretary and Assistant Director for Administration.

[FR Doc. 01–2199 Filed 1–24–01; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 15c3–3; SEC File No. 270–87; OMB Control No. 3235–0078.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for approval of extension on the following rule.

• Rule 15c3–3 Customer Protection—Reserves and Custody of Securities

Rule 15c3–3 requires broker-dealers that hold customer securities to obtain and maintain possession and control of fully paid and excess margin securities they hold for customers. In addition, the rule requires broker-dealers that hold customer funds to make either a weekly or monthly computation to determine whether certain customer funds need to be segregated in a special reserve bank account for the exclusive benefit of the firm's customers. It also requires broker-dealers (1) to maintain a description of the procedures utilized to comply with the possession and control requirements of the rule; (2) to maintain a written notification from the bank where the Special Reserve Bank Account is located that all assets in the account are for the exclusive benefit of the broker-dealer's customers; and (3) to give telegraphic notice to the Commission, and the appropriate Self-Regulatory Organization under certain circumstances.

Commission staff estimates that the average number of hours necessary for each broker-dealer subject to the rule to make the required reserve computations is 2.5 hours per response. Approximately 327 broker-dealers choose to make a weekly computation and 115 broker-dealers choose to make a monthly computation. Accordingly, the total burden for this requirement is estimated to be 45,960 hours annually for all broker-dealers, based upon past submissions. The staff believes that financial reporting specialists will make the computations. The staff estimates that the hourly salary of a financial reporting specialist is $72.40 per hour.[1] Consequently, Commission staff estimates that the annual total cost of compliance with the reserve computation requirement for all broker-dealers, taking overhead into consideration, is $3,327,504.

In addition, Commission staff estimates that broker-dealers file approximately 30 notices per year pursuant to the rule. Commission staff estimates that it takes approximately 30 minutes to file each notice. Accordingly, the total burden for this requirement is estimated to be 15 hours annually for all broker-dealers, based on past submissions. The average cost per hour is approximately $72.40. Consequently, Commission staff estimates that the annual total cost of compliance with the notice requirement for all broker-

[1] Per Securities Industry Association (SIA) Management and Professional Earnings, Table 011 (Financial Reporting Manager) + 35% overhead (based on end-of-year 1998 figures).

dealers, taking overhead into consideration, is $1,086.

Based on the above, Commission staff estimates that the total cost of compliance with the rule for all broker-dealers is $3,328,590.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 16, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–2241 Filed 1–24–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Massey Energy Company, Common Stock, $.625 Par Value) File No. 1–0777–5

January 19, 2001.

Massey Energy Company (formerly known as Fluor Corporation) (''Company'') has filed applications with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.625 par value (''Security''), from listing and registration on the Pacific Exchange, Inc. (''PCX'') and on the Chicago Stock Exchange, Inc. (''CHX'').[3]

As described in its application to the Commission, on November 30, 2000, the Company completed a reverse spin-off, which divided the Company into two publicly traded corporations. As a result of this action, the spun-off corporation, ''new'' Fluor Corporation, owns all of the businesses of the predecessor corporation except that of A.T. Massey Coal Company, Inc., which, continuing as the successor to ''old'' Fluor Corporation, has been renamed Massey Energy Company.

In connection with this spin-off, the Company has determined to consolidate the listings for its Security to one national securities exchange. In addition to being listed on the PCX and CHX, the Security is currently listed on the New York Stock Exchange, Inc. (''NYSE''). The Company desires to continue only the NYSE listing.

The Company has stated in its application that it has complied with the respective rules of the PCX and CHX governing the withdrawal of a security by its issuer and that both the PCX and the CHX have in turn indicated that they will not oppose such proposed withdrawals. The Company's application shall not have any effect on the Security's continued listing on the NYSE or on its registration under Section 12(b) of the Act.[4]

Any interested person may, on or before February 9, 2001, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609, facts bearing upon whether the application has been made in accordance with the respective rules of the PCX and CHX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–2242 Filed 1–24–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] Notice of this application was previously issued by the Commission as Securities Exchange Act Release No. 43820 on January 8, 2001. Such notice, however, failed to appear in the **Federal Register**, as required, and so is being reissued.

[4] 15 U.S.C. 78*l*(b).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27339]

Filings Under the Public Utility Holding Company Act of 1935, as amended (''Act)''

January 19, 2001.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 13, 2001, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After February 13, 2001, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Pinnacle West Capital Corporation (70–9745)

Pinnacle West Capital Corporation (''Pinnacle West''), located at 400 East Van Buren Street, Suite 700, Phoenix, Arizona 85004, an Arizona holding company exempt from registration under section 3(a)(1) of the Act by rule 2, has filed an application with the Commission under sections 9(a)(2) and 10 of the Act in connection with a proposed corporate reorganization (''Reorganization''). The Reorganization involves the relocation of certain generation assets from Arizona Public Service Company (''APS''), Pinnacle West's public-utility company subsidiary, to Pinnacle West Energy Corporation (''PWE''),[1] a wholly owned nonutility subsidiary of Pinnacle West. As a result of the Reorganization, PWE will be a public-utility company within the meaning of the Act, and Pinnacle West will acquire an additional public-utility subsidiary.

Pinnacle West is engaged through subsidiaries in the generation, transmission, and distribution of

[1] PWE was organized primarily to engage in the business of developing, owning and operating generation plants used for the production and sale of wholesale energy. PWE is currently engaged in the development of approximately 2,600 megawatts of generating capacity in Arizona.

electricity, the sale of energy services, real estate development, and venture capital investment. APS provides retail electric services principally in Arizona. In addition to the generation, transmission, and distribution of electricity, APS is presently engaged in power marketing activities. The Arizona Corporation Commission (''ACC'') regulates APS with respect to its retail rates, accounting, service standards, service territory, issuances of securities, siting of generation and transmission projects, and various other matters. The Federal Energy Regulatory Commission regulates APS' wholesale generation and interstate transmission rates, accounting, and certain other matters.

The purpose of the Reorganization is to comply with certain requirements set forth in rules adopted by the ACC that provide the framework for introduction of retail electric competition in Arizona (''Competition Rules'') and in a final ACC order approving APS' settlement with various parties with respect to implementation of the Competition Rules (''Settlement'').[2] Under the Competition Rules and the Settlement, APS must separate its generating assets and competitive services from its transmission and distribution functions no later than December 31, 2002.

The principal transactions associated with the Reorganization are the following. First, APS will contribute certain of its fossil and solar generating facilities, assets and related operational agreements to one or more newly-formed wholly-owned subsidiaries (''Transitory Subsidiaries''). Second, APS will distribute (or cause to be distributed) all of the common stock of each Transitory Subsidiary to Pinnacle West. Third, the Transitory Subsidiaries will then be merged into PWE, with PWE as the surviving entity. It is contemplated that these transactions will occur simultaneously.

When the Reorganization is completed, APS' existing divisional structure, in which electric utility operations are divided along functional lines, will be formalized, and separate corporate entities will engage in the transmission/distribution of electricity and the generation of electricity. APS will become a ''wires'' company and will continue to own and operate its existing electric transmission and distribution system. PWE become a generating company and will own or lease and operate APS' generation assets and sell the output from these assets at wholesale to Power marketing and Trading (''Power Marketing''), a division of Pinnacle West. Power Marketing was previously a division of APS engaged primarily in the sale and purchase of electric capacity and energy in the wholesale market. Power Marketing sold excess power from APS' generation facilities and also purchased energy from other entities to meet APS' requirements to supply retail and wholesale customers. The Competition Rules and Settlement contemplate that APS will move its Power Marketing division to an affiliate. Accordingly, on October 1, 2000, Power Marketing became a division of Pinnacle West. It is expected that Power Marketing will sell power to APS as well as to non-affiliated power purchasers. APS will continue to provide transmission and distribution services at regulated rates, as well as provide energy to those retail customers in APS' existing service territory that do not elect to use an alternate retail power supplier.

Pinnacle West states that, after the Reorganization, it will continue to qualify for exemption from registration under section 3(a)(1) of the Act because Pinnacle West and each public-utility company from which it derives, directly or indirectly, any material part of its income, will be predominantly intrastate in character and will carry on their business substantially in Arizona, the state in which Pinnacle West and each such public-utility company is organized.[3]

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–2280 Filed 1–24–01; 8:45 am]

BILLING CODE 8010–01–M

[2] Under the terms of the Competition Rules and the Settlement, retail choice for APS' retail customers is being phased in. All of APS' retail customers will be entitled to choose their retail power supplier beginning January 1, 2001.

[3] Pinnacle West states that it will continue to file, under rule 2, annual exemption statements on Form U–3A–2 following the Reorganization.

SECURITIES AND EXCHANGE COMMISSION

[Release No. PA–31; File No. S7–02–01]

Privacy Act of 1974: Notice of Modifications to a System of Records and Establishment of a New System of Records

AGENCY: Securities and Exchange Commission.

ACTION: Notice of intended modifications to an existing system of records and the establishment of a new system of records.

SUMMARY: The Securities and Exchange Commission (SEC or the Commission) proposes to modify an existing system of records by excluding investment adviser registration forms, forms withdrawing registration by investment advisers, and related investment adviser records. The Commission further proposes to add a new system of records consisting of these registration forms, withdrawal notices, and related records. This proposal is precipitated by the development of a new Internet-based system for the registration of investment advisers called the Investment Adviser Registration Depository (IARD). NASD Regulation, Inc. (NASDR) will operate the IARD.

DATES: Comments must be received by February 26, 2001. The proposed changes and the new system of records will take effect March 6, 2001 unless the Commission receives comments that would require a different determination.

ADDRESSES: Please send three copies of your comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. You may also send your comments electronically to the following electronic address: *rule-comments@sec.gov.* All comments should refer to File No. S7–02–01 and, if sent electronically, should include this file number on the subject line. Comment letters will be available for public inspection and copying at our Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. If sent electronically, comment letters will also be available on our Web site (*http://www.sec.gov*).

FOR FURTHER INFORMATION CONTACT: Elizabeth T. Tsai, Privacy Act Staff Attorney (202) 942–4326, Office of Filings and Information Services, SEC, Operations Center, 6432 General Green Way, Alexandria, VA 22312–2413.

SUPPLEMENTARY INFORMATION: The Commission gives notice of major changes to ''Applications for Registration or Exemption under the Investment Advisers Act of 1940 and the Investment Company Act of 1940' (SEC–2), which results in the establishment of a new system—''Investment Adviser Records'' (SEC–50).

SEC–2

Currently, the Commission treats paper and microfiche copies of applications for registration by investment advisers (Form ADV) and their related amendments and withdrawal notices as agency records subject to the Privacy Act. Accordingly, the Commission has published and

periodically updated a system of records notice for these records, designated as SEC–2. These records contain names of individuals and information about those individuals, such as disciplinary information. However, the current Privacy Act notice does not address the electronic filing of such forms and new ways of maintaining and retrieving them through any SEC or non-SEC system. The Commission is therefore proposing to transfer investment adviser records, whether in paper, microfiche, or electronic format from SEC–2 to ''Investment Adviser Records'' (SEC–50), a new Privacy Act records system.

SEC–50

On September 12, 2000, the Commission adopted amendments to rules 30–5 and 30–11 of the SEC's Organization and Program Management rules (17 CFR 200.30–5 and 200.30–11), new rule 203–3 and Form ADV–H; adopted amendments to rules 0–2, 0–7, 203–1, 203–2, 203A–1, 203A–2, and 204–1 (17 CFR 275.0–2, 275.0–7, 275.203–1, 275.203–2, 275.203A–1, 275.203A–2, and 275.204–1); and Form ADV, Form ADV–W, and Form 4–R (17 CFR 279.1, 279.2, and 279.4) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1) (the Advisers Act or the Act).[1] The Commission also withdrew rule 204–5 (17 CFR 275.204–5) and Forms 5–R, 6–R, 7–R, and ADV–Y2K (17 CFR 279.5, 279.6, 279.7, and 279.9) under the Advisers Act.[2]

These amendments require investment advisers to submit all Form ADV applications for registration, Form ADV amendments, and Form ADV–W withdrawal requests electronically through the IARD. As a result of these amendments, NASDR, which is responsible for the operation and maintenance of the IARD system, effectively will be the custodian of investment adviser registration records filed electronically through the IARD after January 1, 2001. Under 5 U.S.C. 552a(m), the SEC and the NASDR intend to enter into a Memorandum of Understanding, under which the NASDR will assume, among other things, responsibilities for compliance with the Privacy Act with respect to those records and further will maintain those records in accordance with federal recordkeeping requirements.[3]

All investment adviser records on paper and microfiche, received by the SEC before January 1, 2001, will remain in its custody and control and their routine uses are unchanged by the development of the IARD. All investment adviser records received by the SEC after January 1, 2001 that are on paper or microfiche also will be in the SEC's custody and control.

As 5 U.S.C. 552a(r) requires, the SEC has submitted its reports of the new and the altered systems of records to the Congress and the Office of Management and Budget. This complies with Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' as amended on February 20, 1996.[4] Accordingly, the SEC proposes to amend SEC–2 and establish SEC–50, to read as follows:

SEC–2

SYSTEM NAME:

Applications for Registration or Exemption under the Investment Company Act of 1940.

SYSTEM LOCATION:

SEC, 450 Fifth Street, NW, Washington, DC 20549.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers, directors, and other individuals related to investment companies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date of birth, address, telephone numbers, social security number, education, past and present employment, disciplinary history, business relationships, and similar information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 77f, 77g, 77h, 77j, 80a–6, and 80a–8.

PURPOSE(S):

To help the SEC staff process applications for registration or exemption, registration statements, and related forms under the Investment Company Act of 1940 and implement the Federal securities laws and rules.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the conditions of disclosure under 5 U.S.C. 552a(b), the SEC staff may provide these records to:

(1) Any member of the general public upon request;

(2) Any Federal, state, local, or foreign government authority or securities self-regulatory organization that is investigating a violation or potential violation of a statute, rule, regulation, or order;

(3) Any Federal, state, local, or foreign bar association or similar licensing authority responsible for possible disciplinary action;

(4) Any Federal, state, or local government or governmental authority that is deciding to hire or retain an individual, sign a contract, or issue a license, grant, or benefit;

(5) Any individual or entity appointed by a court of competent jurisdiction or agreed upon by the parties to a pending court action or administrative proceeding alleging a violation of the Federal securities laws or rules; and

(6) Any contractor that performs, on the SEC's behalf, services requiring the use of these records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on paper, microfilm, or magnetic tape and in a computer system.

RETRIEVABILITY:

These records are retrievable by the name of, or a file number assigned to, the registrant. Individual name access to these records is available through the SEC's Name-Relationship Search Index.

SAFEGUARDS:

Non-computer records are maintained in a central records facility that only authorized individuals may access. The facility is locked, with security cameras and a 24-hour security guard. Computer records, which are subject to data integrity controls, require passcodes for database access.

RETENTION AND DISPOSAL:

These records are transferred to the Federal Records Center periodically for storage. They are controlled by file number and retained under 17 CFR 200.80f.

SYSTEM MANAGER(S) AND ADDRESS:

Records Officer, SEC, Operations Center, 6432 General Green Way, Alexandria, VA 22312–2413.

NOTIFICATION PROCEDURE:

Requests to determine whether this system of records contains a record pertaining to the requesting individual should be sent to the Privacy Act Officer, SEC Operations Center, 6432

[1] Investment Advisers Act Release No. 1897 (Sept. 12, 2000) (65 FR 57438 (Sept. 22, 2000)).

[2] *Id.*

[3] 36 CFR part 1220, Federal Records—General; 36 CFR part 1222, Creation and Maintenance of Federal Records; and 36 CFR part 1234, Electronic Records Management.

[4] 61 FR 6428, 6435–39.

General Green Way, Alexandria, VA 22312–2413.

RECORDS ACCESS PROCEDURES:

Persons wishing to access or contest these records should contact the Privacy Act Officer, SEC Operations Center, 6432 General Green Way, Alexandria, VA 22312–2413.

CONTESTING RECORD PROCEDURES:

See Records Access Procedures, above.

RECORD SOURCE CATEGORIES:

Applications for registration or exemption and related forms filed with the SEC under the Investment Company Act of 1940.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

SEC–50

SYSTEM NAME:

Investment Adviser Records.

SYSTEM LOCATION:

Records filed before January 1, 2001 and paper records filed after January 1, 2001: SEC, 450 Fifth Street, NW, Washington, DC 20549; and Form ADV applications for registration, Form ADV Amendments, and Form ADV–W withdrawal notices filed electronically on IARD after January 1, 2001: NASDR, 9509 Key West Avenue, Rockville, MD 20850.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Registrants and officers, directors, principal shareholders, or other individuals related to them.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, telephone number, social security number, education, past and present employment, disciplinary history, business relationships, and similar information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 80b–3 and 80b–6a.

PURPOSE(S):

To help the SEC staff process applications for registration or exemption and related forms under the Investment Advisers Act of 1940 and implement the Federal securities laws and rules.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the conditions of disclosure under 5 U.S.C. 552a(b), the SEC staff may provide these records to:

(1) Any member of the general public upon request;

(2) Any Federal, state, local, or foreign government authority or securities or commodities self-regulatory organization that is investigating a violation or potential violation of a statute, rule, regulation, or order;

(3) Any Federal, state, local, or foreign bar association or similar licensing authority responsible for possible disciplinary action;

(4) Any Federal, state, or local government or governmental authority that is deciding to hire or retain an individual, sign a contract, or issue a license, grant, or benefit;

(5) Any individual or entity appointed by a court of competent jurisdiction or agreed upon by the parties to a pending court action or administrative proceeding alleging a violation of the Federal securities laws or rules; and

(6) Any contractor that performs, on the SEC's behalf, services requiring the use of these records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records filed before January 1, 2001 and paper records filed after January 1, 2001 in the SEC's custody are maintained on paper, microfilm, or magnetic tape and in a computer system.

Form ADV applications for registration, Form ADV amendments and Form ADV–W notices of withdrawal filed electronically on the IARD after January 1, 2001 in the NASDR's custody are maintained in electronic format (IARD).

RETRIEVABILITY:

These records are retrievable by the name of, or a file number assigned to, the registrant. Individual name access to these records is available through the SEC's Name-Relationship Search Index.

SAFEGUARDS:

Non-computer records in the SEC's custody are maintained in a central records facility that only authorized individuals may access. The facility is locked, with security cameras and a 24-hour security guard. Computer records, which are subject to data integrity controls, require passcodes for database access.

RETENTION AND DISPOSAL:

The records in the SEC's custody are transferred to the Federal Records Center periodically for storage. They are controlled by file number and retained under 17 CFR 200.80f.

SYSTEM MANAGER(S) AND ADDRESS:

Records filed before January 1, 2001 and paper records filed after January 1, 2001—Records Officer, SEC Operations Center, 6432 General Green Way, Alexandria, VA 22312–2413.

Form ADV applications for registration, Form ADV amendments and Form ADV–W notices of withdrawal filed electronically on IARD after January 1, 2001—NASDR, 9509 Key West Avenue, Rockville, MD 20850.

NOTIFICATION PROCEDURE:

Requests to determine whether this system of records contains a record pertaining to the requesting individual should be sent to the Privacy Act Officer, SEC Operations Center, 6432 General Green Way, Alexandria, VA 22312–2413.

RECORDS ACCESS PROCEDURES:

Persons wishing to access or contest these records should contact the Privacy Act Officer, SEC Operations Center, 6432 General Green Way, Alexandria, VA 22312–2413.

CONTESTING RECORD PROCEDURES:

See Records Access Procedures, above.

RECORD SOURCE CATEGORIES:

Registrations and related forms filed with the SEC under the Investment Advisers Act of 1940.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: January 19, 2001.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–2240 Filed 1–24–01; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43833; File No. SR–ISE–00–10]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the International Stock Exchange, LLC Relating to Payment for Order Flow

January 10, 2000.

I. Introduction

On September 12, 2000, the International Securities Exchange, LLC (''ISE'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') pursuant to section 19(b)(1) of the Securities Exchange Act

of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a payment-for-order-flow fee program designed to attract options order flow to the Exchange.[3] Notice of the proposed rule change was published for comment in the **Federal Register** on October 27, 2000.[4] The Commission received ten comment letters regarding the proposal.[5] This order approves the proposed rule change.

II. Description of the Proposal

The proposed rule change will establish the structure for an ISE payment-for-order-flow program, as a competitive response by the Exchange to similar programs at the other options exchanges.[6] The proposal includes two major elements:

A. Establishing a Payment-for-Order-Flow Fee

Under the proposed rule change, the ISE will be authorized to impose fees on Primary Market Makers (''PMMs'') and Competitive Market Makers (''CMMs''). The proposal allows for up to three separate fees on a per-contract basis:

- Fees on transactions with Public Customers;[7]
- Fees on transactions with Non-Customers,[8] other than market makers on another options exchange (''away market makers''); and
- Fees on transactions with away market makers.

No fees are authorized under the proposal for transactions in which all parties to the transaction are PMMs and/or CMMs.

The proposal provides that the specific amounts of the fees authorized under its provisions are to be established in a separate rule filing submitted to the Commission pursuant to Section 19(b)(3)(A) of the Act.[9] The three fees may be the same, or may differ from each other; one or more fees may be set at $0.00 per contract. The fees on transactions with Non-Customers and away market makers may not be higher than the fee on Public Customer transactions, however. In addition, the fee on transactions with away market makers may not be higher than the fee on transactions with other Non-Customers.

The Exchange also will have the flexibility under the proposed rule change to establish multi-tiered fees. This means that the fees may vary according to the option traded.[10] The tiers may be based on such factors as the overall trading activity of an option, the Exchange's market share in an option, or any other objective factor. If the Exchange establishes multi-tiered fees, the Exchange's fee filing will specify each of those fees.

B. Use of the Funds

Under the proposed rule change, the Exchange will separately account for the funds the payment-for-order-flow fee generates on a per-group basis. That is, the Exchange will segregate these funds according to each of the groups—or ''bins''—of options the Exchange trades. The PMMs will use the funds generated by the fee to pay Electronic Access Members (''EAMs'') for their order flow. The PMMs will have full discretion regarding payments, including those EAMs to be paid, the amount of the payments, and the type of order flow subject to the payment.

The proposed rule change also provides that the Exchange will establish ''bin advisory committees'' (''BACs'') consisting of the particular PMM and CMMs in a bin. The Exchange will provide to all bin members information regarding payments made, and the BACs will provide a forum for the discussion of payment-for-order-flow issues.[11] These committees will be advisory in nature only, however, and the PMM will retain full discretion over all payment decisions.

III. Comment Letters

The proposal was opposed by four commenters, including a specialist and market maker firm that is a member of all the national options exchanges,[12] a member firm of both the ISE and the Phlx;[13] a former floor broker who is currently a market maker on the Phlx;[14] and an association of options market makers recently formed, in part, to challenge the propriety of payment for order flow as implemented by the Phlx.[15]

Generally, these commenters maintained that payment for order flow harms investors because brokers who receive payment to direct their order flow to a specific specialist or exchange have no incentive to seek the best price for their customers, and because market centers that pay for order flow may not compete as aggressively for orders on the basis of price.[16] The opponents argued further that the increased costs of paying for order flow would be unaffordable to smaller market participants and could lead to an exodus of market makers from the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In the interim, the ISE submitted another proposed rule change concerning a fee to fund payment for order flow, File No. SR–ISE–00–24, which became effective upon its filing on December 1, 2000. *See* Securities Exchange Act Release No. 43688 (Dec. 7, 2000), 65 FR 78233 (Dec. 14, 2000). The interim proposal established a fee of $.75 per contract on all Primary Market Maker and Competitive Market Maker executions against customer orders, which is to terminate at the earlier of January 15, 2001, or Commission approval of the ISE's permanent program discussed in this release and the ISE's establishment of a fee to fund the permanent program.

[4] *See* Securities Exchange Act Release No. 43462 (October 19, 2000), 65 FR 64466.

[5] *See* Letters to Jonathan G. Katz, Secretary, the Commission, from: Edward Frank, Managing Director, Gateway Partners, LLC, dated September 22, 2000 (''Gateway Letter''); Bernard L. Hirsh, President and market maker, Bernard L. Hirsch, Inc., dated September 28, 2000 (''Hirsh Letter''); Meyer S. Frucher, Chairman and Chief Executive Officer, Philadelphia Stock Exchange (''Phlx''), dated November 1, 2000; Joel Greenberg, Chief Legal Officer, Susquehanna Investment Group (''Susquehanna''), dated November 13, 2000; Merrill G. Davidoff, Berger & Montague, P.C., on behalf of Independent Traders Association, Inc., dated November 9, 2000 (''ITA Letter''); Matthew D. Wayne, Chief Legal Officer, Knight Financial Products, LLC (''KFP Letter''), dated November 16, 2000; and Edward J. Joyce, President and Chief Operating Officer, Chicago Board Options Exchange (''CBOE''), dated November 21, 2000 (''CBOE Letter''); and to Arthur Levitt, Chairman, the Commission, from: Daniel C. Bigelow, President, Binary Traders, LP, *et al.,* dated September 29, 2000 (''Binary Traders Letter''); and Marjorie McGee, market maker, Benton Parnters, dated September 29, 2000 (''McGee Letter'').

[6] The Commission notes that since July 2000, all five options exchanges have submitted fee proposals to the Commission, which became effective on filing, that impose fees on market makers to fund payment for order flow. *See* Securities Exchange Act Release Nos. 43112 (August 3, 2000), 65 FR 49040 (August 10, 2000) (SR–CBOE–00–28); 43177 (August 18, 2000), 65 FR 51889 (August 25, 2000) (SR–Phlx–00–77); 43228 (August 30, 2000), 65 FR 54330 (September 7, 2000) (SR–Amex–00–38); 43290 (September 13, 2000), 65 FR 57213 (September 21, 2000) (SR–PCX–00–30); and *supra* note 3 (concerning the ISE's interim filing).

[7] ''Public Customer'' is defined by ISE Rule 100(29) as ''a person that is not a broker or dealer in securities.''

[8] ''Non-Customer'' is defined by ISE Rule 100(19) as ''a person or entity that is a broker or dealer in securities.''

[9] 15 U.S.C. 78s(b)(3)(A).

[10] Telephone conversation between Michael J. Simon, Senior Vice President and General Counsel, ISE, and Nancy J. Sanow, Assistant Director, and Ira L. Brandriss, Attorney, Division of Market Regulation, the Commission, on November 8, 2000 (''Telephone conversation with the ISE'').

[11] BACs are intended to provide the PMM and CMMs comprising a bin solely with the means to discuss advice and suggestions on payment-for-order-flow issues and will not be used for any other purpose. Telephone conversation with the ISE.

[12] *See* Gateway Letter.

[13] *See* Binary Traders Letter.

[14] *See* McGee Letter.

[15] *See* ITA Letter.

[16] Two commenters believed that the ''prearranged trading'' implicit in payment-for-order-flow arrangements could violate Commission rule and/or federal criminal statutes. *See* Binary Traders Letter, McGee Letter. One commenter argued that market makers who believe that payment for order flow is unethical should not be compelled by an exchange to help fund the practice. *See* Gateway Letter.

market.[17] This would reduce liquidity and competition in the markets, thereby causing spreads to widen and harming investors, they believed. Some also feared that the large firms that survived would form cartels to eliminate their competition.[18]

Some commenters were also concerned about the discretion granted to the PMM in appropriating the funds generated by the fee.[19] They argued that the proposal obligates CMMs to pay a fee that their competitor, the PMM, can use to benefit itself—through direct payment relationships and the favored treatment that can arise from such relationships—and possibly in ways hidden from the CMMs.[20]

Another commenter, an independent Registered Options Trader on the Phlx, predicted some of the same outcomes feared by the proposal's opponents, but did not specifically take a position of whether the proposal should or should not be approved.[21]

The Phlx did not oppose the ISE proposal, believing that its impact would be minimal in view of the fact that other exchanges have already implemented similar payment-for-order-flow fees. However, as a general matter, the Phlx voiced the view that ''exchange-sponsored payment for order flow programs'' are anti-competitive, interfere with market forces, adversely impact market makers, interfere with the obligation of exchanges to supervise for best execution of customer orders, and are structural impediments to price competition.

While not objecting to the language of the ISE proposal, Knight Financial Products (''KFP'') commented that ''[e]xchange sponsored payment for order flow programs are not in the best interests of the securities industry.'' It added: ''To the extent the payment for order flow should even exist in the options industry, it should be a decision made by market makers and/or specialists and not the exchanges.'' At the same time, KFP believed that if the Commission allows the current status quo to continue, it should approve the ISE proposal to allow the ISE to remain competitive.

The CBOE believed that fairness dictates that the ISE's proposed rule change be approved, but took issue with what it viewed as misstatements in the proposal. Specifically, the CBOE disagreed with the ISE's belief that payment-for-order-flow programs sponsored by exchanges have a more detrimental effect on intramarket competition than other payment-for-order-flow plans.[22]

Susquehanna believed that the proposal raises numerous antitrust issues, concerning, for example, the sharing of information on payment for order flow among market participants; the determination of who will be permitted to participate in the discussions; and the establishment of different fees for different types of transactions. Susquehanna believed that the Commission should establish guidelines under which market participants may participate in option exchange payment-for-order-flow plans and indicate whether such guidelines will provide any immunity to market participants or exchanges under U.S. antitrust laws.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the provisions of the Act and the rules thereunder applicable to a national securities exchange. The Commission believes the proposal is a reasonable competitive response on the part of the ISE to the adoption of similar payment-for-order-flow programs on other exchanges.

Specifically, the Commission believes that the proposed rule change provides for the equitable allocation of a reasonable fee among the ISE's members in accordance with Section 6(b)(4) of the Act,[23] designed, as it is, to enable the Exchange to compete with other markets in attracting options business. In conformance with Section 6(b)(8) of the Act,[24] the proposal, rather than imposing an unnecessary burden on competition, should serve to even the playing field among competing exchanges.

As required by section 6(b)(5) of the Act,[25] the proposed rule change is not designed to permit unfair discrimination among market participants. The proposal's differentiation of fees based on the types of transactions and according to the tiers described above is grounded upon a satisfactory rationale. No distinctions are made among Exchange members with respect to the amounts they must pay based on any factor other than the nature of the transaction upon which the fee is imposed and the trading characteristics of the particular option that it involves, as assessed in terms of objective criteria.

The Commission notes, in approving the proposed rule change, that the U.S. options markets are in the midst of profound and dynamic structural change, resulting from the intense competition for options order flow unleashed by the multiple listing of the most actively traded options beginning in August 1999. The creation of the ISE as the nation's newest options exchange, with plans to list some 600 standardized options classes traded on other markets, has also contributed in no small measure to the new competitive environment.

The heightened competition among markets and market participants for order flow, and the shifting order flow patterns it produces, shows no signs of abating. Payment for order flow—long a controversial facet of competition in the equities markets—has now emerged as a phenomenon in the options markets, as well.

As noted in a recently released Commission study, Payment for Order Flow and Internalization in the Options Markets (''SEC Study''),[26] the offering of direct cash compensation to broker-dealers to route their orders to a particular market center is, in fact, one of several strategies based on economic inducement to which exchanges and specialists have resorted in the intense competition to win orders.[27]

[17] Two commenters claimed that plans for distribution of the funds are designed to exclude many firms providing the money, ''effectively putting exchanges in the position of deciding who will stay in business and who will not be able to afford to maintain operations.'' *See* Binary Traders Letter, McGee Letter.

[18] *See* Binary Letter, McGee Letter. *See also* ITA Letter.

[19] *See, e.g.,* Gateway Letter, ITA Letter.

[20] One commenter claimed that the PMM would also be able to benefit by using documentation of the fees it could expect to have at its discretion as a credit, cash or vouc*h*er at another exchange. *See* Gateway Letter. Another commenter argued that specialists that operate on multiple exchanges would have divided loyalties and economic interests, and thus would lack sufficient incentive to use the funds collected at a particular exchange in a way that would promote that exchange's competitive interest. *See* ITA Letter.

[21] Hirsh Letter. The commenter also believed that under the proposal, market makers and specialists would tend to cooperate more than compete; brokers would promote increased options trading by their customers in order to reap the benefit of payment for order flow; smaller exchanges would increase their market share; and the exchanges and market participants involved in payment-for-order-flow arrangements would face litigation attacking their ''collaboration'' as ''subversive to the auction market and harmful to the customers.''

[22] CBOE Letter.

[23] 15 U.S.C. 78f(b)(4).

[24] 15 U.S.C. 78f(b)(8).

[25] 15 U.S.C. 78f(b)(5)

[26] *See* ''SEC Staff Report Describes Development of Payment for Order Flow and Internalization in the Options Markets,'' Commission press release 2000–190, December 20, 2000; the full report, prepared by the Commission's Office of Compliance Inspections and Examinations and Office of Economic Analysis, is available at http://www.sec.gov/news/studies/ordpay.htm.

[27] Other strategies identified in the SEC Study include: (1) Exchange rules that permit order-routing firms to ''internalize'' part of their orders, *i.e.,* trade as principal against at least a portion of their own customers' orders ahead of the trading

Both public customers and securities industry professionals have voiced deep concerns about this practice. The Commission, too, has repeatedly recognized—most recently, in the SEC Study—that the anticipation of payment for order flow raises a potential conflict of interest for brokers handling customer orders, and that reliance by market centers on the strategy of simply paying money to attract orders may present a threat to aggressive quote competition. At the same time, paying for order flow is not in itself unlawful, and the Commission has acknowledged that it is not necessarily inconsistent with a broker's duty of best execution—so long as appropriate measures are taken to ensure that that duty is in fact met.[28]

Payment for order flow assumes many different forms and guises—as numerous as the many different kinds of incentives granted to order flow providers by exchanges, specialists, and other market participants to order flow providers to entice them to send their business to them.[29] Without more, this form of such payment or incentive—however objectionable to some—cannot be said to be in itself inconsistent with the Act while other forms are accepted as consistent with the Act.[30] In this context, the ISE proposal cannot be said to constitute an undue burden on competition.

The strict proviso, however—as already mentioned—is that adequate protections must be established to assure that order flow providers meet their duty of best execution to their customers. In approving the ISE's proposed rule change, the Commission expects the Exchange to issue appropriate informational materials to its members that emphasize the best execution obligations of EAMs who may accept payment for order flow.

Moreover, the Commission notes that new Rule 11Ac1–6 under the Act, ''Disclosure of Order Routing Information,'' will require broker-dealers to make publicly available, for each calendar quarter, a report on how it routes its customer orders, including options orders.[31] That report must include a description of any payment for order flow arrangements the broker-dealer maintains with market centers to which it sends significant percentages of its orders.[32] The Commission believes that making these arrangements visible will encourage broker-dealers' compliance with their best execution obligations.

The Commission acknowledges the broader concern that payment for order flow may result in less aggressive competition for order flow on the basis of price, articulated in the comment letters.[33] However, singling out and banning only one particular form of such payment—for example, payment made possible by an exchange through the collection of fees from its market makers—would scarcely address the issue on the larger scale.

It therefore would be unfair to disapprove the payment for order flow program proposed by the ISE as a salve to the issues created by payments, rebates, credits, and other incentives to encourage order flow that now exist across both equity and options markets.

With respect to the concern voiced by Susquehanna that the proposal raises antitrust issues, the ISE has represented that the discussions among CMMs and PMMs in the BACs established under the proposal will be limited strictly to the subject of payment to order flow providers from the funds generated by the collected fees. Although Susquehanna urged the Commission to provide guidelines on option exchange payment-for-order-flow programs from an antitrust perspective, the Commission believes that market participants should consult their own legal counsel on antitrust issues.

With respect to the argument of some market makers that payment-for-order-flow fees are unaffordable, the Commission believes that the determination to impose them is a business decision legitimately made by the Exchange in assessing the costs that must be assumed if it is to remain competitive as a market center. With respect to other concerns voiced by the commenters, the Commission expects that the ISE, in fulfillment of its self-regulatory function, will be alert to any inappropriate expenditure of such funds in the service of particular members, or for use of these funds to encourage trades on other exchanges.

V. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–ISE–00–10) be and hereby is approved.

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crowd on the floor of the exchange, thus reaping higher profits than they would realize as mere agents; (2) another form of internalization, in which a broker-dealer affiliated with a specialist firm determines to route all its orders in a particular option to the exchange where that firm serves as specialist in the option; and (3) reciprocal order-routing arrangements, whereby, for instance, a specialist agrees to send a particular broker-dealer the equities orders it receives in return for the broker-dealer routing to the specialist the options orders it receives. *See also infra,* note 29.

[28] *See, e.g.,* Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577 (February 28, 2000).

[29] For instance, Commission rules under the Act define payment for order flow broadly as:

any monetary payment, service, property, or other benefit that results in remuneration, compensation, or consideration to a broker or dealer from any broker or dealer, national securities exchange, registered securities association, or exchange member in return for the routing of customer orders by such broker or dealer * * * including but not limited to: Research, clearance, custody, products or services; reciprocal agreements for the provision of order flow; adjustment of a broker or dealer's unfavorable trading errors; offers to participate as underwriter in public offerings; stock loans or shared interest accrued thereon; discounts, rebates, or any other reductions of or credits against any fee to, or expense or other financial obligation of, the broker or dealer routing a customer order that exceeds that fee, expense, or financial obligation.

See Rule 10b–10(d)(9), 17 CFR 240.10b–10(d)(9), incorporated by reference in the definitional section of recently approved Rule 11Ac1–6, 17 CFR 240.11Ac1–6 (effective date, January 30, 2001), which imposes new disclosure requirements on broker-dealers concerning their order routing practices, including payment for order flow arrangements. The new rule is applicable to both equity securities and options transactions. *See* Securities Exchange Act Release No. 43590 (November 17, 2000), 65 FR 75414 (December 1, 2000) (''Disclosure of Routing Practices Adopting Release''). *See also supra,* note 27.

[30] The Commission notes in this regard that several securities exchanges have adopted various programs in which the exchanges themselves grant economic inducements to members in an attempt to attract additional equity order flow to their markets. *See, e.g.,* Securities Exchange Act Release No. 41286 (April 14, 1999), 64 FR 19843 (April 22, 1999) (concerning specialist revenue sharing program at the Chicago Stock Exchange) and other programs cited in that release at note 8.

[31] 17 CFR 240.11Ac1–6. The Rule becomes effective January 30, 2001, while broker-dealers must comply with its provisions beginning July 2, 2001. *See* Disclosure of Routing Practices Adopting Release, Section V.

[32] *See* 17 CFR 240.11Ac1–6(b)(1)(iii) and Disclosure of Routing Practices Adopting Release, Section IV.B.

[33] Some of the findings of the recent SEC Study tend to validate this concern, although the study emphasized that continued monitoring of the markets is necessary.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[34]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–2243 Filed 1–24–01; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the District of New Jersey, dated September 13, 2000, the United States Small Business Administration hereby revokes the license of First Princeton Capital Corporation, a New Jersey Corporation, to function as a small business investment company under the Small Business Investment Company License No. 02/02–0449 issued to First Princeton Capital Corporation on March 8, 1983 and said license is hereby declared null and void as of September 30, 2000.

Dated: January 11, 2001.

Small Business Administration.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 01–2215 Filed 1–24–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the District for The Middle District of Tennessee, dated September 13, 2000, the United States Small Business Administration hereby revokes the license of Tennessee Venture Capital Corporation, a Tennessee Corporation, to function as a small business investment company under the Small Business Investment Company License No. 04/04–5176 issued to Tennessee Venture Capital Corporation on September 28, 1979 and said license is hereby declared null and void as of September 30, 2000.

Dated: January 11, 2001.

Small Business Administration.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 01–2213 Filed 1–24–01; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Supplemental Security Income (SSI) for the Aged, Blind, and Disabled; SSI Work Incentives Demonstration Project

AGENCY: Social Security Administration (SSA).

ACTION: Notice.

SUMMARY: The Commissioner of Social Security announces the following demonstration project relating to the Supplemental Security Income (SSI) program under title XVI of the Social Security Act (the Act). Under this project, the Social Security Administration (SSA) will test the effectiveness of altering certain SSI program rules as an incentive to encourage SSI recipients with disabilities or blindness to work for the first time, return to work, or increase their work activity and earnings. This project, called the SSI Work Incentives Demonstration Project, is being conducted under the authority of section 1110(b) of the Act. We are conducting this project in selected States that are working with us under our State Partnership Initiative to assist people with disabilities to obtain employment and reduce their dependence on SSI benefits and benefits under other government programs. We are publishing this notice in accordance with 20 CFR 416.250(e).

FOR FURTHER INFORMATION CONTACT: Elissa Ness, Social Security Administration, Office of Employment Support Programs, 6401 Security Boulevard, 107 Altmeyer Building, Baltimore, Maryland, 21235–6401; Phone (410) 965–7955; or through E-mail to elissa.ness@ssa.gov.

SUPPLEMENTARY INFORMATION:

Background

What is the SSI program?

The SSI program established under title XVI of the Act provides monthly benefits for aged, blind and disabled individuals with limited income and resources. For SSI applicants and recipients, income is a factor in determining eligibility for, and the amount of, SSI benefits. In determining an individual's countable income for SSI program purposes, title XVI of the Act specifies certain items that are included as well as certain items and/or amounts that are excluded. Earnings from employment, minus certain exclusions, are counted as income to the individual. The amount of an individual's resources is used to determine whether he or she is eligible for SSI benefits for any given month. If an individual's countable resources are within the statutory limit for eligibility, they have no effect on the amount of the SSI payment to the recipient.

What is the SSI Work Incentives Demonstration Project?

This is a demonstration project which we are conducting under the authority of section 1110(b) of the Act to test whether altering certain requirements, conditions, or limitations under title XVI of the Act and the implementing regulations, relating to the counting of an SSI recipient's income and resources and to the initiation of certain continuing disability reviews for SSI recipients with disabilities or blindness, will encourage recipients of SSI benefits based on disability or blindness to attempt to work for the first time, return to work, or increase their work activity and earnings. Under the project, we will test, on a demonstration basis, the effectiveness of certain alternative SSI program rules as incentives for SSI recipients with disabilities or blindness who want to work to attempt work activity or increase their level of work activity. We are conducting the SSI Work Incentives Demonstration Project in connection with certain return-to-work projects for which we awarded cooperative agreement funds to certain States under SSA's State Partnership Initiative.

What is SSA's State Partnership Initiative?

The State Partnership Initiative (SPI), established by SSA, is the first activity launched under Executive Order 13078, Increasing Employment of Adults with Disabilities, signed on March 13, 1998 by President Clinton. This initiative is designed to help States develop innovative and integrated, state-wide programs of services and supports for their residents with disabilities.

In 1998, under the SPI program, SSA awarded five-year cooperative agreements to a number of States to develop innovative projects to increase job opportunities and enhance the coordination and delivery of rehabilitation, employment and other support services for adults who are recipients of SSI benefits based on disability or blindness, or who are Social Security Disability Insurance (SSDI) beneficiaries, to assist them to return to work or work for the first time

[34] 17 CFR 200.30–3(a)(12).

and reduce their dependence on SSI and SSDI benefits. These cooperative agreement projects under the SPI program are expected to continue in operation through September 30, 2003.

With Which SPI Projects Is SSA Conducting the SSI Work Incentives Demonstration Project?

We are conducting the SSI Work Incentives Demonstration Project, which consists of two models, in conjunction with the SPI projects in the States of California, New York, Vermont and Wisconsin. The SPI projects in these States are as follows:

(1) California's Individual Self-Sufficiency Planning Project is providing enhanced services to 150 project participants with severe psychiatric disabilities who receive SSI and/or SSDI benefits at two demonstration sites, One-Stop Career Centers in San Mateo and Kern Counties. Selected individuals from other counties who are clients of the Department of Rehabilitation will serve as the control group for the research design.

(2) The New York Works: Self Sufficiency Through Employment Incentives project is testing the impact of full program services or enhanced services to recipients on return to work outcomes. Full services include a client-centered ''team'' approach, a vocational case manager/employment coordinator, intensive benefits counseling and management, in addition to any federal program rules waivers, access to SSA work incentives, expedited access to a Plan for Achieving Self-Support (PASS), and presumed vocational rehabilitation (VR) eligibility.

SSI recipients with serious mental illness, residing in New York City or Erie County, will be randomly assigned to a full service model, an enhanced service model, or a control group. Each treatment group will have 450 members, with 650 in the control group.

(3) Vermont Work Incentives Project is examining the impact of benefits counseling, benefits assessment plans, peer benefits counseling, training of VR staff on mental health issues, and any federal program rules waivers and Medicaid Buy-In in its overall project evaluation. The statewide program expects to have 1,200 participants (SSI/SSDI recipients) with a range of disabilities.

(4) Wisconsin Pathways to Independence includes benefits counseling as a core service with additional options including targeted vocational planning, greater use of existing SSA work incentives, and health care and income support policy changes derived from federal waivers. The Wisconsin Project will also implement the Medicaid Purchase Plan, an amendment to Wisconsin's Medicaid Program. It is anticipated that approximately 1,200 individuals with severe disabilities (including physical disabilities, mental illness, HIV/AIDS, and developmental disabilities) will be served in 15 sites throughout the State.

What Are the Objectives of the SSI Work Incentives Demonstration Project?

SSA is committed to supporting the work efforts of disabled or blind SSI recipients, as well as SSDI beneficiaries, who want to work and become more self-sufficient. SSA seeks to develop new strategies and incentives that will assist SSI recipients and SSDI beneficiaries to enter and remain in the workforce and reduce their dependence on SSI and SSDI benefits.

Our overall objective in conducting this project is to demonstrate whether providing additional work incentives under the SSI program will remove potential barriers to work for recipients of SSI benefits based on disability or blindness. Under the project, we will test whether altering certain SSI program rules provides effective work incentives for disabled or blind SSI recipients and concurrent SSI/SSDI beneficiaries to attempt to work for the first time, return to work, or increase their work activity and earnings.

What Is The Statutory Authority for Altering SSI Program Rules to Conduct This Demonstration Project?

We are conducting the SSI Work Incentives Demonstration Project under the authority of section 1110(b) of the Act. Section 1110(b) of the Act authorizes the Commissioner of Social Security to waive any of the requirements, conditions, or limitations of title XVI of the Act to the extent necessary to carry out experimental, pilot, or demonstration projects which, in the Commissioner's judgment, are likely to assist in promoting the objectives or facilitate the administration of the SSI program.

Description of the SSI Work Incentives Demonstration Project

What Are the Alternative SSI Program Rules That Will Apply to Participants in the SSI Work Incentives Demonstration Project?

The alternative SSI program rules that we are testing under the demonstration project consist of the following four elements. Elements 1 through 3 will apply to participants in the project who are SSI-only recipients or concurrent SSI/SSDI beneficiaries. Element 4 will only apply to participants who are SSI-only recipients; it will not apply to concurrent SSI/SSDI beneficiaries.

1. ''Three-for-Four''—Increase Earned Income Exclusion

SSA will test the effectiveness, as a work incentive, of using modified earned income exclusion in determining an SSI recipient's countable income for SSI program purposes. Under this work incentive, SSA will exclude the first $65 of a project participant's monthly earned income plus an additional 75 percent of any remaining gross monthly earned income, or an additional $3 for every $4 earned. This differs from the current rules under which SSA excludes the first $65 of monthly earned income plus an additional 50 percent of any remaining gross monthly earned income, or an additional $1 for every $2 earned.

2. ''Unearned Income Related to Work Activity''—Treat as Earned Income

SSA will test, as an additional work incentive, treating certain types of temporary unearned income related to work activity in the same manner as earned income will be treated under element 1 above for purposes of determining an SSI recipient's countable income. That is, for a project participant, SSA will exclude the first $65 per month of certain types of unearned income that result from work activity plus 75 percent of the remainder of such unearned income in a month. This differs from current SSI rules under which SSA excludes the first $20 of unearned income in a month. The only types of temporary unearned income that result from work activity that would be subject to the alternative rule are: Unemployment insurance benefits, worker's compensation benefits, State disability benefits, and disability-related benefits paid through private insurance plans. Other types of benefits, such as Social Security benefits or veterans benefits from the Department of Veterans Affairs, will continue to be treated as unearned income based on current rules.

3. ''Independence Account''—Create New Resource Exclusion

SSA will study the use of an additional resource exclusion as a work incentive. SSA will allow a project participant to maintain an ''Independence Account'' as a resource, beyond the current $2,000 resource limit. For purposes of determining an SSI recipient's countable resources, SSA will exclude monies conserved (including any accrued interest) in one

separate account for saved wages, not to be commingled with other monies, and with deposits limited to 50 percent of gross earnings, not to exceed $8,000 per year. The account may be a checking or savings account, certificate of deposit, money market or mutual fund account. It cannot be any type of retirement plan such as an IRA, Roth IRA, 401(k) plan, or 403(b) plan. The period during which a participant will be permitted to deposit a portion of his or her wages into an ''Independence Account'' will end September 30, 2003 or, if earlier, when he or she ceases to be a project participant. Following the close of the period for making deposits, SSA will provide for a 24-month spend-down period during which the resource exclusion under the demonstration project would continue to apply to monies in the account.

4. ''Medical Continuing Disability Reviews''—Suspend for Certain Participants

SSA will test suspending medical continuing disability reviews (CDRs) as a work incentive for certain individuals. SSA will suspend medical CDRs for participants in the demonstration project who are SSI-only recipients with ''medical improvement possible'' (MIP) or ''medical improvement not expected'' (MINE) diaries. For a project participant meeting these criteria, SSA will not initiate a medical CDR during the period this work incentive is in effect (i.e., through September 30, 2003), so long as the individual remains a project participant. The suspension of CDRs would not apply to redeterminations of disability that are required for childhood disability recipients who attain age 18.

When Will the Demonstration Project Begin and End?

The alternative SSI program rules under the demonstration project will become effective on January 26, 2001. Except for the spend-down period for the ''Independence Account,'' the alternative SSI program rules will cease to be effective after September 30, 2003. The spend-down period for the ''Independence Account'' will begin on October 1, 2003 (or, if earlier, when an individual's participation in the demonstration project ends) and will end after a period of 24 months.

What Are the Two Models Which Comprise the SSI Work Incentives Demonstration Project?

Model one of the demonstration project will use the alternative SSI program rules described in items 1 through 4 above, and will be carried out in conjunction with the SPI projects in California, New York, and Wisconsin. Model two of the demonstration project will use the alternative SSI program rules described in items 2 through 4 above, and will be carried out in conjunction with the SPI project in Vermont.

How Will An Individual Become a Participant in the SSI Work Incentives Demonstration Project?

The participation of an SSI recipient or concurrent SSI/SSDI beneficiary in the SSI Work Incentives Demonstration Project will be voluntary, as required under section 1110(b)(2)(B) of the Act and the implementing regulation at 20 CFR 416.250(d). Only those disabled or blind SSI recipients and concurrent SSI/SSDI beneficiaries who are enrolled or will enroll as participants in the SPI cooperative agreement projects in the States of California, New York, Vermont and Wisconsin will be eligible to become a participant in the SSI Work Incentives Demonstration Project. An enrollee in one of the SPI projects will become a participant in the SSI Work Incentives Demonstration Project by providing a voluntary written consent to be a participant in the SSI demonstration project. The individual's consent to participate in the SSI Work Incentives Demonstration Project may be revoked by the individual at any time. In addition, an individual's status as a participant in the SSI Work Incentives Demonstration Project will end if his or her participation in the SPI project ends.

How Will the SSI Demonstration Project Be Evaluated?

The four States will collect data for each recipient regarding identifying information, educational and vocational background, services provided, work attempts and outcomes and use of the alternative SSI program rules. Each State will use the data to evaluate the effectiveness of the alternative SSI program rules under the project model in that State. In addition, the data will be sent by each State to Virginia Commonwealth University (VCU) for a process evaluation and will be analyzed by Mathematica, Inc., for a net outcomes evaluation. SSA has contracts with VCU and Mathematica to collect and analyze the data from the States to permit evaluation on a cross-State basis for the SSI Work Incentives Demonstration Project.

What Are the Statutory and Regulatory Provisions Being Waived to Conduct the SSI Work Incentives Demonstration Project?

We are waiving the following requirements, conditions, or limitations under title XVI of the Act and the implementing regulations to the extent necessary to permit the application of the alternative SSI program rules described above to participants in the SSI Work Incentives Demonstration Project.

1. ''Three-for-Four''—Increase Earned Income Exclusion

We are waiving the limitation on the earned income exclusion under sections 1612(b)(4)(A)(i) and (b)(4)(B)(iii) of the Act and 20 CFR 416.1112(c)(7) to the extent necessary to permit, after the exclusion of the first $65 per month of earned income not otherwise excluded as provided under the statute and regulations, the exclusion of three-fourths of a project participant's remaining earned income in a month for the purpose of determining a participant's countable income for SSI program purposes.

2. ''Unearned Income Related to Work Activity''—Treat as Earned Income

We are waiving the limitations on excluding unearned income under section 1612(b) of the Act and 20 CFR 416.1124 to the extent necessary to permit, in addition to any other allowable unearned income exclusions authorized under the statute and regulations, the exclusion of the first $65 per month of specified types of unearned income of a project participant, plus three-fourths of the amount of a participant's remaining specified types of unearned income in a month, for the purpose of determining a participant's countable income for SSI program purposes. The types of unearned income covered by this exclusion are: unemployment insurance benefits, worker's compensation benefits, State disability benefits, and disability-related benefits paid through private insurance plans.

3. ''Independence Account''—Create New Resource Exclusion

We are waiving the limitations on excluding resources under section 1613 of the Act and 20 CFR 416.1210 to the extent necessary to permit the exclusion of monies conserved (and any interest accrued thereon) in one ''Independence Account'' of a project participant that meets certain requirements, for the purpose of determining a participant's countable resources for SSI program purposes. Only wages earned by an

individual while a project participant and before October 1, 2003, may be deposited in the account, not to be commingled with any other monies, with deposits limited to 50 percent of gross earnings, not to exceed $8,000 per year. A 24-month spend-down period, during which the resource exclusion will continue to apply, will begin October 1, 2003 or, if earlier, when the individual's participation in the project ends.

4. ''Medical CDRs''—Suspend for Certain Participants

We are waiving the requirements for SSA to conduct medical CDRs under sections 1619(a)(2) and 1631(j)(2) of the Act, and 20 CFR 416.990, to the extent necessary to preclude the initiation of medical CDRs under these provisions for project participants who are SSI-only recipients with MIP or MINE diaries.

Authority: Section 1110(b) of the Social Security Act.

(Catalog of Federal Domestic Assistance Program No. 96.006—Supplemental Security Income)

Dated: January 18, 2001.

Kenneth S. Apfel,

Commissioner of Social Security.

[FR Doc. 01–2226 Filed 1–24–01; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 01-1(3)]

Sykes v. Apfel; Using the Grid Rules as a Framework for Decisionmaking When an Individual's Occupational Base is Eroded by a Nonexertional Limitation—Titles II and XVI of the Social Security Act

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 01-1(3).

EFFECTIVE DATE: January 25, 2001.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-1695.

SUPPLEMENTARY INFORMATION: We are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 402.35(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals' decision as explained in this Social Security Acquiescence Ruling to claims at all levels of administrative review within the Third Circuit. This Social Security Acquiescence Ruling will apply to all determinations or decisions made on or after January 25, 2001. If we made a determination or decision on your application for benefits between September 18, 2000, the date of the Court of Appeals' decision, and January 25, 2001, the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling to the prior determination or decision. You must demonstrate, pursuant to 20 CFR 404.985(b)(2) or 416.1485(b)(2), that application of the Ruling could change our prior determination or decision in your claim.

Additionally, when we received this precedential Court of Appeals' decision and determined that a Social Security Acquiescence Ruling might be required, we began to identify those claims that were pending before us within the circuit that might be subject to readjudication if an Acquiescence Ruling were subsequently issued. Because we determined that an Acquiescence Ruling is required and are publishing this Social Security Acquiescence Ruling, we will send a notice to those individuals whose claims we have identified which may be affected by this Social Security Acquiescence Ruling. The notice will provide information about the Acquiescence Ruling and the right to request readjudication under the Ruling. It is not necessary for an individual to receive a notice in order to request application of this Social Security Acquiescence Ruling to the prior determination or decision on his or her claim as provided in 20 CFR 404.985(b)(2) or 416.1485(b)(2), discussed above.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e) or 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c) or 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.006—Supplemental Security Income.)

Dated: January 9, 2001.

Kenneth S. Apfel,

Commissioner of Social Security.

Acquiescence Ruling 01-1(3)

Sykes v. *Apfel*, 228 F.3d 259 (3d Cir. 2000)—Using the Grid Rules[1] as a Framework for Decisionmaking When an Individual's Occupational Base is Eroded by a Nonexertional Limitation—Titles II and XVI of the Social Security Act.[2]

Issue: Whether we may apply the Medical-Vocational Guidelines (grid rules) as a framework to deny disability benefits at step 5 of the sequential evaluation process when a claimant has a nonexertional limitation(s) without either:

(1) taking or producing vocational evidence, such as testimony from a vocational expert, reference to the *Dictionary of Occupational Titles* (DOT)[3] or other similar evidence; or

(2) providing notice of our intention to take official notice of the fact that the particular nonexertional limitation(s) does not significantly erode the occupational job base.

Statute/Regulation/Ruling Citation: Sections 205(b), 223(d)(2)(A), 1614(a)(3)(B) and 1631(c)(1)(A) of the Social Security Act (42 U.S.C. 405(b), 423(d)(2)(A), 1382c(a)(3)(B)) and 1383(c)(1)(A); 20 CFR 404.1520(f)(1), 404.1566, 404.1569, 404.1569a, 416.920(f)(1), 416.966, 416.969 and 416.969a; 20 CFR Part 404, Subpart P,

[1] At step 5 of the sequential evaluation process we use the medical-vocational rules that are set out in appendix 2 of subpart P of part 404. In general, the rules in appendix 2 take administrative notice of the existence of numerous, unskilled occupations at exertional levels defined in the regulations, such as ''sedentary,'' ''light,'' and ''medium.'' Based upon a consideration of an individual's residual functional capacity, age, education, and work experience, the rules either direct a conclusion as to whether an individual is disabled at step 5 of the sequential evaluation process or provide a framework to guide our a decision at this step. *See* 20 CFR 404.1569a and 416.969a and our preamble to final rules published at 65 FR 17994 (April 6, 2000).

[2] Although *Sykes* was a title II case, the same principles apply to title XVI. Therefore, this Ruling applies to both title II and title XVI disability claims.

[3] Employment and Training Administration, U.S. Department of Labor, *Dictionary of Occupational Titles* (Fourth Edition, Revised 1991) and its companion publication, *Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles*, (1993).

Appendix 2, section 200.00(e); Social Security Rulings 83-10, 83-12, 83-14, 85-15 and 96-9p.

Circuit: Third (Delaware, New Jersey, Pennsylvania, and the Virgin Islands).

Sykes v. *Apfel*, 228 F.3d 259 (3d Cir. 2000).

Applicability of Ruling: This Ruling applies to determinations or decisions at all levels of the administrative review process (i.e., initial, reconsideration, Administrative Law Judge (ALJ) hearing and Appeals Council).

Description of Case: Clifton Sykes filed an application for disability insurance benefits after suffering several job-related injuries. After his claim was denied at both the initial and reconsideration levels of the administrative review process, he requested a hearing before an ALJ. The ALJ found that Mr. Sykes had several ''severe'' impairments and that, because of these impairments, he was unable to do his past relevant work. At least one of these impairments, blindness in the left eye, resulted in a nonexertional limitation. The other severe impairments included the residual effects of a torn rotator cuff, angina and obstructive pulmonary disease. Applying the grid rules in 20 CFR Part 404, Subpart P, Appendix 2 as a framework for decisionmaking without referring to a vocational expert or other evidence, the ALJ concluded that Mr. Sykes was not disabled because he could perform other work existing in the national economy. The ALJ's conclusion was based on his findings that Mr. Sykes had the exertional capability to perform ''light'' work and that the exclusion of jobs requiring binocular vision did not significantly compromise the ''broad base of light work'' established under the grid rules.

After the Appeals Council denied Mr. Sykes' request for review of the ALJ's decision, he sought judicial review. Mr. Sykes argued, among other things, that the ALJ erred in relying exclusively on the grid rules to determine whether there were jobs in the national economy that he could perform when his impairments resulted in both exertional and nonexertional limitations. The district court affirmed the ALJ's decision finding that it was supported by substantial evidence. On appeal to the United States Court of Appeals for the Third Circuit, the court reversed the judgment of the district court and remanded the case to us for further proceedings consistent with its decision.

Holding: After considering the Supreme Court's decision in *Heckler* v. *Campbell*, 461 U.S. 458 (1983), the court concluded that our ''interpretation of 20 CFR Part 404, Subpart P, Appendix 2 section 200.00(e)(2) does not comport with the Social Security Act * * * .'' In view of the ALJ's finding that the claimant had a severe nonexertional impairment, the court stated that we cannot establish the existence of other ''jobs in the national economy that Sykes can perform by relying on the grids alone, even if [we use] the grids only as a framework instead of to direct a finding of no disability.'' The court further stated that, ''in the absence of a rulemaking establishing the fact of an undiminished occupational base, the Commissioner cannot determine that a claimant's nonexertional impairments do not significantly erode his occupational base under the medical-vocational guidelines [alone].''

The Third Circuit also addressed ''the question [of] what additional evidence the Commissioner must present to meet the burden of establishing that there are jobs in the national economy that a claimant with exertional and nonexertional impairments can perform.'' The court held that the ''sort of evidence the Commissioner must present to meet his burden of proof * * * when a claimant has exertional and nonexertional impairments * * * [is] the testimony of a vocational expert or other similar evidence, such as a learned treatise.''

As an alternative to producing additional vocational evidence, the court held that we could rely on official administrative notice to establish that a particular nonexertional limitation does not significantly erode a claimant's occupational job base. The court stated that, ''official [administrative] notice * * * allows an administrative agency to take notice of technical or scientific facts that are within the agency's area of expertise,'' in addition to commonly acknowledged facts. Under this alternative, we ''would have had to provide Sykes with notice of [our] intent to [take administrative] notice [of the] fact [that the occupational base is not significantly eroded by the nonexertional limitation] and, if Sykes raised a substantial objection, an opportunity to respond * * * .''

The court stated that it was not deciding the issue of ''whether Social Security Rulings can serve the same function as the rulemaking upheld in *Campbell*.'' The court further stated that it need not resolve the issue of whether ''the Commissioner can properly refer to a ruling for guidance as to when nonexertional limitations may significantly compromise the range of work that an individual can perform.''

Statement As To How Sykes Differs From SSA's Interpretation

At step 5 of the sequential evaluation process (or the last step in the sequential evaluation process in continuing disability review claims), we consider the vocational factors of age, education and work experience in conjunction with a claimant's residual functional capacity to determine whether the claimant can do other jobs that exist in significant numbers in the national economy. Section 200.00(e)(2) of 20 CFR Part 404, Subpart P, Appendix 2 provides that, when an individual has an impairment(s) ''resulting in both strength [exertional] limitations and [nonstrength] nonexertional limitations,'' we use the grid rules first to determine whether a finding of disabled is possible based on strength limitations alone. If not, we use the same grid rules reflecting the individual's maximum residual strength capabilities, age, education, and work experience as a framework for consideration of how much the individual's nonexertional limitations further erode the occupational job base. As stated in 20 CFR 404.1569a and 416.969a, the grid rules ''provide a framework to guide our decision'' in this situation.

SSR 83-14, Capability to do Other Work—The Medical Vocational Rules as a Framework for Evaluating a Combination of Exertional and Nonexertional Impairments, provides that we use the grid rules to determine how the totality of an individual's limitations or restrictions reduces the occupational base of administratively noticed unskilled jobs when a claimant cannot be found disabled based on exertional limitations alone. In those claims where a person comes very close to meeting the criteria of a grid rule directing a finding of not disabled because it is clear that the additional nonexertional limitation(s) has very little effect on the exertional occupational base, we may rely on the framework of the grid rules to support a finding that the person is not disabled without consulting a vocational expert or other vocational resource. On the other hand, an additional nonexertional limitation may substantially reduce a range of work to the extent that an individual is very close to meeting a grid rule which directs a conclusion of disabled. Particular nonexertional limitation(s) may significantly erode or may have very little effect on the occupational base of jobs an individual can perform.

SSRs 96-9 and 83-14 include examples of nonexertional limitation(s)

and provide adjudicative guidance on their effects on an individual's occupational job base. Some of the nonexertional limitations described in the SSRs do significantly reduce an individual's occupational job base and would result in a finding of disability. Other nonexertional limitations described in the SSRs do not significantly reduce an individual's occupational job base and would not ordinarily result in a finding of disability if the person's exertional limitations (or ''capabilities'') would result in a finding of not disabled under the grid rules. Regardless of whether the result is a finding of disability or no disability, we rely on our regulations and the SSRs to provide adjudicative guidance on the effects of particular nonexertional limitations on an individual's occupational job base.

Under our interpretation of 20 CFR 404.1569a, 416.969a and section 200.00(e) of Appendix 2 to Subpart P of Part 404, and of SSR 83-14, we are not required to consult a vocational expert or other vocational resource in all instances in which we decide whether an individual who has a nonexertional limitation(s) is or is not disabled. For instance, we are not always required to consult a vocational expert or other vocational resource to help us determine whether a nonexertional limitation significantly erodes a claimant's occupational base when adjudicative guidance on the effect of the limitation is provided in an SSR.

The Third Circuit concluded that, under *Campbell*, we cannot rely on the framework of our grid rules to deny a claim when a claimant has a nonexertional impairment(s) ''without either taking additional vocational evidence * * * or providing notice to the claimant of [our] intention to take official notice of this fact [that the claimant's nonexertional impairment(s) do not significantly erode his or her occupational base] (and providing the claimant with an opportunity to counter the conclusion).'' The court held that we cannot establish the existence of other jobs in the national economy that a claimant with a nonexertional limitation ''can perform by relying on the grids alone, even if [we] use the grids as a framework instead of to direct a finding of no disability.''

Explanation of How SSA Will Apply the Sykes Decision Within the Circuit

This Ruling applies only to claims in which the claimant resides in Delaware, New Jersey, Pennsylvania or the Virgin Islands at the time of the determination or decision at any level of the administrative review process; i.e., initial, reconsideration, ALJ hearing or Appeals Council review.

In making a disability determination or decision at step 5 of the sequential evaluation process (or the last step in the sequential evaluation process in continuing disability review claims), we cannot use the grid rules exclusively as a framework for decisionmaking when an individual has a nonexertional limitation(s). Before denying disability benefits at step five when a claimant has a nonexertional limitation(s), we must:

(1) take or produce vocational evidence such as from a vocational expert, the DOT or other similar evidence (such as a learned treatise); or

(2) provide notice that we intend to take or are taking administrative notice of the fact that the particular nonexertional limitation(s) does not significantly erode the occupational job base, and allow the claimant the opportunity to respond before we deny the claim.

This Ruling does not apply to claims where we rely on an SSR that includes a statement explaining how the particular nonexertional limitation(s) under consideration in the claim being adjudicated affects a claimant's occupational job base. When we rely on such an SSR to support our finding that jobs exist in the national economy that the claimant can do, we will include a citation to the SSR in our determination or decision.

We are considering revising our rules regarding our use of the grid rules as a framework for decisionmaking and may rescind this Ruling once we have made the revision.

[FR Doc. 01–2274 Filed 1–24–01; 8:45 am]
BILLING CODE 4191–02–F

DEPARTMENT OF STATE

Bureau of Educational and Cultural Affairs

[Public Notice 3556]

Business Management Curriculum Development and Faculty Training in Albania

ACTION: Request for Grant Proposals (RFGP).

SUMMARY: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs in the Department of State announces an open competition for an assistance award to develop and strengthen university-level business management education in Albania. The project will support the development of instructional materials and faculty training in business with emphasis on business management, business law and ethics, corporate governance, accounting, organizational management, finance, banking, and alternative conflict resolution in business. Accredited post-secondary institutions meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals that address these objectives. The means for achieving these objectives may include mentoring, case study development, teaching, consultation, research, distance education, internship training and professional outreach to public and private sector managers and entrepreneurs.

Overview and Project Objectives

The project is designed to support business management education at one or more post-secondary educational institutions in Albania and to address current issues affecting Albania's transition to a market economy, including the ethical dimensions of business practices and the factors that will encourage the development of a more favorable investment climate. The U.S. applicant should describe how it will work cooperatively with one or more post-secondary institutions in Albania. Applicants are encouraged to develop creative strategies to pursue these objectives.

Bureau policy stipulates that awards to organizations with less than four years experience in conducting international exchanges are limited to $60,000. The Bureau anticipates awarding one or two grants for a total amount not to exceed $188,300. Funds will be awarded for a period up to three years to assist with the costs of exchanges, educational materials, and to increase library holdings and improve Internet connections. Up to 25% of the grant total may be used to assist with the costs of project administration. Indirect administrative costs are not eligible for Bureau funding under this competition, but may be presented as part of the U.S. institution's contribution.

The project should pursue its objectives through a strategy that coordinates the participation of junior and senior faculty, administrators, or graduate students for any appropriate combination of teaching, research, mentoring, internships, and outreach, for exchange visits ranging from one week to an academic year. Visits of one semester or longer for participants from Albania are strongly encouraged, especially for junior members of the Albanian faculty. Program activities should be tied to the goals and objectives of the project. The strategy

may include short but intensive English language training for selected participants whose English knowledge skills need to be strengthened or refreshed.

If the proposed project would occur within the context of a previous or ongoing project, the proposal should explain how the request for Bureau funding would build upon the pre-existing relationship or complement previous and concurrent projects, which must be listed and described with details about the amounts and sources of external support. Previous projects should be described in the proposal, and the results of the evaluation of previous cooperative efforts should be summarized.

U.S. Institution and Participant Eligibility

In the United States, participation in the program is open to accredited two and four-year colleges and universities, including graduate schools. Applications from community colleges, minority-serving institutions, and consortia or other combinations of U.S. colleges and universities are eligible. Secondary U.S. partners may include governmental and non-governmental organizations, as well as non-profit service and professional organizations. The lead U.S. university in the consortium or other combination of cooperating institutions is responsible for submitting the application. Each application must document the lead organization's authority to represent all U.S. cooperating partners.

With the exception of outside consultants reporting on the degree to which project objectives have been achieved, participants representing a U.S. institution and traveling under the Bureau's grant funds must be teachers, advanced graduate students who are teaching or research assistants, or administrators from the participating institution(s). Participants representing a U.S. institution must be U.S. citizens. Advanced graduate students who are teaching or research assistants are eligible for Bureau-funded participation in this program only if they are working under the direction of an accompanying faculty participant or project director.

Albanian Institutional and Participant Eligibility

Participation is open to recognized institutions of post-secondary education. Secondary foreign partners may include relevant governmental and non-governmental organizations, as well as non-profit service and professional organizations concerned with issues in business management, business law, business ethics, and alternative conflict resolution in business. Foreign participants must be citizens or permanent residents of Albania who are eligible to receive a J–1 visa.

Budget Guidelines

Applicants may submit a budget proposing up to $188,300. The Bureau anticipates awarding one or two grants for this project. Requests for amounts smaller than the maximum are eligible. Budget notes should carefully justify the amounts needed. There must be a summary budget as well as a breakdown reflecting the program and administrative budgets including unit costs. Cost sharing will be considered an important indicator of institutional commitment.

Please refer to the Solicitation Package for complete guidelines and formatting instructions.

Announcement Title and Number

All correspondence with the Bureau of Educational and Cultural Affairs concerning this RFGP should reference the above title ''Business Management Curriculum Development and Faculty Training in Albania'' and reference number ECA/A/S/U–01–16.

FOR FURTHER INFORMATION CONTACT: Contact the Humphrey Fellowships and Institutional Linkages Branch, Office of Global Educational Programs, Bureau of Educational and Cultural Affairs; ECA/A/S/U, Room 349, SA–44; U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, phone (202) 619–5289, fax: (202) 401–1433, e-mail: affiliations@pd.state.gov to request a Solicitation Package.

The Solicitation Package contains detailed award criteria, required application forms, and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify the above reference number on all inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at http://exchanges.state.gov/education/rfgps. Please read all information before downloading.

Deadline of Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington D.C. time on Friday, April 20, 2001. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received on a later date will not be accepted. It is the responsibility of each applicant to ensure compliance with the deadline.

Approximate Program Dates

Grants should begin on or about September 1, 2001.

Duration: September 1, 2001–September 30, 2004.

Submissions

Applicants must follow all instructions in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Department of State, SA–44, Ref.: ECA/A/S/U–01–16, Program Management, ECA/EX/PM, Room 534, 301 4th Street, S.W., Washington, D.C. 20547.

All copies should include the documents specified under Tabs A through E in the ''Project Objectives, Goals, and Implementation'' (POGI) section of the Solicitation Package. The documents under Tab F of the POGI should be submitted with the original application and with one of the ten copies.

Proposals that do not follow RFGP requirements and the guidelines appearing in the POGI and PSI may be excluded from consideration due to technical ineligibility.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' Sections of the proposal on a 3.5″ diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs Office in Tirana for its review, with the goal of reducing time it takes to get the post's comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the

advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Affairs Section of the U.S. Embassy in Tirana. Eligible proposals will be subject to review for compliance with Federal and Bureau regulations and guidelines and will be forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

State Department officers in Washington, DC and overseas will use the criteria below to reach funding recommendations and decisions. Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank-ordered or weighted.

1. Broad Significance and Clarity of Institutional Objectives

Proposals should outline clearly formulated objectives that relate specifically to the needs of the participating institutions. Project objectives should also have significant but realistically anticipated ongoing consequences for the participating institutions and demonstrate how these consequences will also contribute to the transition in Albania to a more transparent, market-oriented economy.

2. Creativity and Feasibility of Strategy To Achieve Project Objectives

Strategies to achieve project objectives should demonstrate the feasibility of doing so during a three-year period by utilizing and reinforcing exchange activities realistically and with creativity.

3. Support of Diversity

Proposals should demonstrate substantive support of the Bureau's policy on diversity by explaining how issues of diversity relate to project objectives and how these issues will be addressed during project implementation. Proposals should also outline the institutional profile of each participating institution with regard to issues of diversity.

4. Institutional Commitment

Proposals should demonstrate significant understanding of the institutional needs of the Albanian partner institution(s) and of the U.S. institution's capacity to address these needs while also benefiting from its involvement with the Albanian partner(s). Proposals should also demonstrate a strong commitment, during and after the period of grant activity, to cooperate in the pursuit of institutional objectives.

5. Institutional Record/Ability

Proposals should demonstrate an institutional record of administering successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by the State Department's contracts officers. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. Reviewers will also consider the quality of exchange participants' academic credentials, skills, commitment and experience relative to the goals and activities of the project plan.

6. Project Evaluation

The proposal should outline a methodology for determining the degree to which a project meets its objectives, both while the project is underway and at its conclusion. The final project evaluation should include an external component and should provide observations about the project's influence within the participating institutions as well as their surrounding communities or societies.

7. Cost-Effectiveness

Administrative and program costs should be reasonable and appropriate with cost sharing provided as a reflection of the applicant's commitment to the project.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program cited above is provided through the Support for East European Democracy (SEED) Act of 1989.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: January 17, 2001.

Helena Kane Finn,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 01–2189 Filed 1–24–01; 8:45 am]

BILLING CODE 4710–05–U

DEPARTMENT OF STATE

[Public Notice 3558]

Benjamin A. Gilman International Scholarship Program; Conference for Bidders

SUMMARY: The State Department's Bureau of Educational and Cultural Affairs announces a Conference for Bidders, inviting for discussion organizations that are interested in submitting a Proposal to administer the Benjamin A. Gilman International Scholarship Program. The conference will take place at 2:00 p.m., February 6, 2001 at the following location: SA–44, 301 4th Street, SW, Washington, DC, 20547.

ADDITIONAL INFORMATION: Interested organizations should contact Amy Forest at (202) 619–5434 prior to February 5, 2001 to schedule their attendance at the Conference.

The Benjamin A. Gilman International Scholarship Program was announced in the **Federal Register**, Volume 66, Number 11, on January 17, 2001.

Dated: January 19, 2001.

Helena Kane Finn,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 01–2315 Filed 1–24–01; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 3559]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Junior Faculty Development Program

SUMMARY: The Office of Academic Exchange Programs/ European Programs Branch of the Bureau of Educational and Cultural Affairs announces an open competition for the *Junior Faculty Development Program* (JFDP). Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to place approximately 128 visiting faculty from Russia and the New Independent States of the former Soviet Union at U.S. universities in a one academic year (nine months) teacher training and curriculum development program. The grantee organization will support and oversee the activities of the faculty throughout their stay in the United States, including their undertaking a practical internship at the end of the academic program (an additional two months). In addition, the grantee organization will recruit and select candidates for the JFDP in the following countries: Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Turkmenistan and Uzbekistan.

Program Information

Overview

The Junior Faculty Development Program (JFDP) offers fellowships to approximately 128 university instructors from Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Ukraine and Uzbekistan. Selected through an open, merit-based competition, JFDP Fellows attend U.S. universities for one academic year to work with faculty mentors and to audit courses in order to develop new curricula and approaches to teaching in their fields of study. The JFDP encourages its Fellows to develop professional relationships with the American academic community, and to forge ties between their American colleagues and colleagues in their home countries, and to share their experiences and knowledge with American students and professors. Throughout their stay in the United States, JFDP Fellows attend conferences and seminars, and participate in two-month practical internships after completing the academic component of the program. The goals of the program are to allow U.S. scholars and scholars from the participating countries to exchange ideas on curriculum design and teaching, and to increase collaboration and cooperation between universities in the United States and former Soviet Union. Participation in the JFDP is restricted to university instructors from Russia and the NIS in the following fields of study: American studies, arts management, architecture & urban planning, business administration, cultural anthropology, economics, education administration, environmental studies, history, journalism, law, library science, linguistics, literature, philosophy, political science, psychology, public administration, public policy and sociology.

Programs must comply with J–1 Visa regulations. Subject to the availability of funds, it is anticipated that this grant will begin on or about July 1, 2001. Please refer to Solicitation Package for further information.

Budget Guidelines

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. The Bureau anticipates awarding one grant in the amount of $4,071,000 to support the program and administrative costs required to implement this program. The Bureau encourages applicants to provide maximum levels of cost sharing and funding from private sources in support of its programs. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Allowable costs for the program include the following:

(1) Overseas recruitment and selection of candidates

(2) Participant travel expenses, stipends, accident and sickness insurance, visa fees, professional development costs

(3) Orientations, participant conferences

(4) Host university fees

(5) Alumni and follow-on activities

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number *ECA/A/E/EUR–01–08.*

FOR FURTHER INFORMATION, CONTACT: The Office of Academic Exchanges, ECA/A/E/EUR, Room 246, U.S. Department of State, 301 4th Street, S.W., Washington, D.C. 20547, tel. (202) 205–0525, fax (202) 260–7985, exchanges@pd.state.gov to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Sheila Casey on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download A Solicitation Package via Internet: The entire Solicitation Package may be downloaded from the Bureau's website at http://exchanges.state.gov/education/RFGPs. Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5

p.m. Washington, D.C. time on Friday, March 30, 2001. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and five (5) copies of the application should be sent to:

U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/E/EUR–01–08, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs Sections at U.S. Embassies for review, with the goal of reducing the time it takes to obtain Embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy Sections overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program Development and Management:* The proposal should exhibit originality, substance, precision, innovation, and relevance to the Bureau's mission. Objectives should be reasonable, feasible and flexible. The proposal should clearly demonstrate how the grantee organization will meet the program's objectives. A detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. The agenda should adhere to the program overview and guidelines described above.

2. *Multiplier Effect/Impact:* The JFDP should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages. The proposal should include creative ways to involve program participants in U.S. communities.

3. *Support of Diversity:* The proposal should demonstrate the grantee organization's commitment to promoting the awareness and understanding of diversity through participant recruitment efforts, and through its selection of host universities.

4. *Institution's Record/Ability:* The proposal should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau/USIA grants as determined by the Bureau's Grants Division. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals.

5. *Follow-on and Alumni Activities:* The proposal should provide a plan for continued follow-on activity that insures that Bureau-supported programs are not isolated events, but have meaning and scope beyond the time the actual exchange took place.

6. *Project Evaluation:* The proposal should include a plan to evaluate the success of the JFDP, both during and after the program. The Bureau recommends that the proposal include a draft survey questionnaire or other technique, plus a description of methodologies that can be used to link outcomes to original project objectives. The grantee organization will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

7. *Cost-effectiveness and Cost Sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. The proposal should maximize cost sharing through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided in part through the FREEDOM Support Act of 1993.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau

representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: January 19, 2001.

Helena Kane Finn,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 01–2316 Filed 1–24–01; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice No. 3525]

Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet in the Department of State, 2201 ''C'' Street NW, Washington, D.C., February 12–13, 2001, in Conference Room 1105. Prior notification and a valid photo are mandatory for entrance into the building. One week before the meeting, members of the public planning to attend must notify Gloria Walker, Office of Historian (202–663–1124) providing relevant dates of birth, Social Security numbers, and telephone numbers.

The Committee will meet in open session from 1:30 p.m. through 4:30 p.m. on Monday, February 12, 2001, to discuss declassification and transfer of Department of State electronic records to the National Archives and Records Administration and the modernization of the Foreign Relations series. The remainder of the Committee's sessions from 9:00 a.m. until 1:00 p.m. on Tuesday, February 13, 2001, will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). The agenda calls for discussions of agency declassification decisions concerning the Foreign Relations series. These are matters not subject to public disclosure under 5 U.S.C. 552b(c)(1) and the public interest requires that such activities be withheld from disclosure.

Questions concerning the meeting should be directed to Marc J. Susser, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663–1127, (e-mail *history@state.gov*).

Dated: January 18, 2001.

Marc J. Susser,

Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State.

[FR Doc. 01–2313 Filed 1–24–01; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice No. 3557]

Bureau of Political-Military Affairs; Export of C–130 Spare Parts for Indonesia

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that requests for export and retransfer of C–130 spare parts to Indonesia pursuant to Section 38 of the Arms Export Control Act will be considered on a case-by-case basis.

EFFECTIVE DATE: August 25, 2000.

FOR FURTHER INFORMATION CONTACT: Mal Zerden, Senior Analyst, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State, 202–663-2714.

SUPPLEMENTARY INFORMATION: On October 14, 1999, a **Federal Register** Notice was published (Volume 64, Number 198) that suspended all licenses and approvals to export or otherwise transfer defense articles and defense services to Indonesia, except for certain exports related to commercial communication satellites and Y2K compliance activities not for the Indonesian military. The October 14, 1999 Federal Register Notice set forth a policy of denial for new export requests except those that met the exception.

This Notice expands the exception of the items permitted to be exported published October 14, 1999 to, on a case by case basis, C–130 spare parts including when for the Government of Indonesia.

Dated: December 5, 2000.

Eric D. Newsom,

Assistant Secretary, Bureau of Political-Military Affairs.

[FR Doc. 01–2314 Filed 1–24–01; 8:45 am]

BILLING CODE 4710–15–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Under the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The United States Trade Representative has determined that Kenya has adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents in connection with shipments of textile and apparel articles and has implemented and follows, or is making substantial progress toward implementing and following, the customs procedures required by the African Growth and Opportunity Act. Therefore, imports of eligible products from Kenya qualify for the enhanced trade benefits provided under the AGOA.

EFFECTIVE DATE: January 18, 2001.

FOR FURTHER INFORMATION CONTACT: Bethany Schwartz, Director for African Affairs, Office of the United States Trade Representative, (202) 395–9514.

SUPPLEMENTARY INFORMATION: The African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. No. 106–200) (AGOA) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries. The textile and apparel trade benefits provided by the AGOA are available to imports of eligible products from countries that the President designates as ''beneficiary sub-Saharan African countries,'' provided that these countries (1) have adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents, and (2) have implemented and follow, or are making substantial progress toward implementing and following, certain customs procedures that assist the Customs Service in verifying the origin of the products.

In Proclamation 7350 of October 2, 2000, the President designated 34 countries as ''beneficiary sub-Saharan African countries.'' Proclamation 7350 delegated to the United States Trade Representative (USTR) the authority to determine whether these countries have met the two requirements described above. The President directed the USTR to announce any such determinations in the **Federal Register** and to implement them through modifications of the Harmonized Tariff Schedule of the

United States (HTS). Based on actions that Kenya has taken, I have determined that Kenya has satisfied these two requirements.

The AGOA also directs the President to eliminate the existing quotas on textile and apparel articles imported into the United States from Kenya within 30 days after Kenya adopts an effective visa system to prevent unlawful transshipment of textile and apparel articles and the use of counterfeit documents relating to the importation of such articles into the United States. Proclamation 7350 delegated this responsibility to the USTR.

Accordingly, pursuant to the authority vested in the USTR by Proclamation 7350, the HTS is modified as provided in Proclamation 7350 and as specified in the Annex to this notice, effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after January 18, 2001. Importers claiming preferential tariff treatment under the AGOA for entries of textile and apparel articles should ensure that those entries meet the applicable visa requirements. (The visa requirements are described in a separate notice that is being published in the **Federal Register** concurrently with this notice.) By this notice, I direct the Customs Service to eliminate the existing quotas on textile and apparel articles imported into the United States from Kenya within 30 days of the effective date of this notice.

Charlene Barshefsky,

United States Trade Representative.

Annex

Pursuant to the authority provided in Proclamation 7350, the HTS is modified as follows:

1. The text of U.S. note 7 to subchapter II of chapter 98, as established by the annex to such Proclamation, is modified by inserting before it the paragraph designation ''(a)''. Such paragraph is modified by inserting at the end thereof the following new sentence and enumeration:

''The USTR has determined that the following countries have adopted an effective visa system and related procedures and have satisfied the customs requirements of the AGOA and, therefore, are to be afforded the tariff treatment provided for in this note: Kenya''

2. U.S. note 1 to subchapter XIX of chapter 98 of the HTS, as established by the annex to such Proclamation, is modified by adding at the end of the text of such note the following new sentence and enumeration:

''The USTR has determined that the following countries have adopted an effective visa system and related procedures and have satisfied the customs requirements of the AGOA and, therefore, are to be afforded the tariff treatment provided for in this note: Kenya''

3. U.S. note 2(d) to subchapter XIX of chapter 98 of the HTS, as established by the annex to such Proclamation, is modified by adding at the end of the text the following new sentence and enumeration:

''Products of the following countries qualifying as lesser developed beneficiary sub-Saharan African countries for purposes of such subheading, if described therein, shall be eligible to enter thereunder, *provided* that such countries are named in U.S. note 1 to this subchapter on the date of entry, or withdrawal from warehouse for consumption:

Republic of Benin
Republic of Cape Verde
Republic of Cameroon
Central African Republic
Republic of Chad
Republic of Congo
Republic of Djibouti
State of Eritrea
Ethiopia
Republic of Ghana
Republic of Guinea
Republic of Guinea-Bissau
Republic of Kenya
Kingdom of Lesotho
Republic of Madagascar
Republic of Malawi
Republic of Mali
Islamic Republic of Mauritania
Republic of Mozambique
Republic of Niger
Federal Republic of Nigeria
Republic of Rwanda
Democratic Republic of Sao Tomé and Principe
Republic of Senegal
Republic of Sierra Leone
United Republic of Tanzania
Republic of Uganda
Republic of Zambia''

[FR Doc. 01–2209 Filed 1–24–01; 8:45 am]

BILLING CODE 3190–01–U

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Visa Requirements Under the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Directive to the commissioner of customs.

SUMMARY: In the letter published below, the United States Trade Representative directs the Commissioner of Customs to require that importers provide an appropriate export visa from a beneficiary sub-Saharan African country when claiming preferential treatment for entries of textile and apparel products under the African Growth and Opportunity Act.

EFFECTIVE DATE: January 18, 2001.

FOR FURTHER INFORMATION CONTACT: Bethany Schwartz, Director for African Affairs, Office of the United States Trade Representative, (202) 395–9514.

SUPPLEMENTARY INFORMATION: The African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Public Law 106–200) (AGOA) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries. The textile and apparel trade benefits provided by the AGOA are available to imports of eligible products from countries that the President designates as ''beneficiary sub-Saharan African countries,'' provided that these countries (1) have adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents, and (2) have implemented and follow, or are making substantial progress toward implementing and following, certain customs procedures that assist the Customs Service in verifying the origin of the products.

In Proclamation 7350 of October 2, 2000, the President designated 34 countries as ''beneficiary sub-Saharan African countries.'' Proclamation 7350 delegated to the United States Trade Representative (USTR) the authority to determine whether these countries have met the two requirements described above. The President directed the USTR to announce any such determinations in the **Federal Register** and to implement them through modifications of the Harmonized Tariff Schedule of the United States (HTS).

By Executive Order (January 17, 2001), the President delegated to the USTR the authority to direct the Commissioner of Customs to take such actions as may be necessary to ensure that textile and apparel articles described in section 112(b) of the AGOA (19 U.S.C. 3721(b)) that are entered, or withdrawn from warehouse, for consumption are accompanied by an appropriate export visa, if the preferential treatment described in section 112(a) of the AGOA (19 U.S.C. 3721(a)) is claimed with respect to such articles.

In the letter published below, the USTR directs the Commissioner of Customs to require that importers provide an appropriate export visa from a beneficiary sub-Saharan African country when claiming preferential treatment under section 112(a) of the AGOA for eligible textile and apparel products that are entered, or withdrawn from warehouse, for consumption. This requirement is intended to ensure the effectiveness of the visa systems that beneficiary sub-Saharan African countries have adopted. A facsimile of

the export visa stamp for each beneficiary sub-Saharan African country that the USTR has determined to have adopted an effective visa system and related procedures is available for public inspection in the USTR public reading room.

Importers claiming preferential tariff treatment under the AGOA for entries of textile and apparel articles should ensure that those entries meet the visa requirements set forth in the letter to the Commissioner published below.

Charlene Barshefsky,

United States Trade Representative.

Executive Office of the President

The United States Trade Representative, Washington, DC 20508

January 18, 2001.

Commissioner of Customs

U.S. Department of the Treasury, Ronald Reagan Building, 1300 Pennsylvania Avenue NW., Washington, DC 20229

Dear Commissioner: Pursuant to Sections 112(a) and 113(a)(1) of the African Growth and Opportunity Act (Title I of Pub. L. No. 106–200) (''AGOA'') (19 U.S.C. 3721(a) and 3722(a)(1)), the bilateral Visa Arrangements that have been or will be entered into with designated beneficiary sub-Saharan African countries, and the Executive Order signed by the President on January 17, 2001 regarding the implementation of the AGOA and the United States-Caribbean Basin Trade Partnership Act, you are directed to require importers claiming preferential treatment for textile and apparel articles under section 112(a) of the AGOA to provide an appropriate export visa issued by the country of origin of the articles. This requirement is effective with respect to eligible textile and apparel articles of a beneficiary sub-Saharan African country that are entered, or withdrawn from warehouse, for consumption on or after the date that the United States Trade Representative determines that such beneficiary sub-Saharan African country has adopted an effective visa system and related procedures and has implemented and follows, or is making substantial progress toward implementing and following, the customs procedures required by the AGOA.

A shipment shall be visaed by stamping an original circular visa, in blue ink only, on the front of the original commercial invoice. The original visa shall not be stamped on duplicate copies of the invoice. The original of the invoice with the original visa stamp shall be required to obtain preferential tariff treatment under section 112(a) of the AGOA. Duplicates of the invoice and/or visa may not be used for this purpose.

Each visa stamp shall include the following information:

1. Visa Number. The visa stamp shall be in a nine digit-letter format beginning with one numeric digit for the designated grouping (1 to 9), as described below. This number is to be followed by the two-character alpha code specified by the International Organization for Standardization (ISO) for the designated beneficiary sub-Saharan African country, followed by a six-digit numerical serial number identifying the shipment.

Grouping 1—Apparel articles assembled in one or more beneficiary sub-Saharan African countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States.

Grouping 2—Apparel articles assembled in one or more beneficiary sub-Saharan African countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States if, after such assembly, the articles would have qualified for entry under subheading 9802.00.80 of the Harmonized Tariff Schedule of the United States (''HTS'') but for the fact that the articles were embroidered or subject to stone-washing, enzyme-washing, acid washing, perma-pressing, oven baking, bleaching, garment-dyeing, screen printing, or other similar processes.

Grouping 3—Apparel articles cut in one or more beneficiary sub-Saharan African countries from fabric wholly formed in the United States from yarns wholly formed in the United States if such articles are assembled in one or more beneficiary sub-Saharan African countries with thread formed in the United States.

Grouping 4—Apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric wholly formed in one or more beneficiary sub-Saharan African countries from yarn originating either in the United States or one or more beneficiary sub-Saharan African countries.

Grouping 5—Apparel articles wholly assembled in one or more lesser developed beneficiary sub-Saharan African countries regardless of the country of origin of the fabric used to make such articles.

Grouping 6—Sweaters in chief weight of cashmere, knit to shape in one or more beneficiary sub-Saharan African countries and classifiable under subheading 6110.10 of the HTS.

Grouping 7—Sweaters, 50 percent or more by weight of wool measuring 18.5 microns in diameter or finer, knit-to-shape in one or more beneficiary sub-Saharan African countries.

Grouping 8—Apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric or yarn not formed in the United States or any beneficiary sub-Saharan African country, if (1) apparel articles of such fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabric or yarn, under Annex 401 to the North American Free Trade Agreement, or (2) the President proclaims that apparel articles of such fabric or yarn may be accorded preferential tariff treatment under the AGOA.

Grouping 9—Handmade, handloomed, or folklore articles (qualifying articles will be determined following bilateral consultations).

2. Date of Issuance. The date of issuance shall be the day, month, and year on which the visa was signed by an authorized government official.

3. Authorized Signature. The original signature of an authorized official of the beneficiary sub-Saharan African country or his designate.

4. Correct Grouping and Quantity. The correct grouping, the total quantity, and the unit of quantity in the shipment shall be provided within the visa stamp.

Quantities must be stated in whole numbers. Decimals or fractions shall not be accepted. If the quantity indicated on the visa is less than that of the shipment, only the quantity shown on the visa is eligible for preferential tariff treatment under section 112(a) of the AGOA. If the quantity indicated on the visa is more than that of the shipment, only the quantity of the shipment is eligible for preferential tariff treatment under section 112(a) of the AGOA. Any overage cannot be applied to any other shipment.

A visa shall not be accepted and preferential tariff treatment under section 112(a) of the AGOA shall not be permitted if the visa number, date of issuance, authorized signature, correct grouping, quantity or the unit of quantity is missing, incorrect, illegible or has been crossed out or altered in any way. If the visa is not acceptable, a new visa must be obtained from an authorized official of the beneficiary sub-Saharan African country, or his designate, before preferential tariff treatment under section 112(a) of the AGOA can be claimed. Waivers are not permitted. If the visaed invoice is deemed invalid, the Customs Service will not return the original document after entry, but will provide a certified copy of that visaed invoice for use in

obtaining a new correct original visaed invoice.

The product groupings described above are in summary form. Interested persons should refer to section 112(b) of the AGOA for a complete description of the textile and apparel products for which preferential treatment may be claimed under section 112(a) of the AGOA.

This letter will be published in the **Federal Register**.

Sincerely,
Charlene Barshefsky.

[FR Doc. 01–2210 Filed 1–24–01; 8:45 am]

BILLING CODE 3190–01–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Docket Management System (DMS)

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: The Office of Aviation Enforcement and Proceedings issues this notice to remind air carriers, foreign air carriers and travel agents of the requirements for full fare disclosure in connection with sales of air transportation and foreign air transportation on Internet websites. The notice specifically reminds the industry that pursuant to 14 CFR 399.84, as elaborated in Department industry notices and enforcement case precedent, so-called ''fuel surcharges'' must be included in the fare held out to consumers via the Internet. Failure to comply with these requirements violates the cited rule and constitutes a deceptive trade practice and an unfair method of competition in violation of 49 U.S.C. 41712.

FOR FURTHER INFORMATION CONTACT: Dayton Lehman, Deputy Assistant General Counsel, or Nicholas Lowry, Office of Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 7th St., SW., Washington, DC 20590. Tel. No. (202) 366–9342.

Prohibition on Deceptive Practices in the Marketing of Airfares to the Public Using the Internet; Notice

This is to remind all airlines, travel agents, and other sellers of air transportation that use the Internet to market air transportation fares to the public to ensure that the public is not misled about the fares being offered, and to point out a particular problem involving so-called ''fuel surcharges'' that has come to our attention regarding the holding out of fares over the Internet.

During the past several years, we have disseminated a number of notices to the industry addressing a variety of fare advertising issues. One of those letters, dated March 18, 1996, noted the increased use of the Internet in the sale of air transportation and specifically addressed the fact that, just as is the case with the marketing of airfares via print media, marketers of airfares using the Internet must comply with Department regulations and enforcement precedent with respect to their Internet sites. This includes not only adherence to the Department's full-fare advertising rule (14 CFR 399.84), but also rules and enforcement case precedent in other areas concerning deceptive practices, such as disclosure of code-share relationships and critical purchase and travel restrictions. That letter, as well as other industry letters regarding price advertising, may be reviewed by going to the Internet site of the Department's Office of the General Counsel at *http://www.dot.gov/ost/ogc/index.html.*

Despite this earlier advice, we have discovered a serious problem with price advertising on the websites of a number of major airlines and large Internet travel agencies. Under 14 CFR 399.84, fare advertisements by air carriers or their agents must state the full fare charged the consumer. The intent of the rule is to ensure that members of the public are given adequate fare information on which to base their airline travel purchasing decisions. Failure to state the full fare in advertisements, in addition to violating the rule, constitutes an unfair and deceptive trade practice and an unfair method of competition in violation of 49 U.S.C. 41712.

The Department has provided interpretive guidance on the rule and, through a number of enforcement-related consent orders, has recognized certain exceptions to the ''full fare'' advertising standard. In accordance with this enforcement case precedent, the Department has allowed taxes and fees collected by carriers and other sellers of air transportation, such as passenger facility charges (PFCs) and departure taxes, to be stated separately in fare advertisements so long as the charges are levied by a government entity, are not *ad valorem* in nature, are collected on a per-passenger basis, and their existence and amount are clearly indicated in the advertisement so that the consumer can determine the full fare to be paid.

On several websites that we have examined, fare disclosure differs according to the search path selected by the consumer. For searches in which the consumer specifies a date of travel in the search request, we have found that the sites make the disclosures required by section 399.84. With respect to searches where the consumer indicates no preference for travel dates but selects a flexible search, however, we have found fare displays with disclosures that are not adequate. More specifically, this latter type of search path produces a fare display in which a so-called ''fuel surcharge'' is mentioned either (1) in a separate screen, under ''more rules,'' or (2) at the bottom of the display as a footnote, together with other applicable charges. The footnote merely states that a fuel surcharge may apply, and the consumer cannot find out whether it in fact does apply to a particular purchase until he or she goes to the booking page. Since such ''fuel surcharges'' are not government fees imposed on a per-passenger basis, their exclusion from the advertised fare and separate display (even where the amount is stated) does not fit within the exceptions to the full-fare advertising rule recognized in the Department's enforcement case precedent. Where these ''fuel surcharges'' (or similar carrier-imposed surcharges) are listed separately and are not included in the basic fare presented to the public, this is deceptive and violates 14 CFR 399.84. Such listings in other media have led to enforcement action in the past.

Airlines, travel agents, and other sellers of air transportation, in order to comply with the Department's fare advertising rule, must ensure that any ticket price displayed on their site includes all components required by the Department's full fare rule. Non-government surcharges and fees, such as fuel surcharges and service fees, as well as *ad valorem* excise taxes, must be included in the stated fare. Other charges that under Department case precedent may be legitimately excluded from the base fare, such as PFCs, international departure taxes collected by a carrier or its agent, and other per-person taxes or fees imposed by a government entity, may be noted on a website in a prominent link, proximate to the stated fare, that takes the viewer to the bottom of the screen, or to a separate screen, where the nature and amount of such fees are displayed.

As noted above, we are aware of a number of sites that do not comply with the Department's fare advertising requirements. We have already taken or intend to take steps, including enforcement action if necessary, to ensure that consumers are not misled and that all Internet sites conform to the

requirements of the Department's fare advertising rule. We urge all airlines, travel agents, and other sellers of air transportation to ensure that their websites conform to the requirements of the Department's advertising rules and enforcement case precedent. We also caution airlines that they may be held responsible for the actions of their lawful agents, particularly where the carrier's creation of so-called ''surcharges'' makes violations by their agents more likely and carriers have not taken appropriate steps to halt such practices.

Questions concerning this notice or the applicability of the Department's fare advertising rules may be addressed to the Office of Aviation Enforcement and Proceedings.

Thank you for your cooperation on this important issue.

Dated: January 18, 2001.

Samuel Podberesky,

Assistant General Counsel for Aviation Enforcement and Proceedings.

[FR Doc. 01–2259 Filed 1–24–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Special Committee 196; Night Vision Goggle (NVG) Appliances & Equipment

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–196 meeting to be held February 13–14, 2001, starting at 8:00 a.m. each day. The meeting will be held at Anaheim Marriott, 1700 W. Convention Way, Anaheim, CA 92802.

The agenda will include: (1) Welcome and Introductory Remarks; (2) Agenda Overview; (3) Review/Approval of Previous Meeting Minutes; (4) Action Item Status Review; (5) Overview of SC–196 Working Group (WG) Activities; (6) WG–5, Training Issues—Action Item Status Review; (7) Night Vision Imaging System (NVIS) Lighting and NVG Continued Airworthiness—Minimum Operational Performance Standards (MOPS) Development; (8) Open Issue List Review; (9) Other Business; (10) Establish Agenda for Next Meeting; (11) Date and Location of Next Meeting; (12) Working Group Chairpersons meeting; (13) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 18, 2001.

Janice L. Peters,

Designated Official.

[FR Doc. 01–2238 Filed 1–24–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Agency Information Collection Activities: Submission for OMB Review

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) for review and comment. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on November 6, 2000 (65 FR 66578). We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by February 26, 2001.

ADDRESSES: You may send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burdens could be minimized, including the use of electronic technology, without reducing the quality of the collected information.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Epstein, 202–366–2157, Safety Core Business Unit, Federal Highway Administration, Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001. Office hours are from 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2125–0025 (Expiration Date: March 31, 2001)

Title: Highway Safety Improvement Programs.

Abstract: Under sections 130(g) and 152(g) of Title 23, United States Code, each State is required to report annually to the Secretary of Transportation on the progress being made in implementing the Highway Safety Improvement Programs (Highway-Rail Grade Crossings and Hazard Elimination) and on the effectiveness of these programs. This information provides FHWA with a means for monitoring the effectiveness of these programs. It may also be used by the Congress for determining funding levels for the Highway Safety Improvement Programs and for modifying these programs. States are also required under sections 130(d) and 152(a) of Title 23 to conduct and systematically maintain surveys to determine highway-rail grade crossings in need of improvements and to identify hazardous highway locations, sections, and elements. These surveys are the basis for establishing priorities for corrective measures, for scheduling improvements, and for evaluating the effectiveness of improvements. The States collect safety information by surveying highway-rail grade crossings and public roads for potential safety hazards. In addition, motor vehicle crash data, traffic volume data, and other highway inventory data are used by the States to identify hazards and determine which hazards would be the most cost-effective to improve.

Respondents: 52 State Transportation Departments, including the District of Columbia and Puerto Rico.

Frequency: Annually.

Estimated Total Annual Burden: 10,400 hours. It is estimated that each State, the District of Columbia and Puerto Rico spends 200 hours to provide this information to the FHWA.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: January 19, 2001.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. 01–2200 Filed 1–24–01; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Agency Information Collection Activities: Submission for OMB Review

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) for review and comment. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on November 6, 2000 (65 FR 66578). We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by February 26, 2001.

ADDRESSES: You may send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burdens could be minimized, including the use of electronic technology, without reducing the quality of the collected information.

FOR FURTHER INFORMATION CONTACT: Ms. Claretta Duren, (202) 366–4636, Infrastructure Core Business Unit, Federal Highway Administration, 400 7th Street, SW., Washington, DC 20590–0001. Office hours are from 7:30 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2125–0010 (Expiration Date: March 31, 2001).

Title: Bid Price Data.

Abstract: Information collected on Form FHWA–45, Bid Price Data, is needed for the FHWA to monitor changes in purchasing power of the Federal-aid construction dollar. FHWA follows these trends so that changes in highway construction prices can be measured and funding level recommendations to Congress can be justified. The Federal share of the cost of certain projects constructed by the States in advance of regular apportionments is adjusted based on the bid price index (Title 23 United States Code 115). Form FHWA–45 is prepared for Federal-aid highway construction contracts greater than $0.5 million in the 50 States plus Washington, DC, and Puerto Rico. Data is reported on six major items of highway construction, together with the total materials and labor costs of the project, taken from the bid tabulation of construction items submitted by the lowest or winning bidder to the State Transportation Department. The State Transportation Departments furnish copies of the bid tabulation to the FHWA that uses the data to produce the national FHWA bid price index and related statistics.

Respondents: 52 State Transportation Departments, including the District of Columbia and Puerto Rico.

Frequency: The data is collected by the States and submitted to FHWA one time, within two weeks after the project has been awarded.

Estimated Total Annual Burden: 975 hours. There are approximately 1,300 annual projects that require about 37 of the State DOTs to complete the form. It takes an average of 45 minutes for each form.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: January 19, 2001.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. 01–2201 Filed 1–24–01; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–8699]

Notice of Receipt of Petition for Decision That Nonconforming 2001 Harley Davidson FX, FL, and XL Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2001 Harley Davidson FX, FL, and XL motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2001 Harley Davidson FX, FL, and XL motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is February 26, 2001.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., S.W, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Milwaukee Motorcycle Imports, Inc. of Milwaukee, Wisconsin (''MMI'') (Registered Importer 99–192) has petitioned NHTSA to decide whether non-U.S. certified 2001 Harley Davidson FX, FL, and XL motorcycles are eligible for importation into the United States. The vehicles which MMI believes are substantially similar are 2001 Harley Davidson FX, FL, and XL motorcycles that were manufactured for sale in the United States and certified by their

manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2001 Harley Davidson FX, FL, and XL motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

MMI submitted information with its petition intended to demonstrate that non-U.S. certified 2001 Harley Davidson FX, FL, and XL motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2001 Harley Davidson FX, FL, and XL motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses,* 111 *Rearview Mirrors,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* and 122 *Motorcycle Brake Systems.*

The petitioner also states that vehicle identification number plates that meet the requirements of 49 CFR part 565 are already affixed to non-U.S. certified 2001 Harley Davidson, FX, FL, and XL motorcycles.

Petitioner additionally contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated below:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S. model headlamp assemblies which incorporate headlamps that are certified to meet the standard; (b) replacement of all stop lamp and directional signal bulbs with bulbs that are certified to meet the standard; (c) replacement of all lenses with lenses that are certified to meet the standard.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* Installation of a tire information label.

Standard No. 123 *Motorcycle Controls and Displays:* installation of a U.S. model speedometer calibrated in miles per hour and a U.S. model odometer that measures distance traveled in miles.

The petitioner states that when the vehicle has been brought into conformity with all applicable Federal motor vehicle safety standards, a certification label that meets the requirements of 49 CFR Part 567 will be affixed to the front of the motorcycle frame.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 18, 2001.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 01–2186 Filed 1–24–01; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub No. 4)]

Railroad Cost Recovery Procedures—Productivity Adjustment

AGENCY: Surface Transportation Board.

ACTION: Proposed adoption of a railroad cost recovery procedures productivity adjustment.

SUMMARY: The Surface Transportation Board proposes to adopt 1.028 (2.8%) as the measure of average change in railroad productivity for the 1995–1999 (5-year) period. The current value of 3.5% was developed for the 1994 to 1998 period.

DATES: Comments are due by February 9, 2001.

Effective Date: The proposed productivity adjustment is effective 30 days after the date of service.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 290 (Sub-No. 4) to: Office of the Secretary, Case Control Branch, 1925 K Street, NW, Washington, DC 20423–0001. Parties should submit all pleading and attachments on a 3.5-inch diskette in WordPerfect 6.0 or 6.1 compatible format.

FOR FURTHER INFORMATION CONTACT: H. Jeff Warren, (202) 565–1533. Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our web site www.stb.dot.gov. The decision may also be purchased by writing, calling, or visiting in person: DA● TO● DA OFFICE SOLUTIONS, Room 405, 1925 K Street, NW, Washington, DC 20423–0001, telephone (202) 466–5530. [Assistance for the hearing impaired is available through FIRS: 1–800–877–8339]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: January 19, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 01–2311 Filed 1–24–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 11, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 26, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1534.

Regulation Project Number: REG–252936–96 Final.

Type of Review: Extension.

Title: Rewards for Information Relating to Violations of Internal Revenue Laws.

Description: The regulations relate to rewards for information that results in

the detection and punishment of violations of Internal Revenue Laws.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 10,000.

Estimated Burden Hours Per Respondent: 3 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 30,000 hours.

OMB Number: 1545–1703.

Form Number: IRS Forms 12813, 12814, 12815 and 12816.

Type of Review: Extension.

Title: Return Post Card for the Community Based Outlet Participants.

Description: These post card forms are to be used by the community based outlet participants (i.e., grocery stores, credit unions, copy centers, and corporations) to order tax products. The post card will be returned to the Western Area Distribution Center for processing and order fulfillment.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 18,000.

Estimated Burden Hours Per Respondent:

Form	Response time
Form 12813 ...	5 minutes
Form 12814 ...	5 minutes
Form 12815 ...	5 minutes
Form 12816 ...	5 minutes

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 01–2224 Filed 1–24–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 18, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 26, 2001 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0159.

Form Number: IRS Form 3520.

Type of Review: Extension.

Title: Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts.

Description: Form 3520 is filed by U.S. persons who create a foreign trust, transfer property to a foreign trust, receive distribution from a foreign trust, or receive a large gift from a foreign source. IRS uses the form to identity the U.S. persons who may have transactions that may trigger a taxable event in the future.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers:

Recordkeeping—42 hr., 34 min.

Learning about the law or the form–4 hr., 38 min.

Preparing the form–6 hr., 28 min.

Sending the form to the IRS–16 min.

Estimated Burden Hours Per Respondent/Recordkeeper: 2,000.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 107,880 hours.

OMB Number: 1545–0732.

Regulation Project Number: LR–236–81 Final (TD 8251).

Type of Review: Extension.

Title: Credit for Increasing Research Activity.

Description: This information is necessary to comply with requirements of Code section 41 (section 44F before change by TRA 1984 and section 30 before change by TRA 1986) which describes the situations in which a taxpayer is entitled to an income tax credit for increases in research activity.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 250.

Estimated Burden Hours Per Respondent: 15 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 63 hours.

OMB Number: 1545–0889.

Form Number: IRS Forms 8275 and 8275–R.

Type of Review: Extension.

Title: Disclosure Statement (8275); and Regulation Disclosure Statement (8275–R).

Description: Internal Revenue Code (IRC) section 6662 imposes accuracy related penalties for substantial understatement of tax liability or negligence or disregard of rules and regulations. Sections. Section 6694 imposes similar penalties on return preparers. Regulations sections 1.662–4(e) and (f) provide for reduction of these penalties if adequate disclosure of the tax treatment is made on Form 8275 or, if the position is contrary to a regulation on Form 8275–R.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms.

Estimated Number of Respondents/Recordkeepers: 595,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—3 hr., 35 min.

Learning about the law or the form—1 hr., 0 min.

Preparing and sending the form to the IRS—1 hr., 6 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 5,575,000 hours.

OMB Number: 1545–1224.

Regulation Project Number: INTL–112–88 Final.

Type of Review: Extension.

Title: Allocation and Apportionment of Deduction for State Income Taxes.

Description: This regulation provides guidance on when and how the deduction for state income taxes is to be allocated and apportioned between gross income from sources within and without the United States in order to determine the amount of taxable income from those sources. The reporting requirements in the regulation affect those taxpayers claiming foreign tax credits who elect to use an alternative method from that described in the regulation to allocate and apportion deductions for state income taxes.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1,000 hours.

OMB Number: 1545–1587.

Form Number: None.

Type of Review: Extension.

Title: 2001 Electronic Tax Administration Attitudinal Tracking Study.

Description: The survey is being conducted to measure changes to baseline measures of public knowledge and acceptance of Electronic Tax Administration programs and to provide the IRS with quantitative data and analysis to assist with making policy decisions on who to expand the programs.

Respondents: Individuals or households.

Estimated Number of Respondents: 1,100.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 275 hours.

OMB Number: 1545–1590.

Regulation Project Number: REG–251698–96 Final.

Type of Review: Extension.

Title: Subchapter S Subsidiaries.

Description: The IRS will use the information provided by taxpayers to determine whether a corporation should be treated as an S corporation, a C corporation, or an entity that is disregarded for federal tax purposes. The collection of information covered in the regulation is necessary for a taxpayer to obtain, retain, or terminate S corporation treatment.

Respondents: Business or other for-profit, Individuals or households, Farms.

Estimated Number of Respondents/Recordkeepers: 10,660.

Estimated Burden Hours Per Respondent/Recordkeepers: 57 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 10,110 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 01–2225 Filed 1–24–01; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Thursday,
January 25, 2001

Part II

Department of Transportation

Federal Transit Administration

Announcement of Competitively Selected Fiscal Year 2001 Projects for the Job Access and Reverse Commute Competitive Grant Program; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Announcement of Competitively Selected Fiscal Year 2001 Projects for the Job Access and Reverse Commute Competitive Grant Program

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: The U.S. Department of Transportation (DOT), Federal Transit Administration (FTA), announces the selection of competitively submitted proposals for Fiscal Year (FY) 2001 funding under the Job Access and Reverse Commute Grants program funding, authorized under section 3037 of the Transportation Equity Act for the 21st Century (TEA–21) Pub. L. 105–178. The Notice also provides information on how to proceed with the submission of a final application. Projects were competitively selected from projects submitted to FTA in (FY) 2000. Funding limitations in (FY) 2000 prevented FTA from funding or fully funding a number of qualified projects in that fiscal year.

This announcement is available on the DOT's FTA website at [*http://www.fta.dot.gov/wtw/*].

DATES: All applications for selected projects must be completed and filed with the appropriate FTA Regional Offices by April 1, 2001. If there are extenuating circumstances that prevent filing an electronic application by that time, please contact the appropriate FTA regional administrator for a filing extension. Failure to file may mean that funding selection decisions may be rescinded. FTA regional offices will provide guidance on how to file electronic applications.

FOR FURTHER INFORMATION CONTACT: The appropriate FTA Regional Administrator for application-specific information and issues (Appendix A). For general program information, refer to the Job Access and Reverse Commute Competitive Grants Notice, 65 Fed. Reg. 13210 *et seq.*, March 10, 2000. A TDD is available at 1–800–877–8339 (TDD/FIRS). The notice can also be accessed through FTA's web site, [*www.fta.dot.gov/wtw*].

Background

In (FY) 2001, the Congress provided $99,780,000 for the Job Access and Reverse Commute Grants program. Congress designated $75,240,000 of this funding for projects in specified states, localities and, in some cases, to specific organizations. These designations are listed in Appendix B.

FTA has decided that the remaining (FY) 2001 selections would be chosen from meritorious proposals submitted in (FY) 2000 that were only partially funded or not funded because of funding limitations in (FY) 2000. The (FY) 2000 selections were announced in the **Federal Register** on October 16, 2000 and may be found on the FTA website, [*http://www.fta.dot.gov/wtw/*].

FTA has made this decision because project proposals submitted in (FY) 2000 far exceeded FTA's funding resources available for major urbanized areas with populations greater than 200,000 and for small urban and rural areas with populations of less than 50,000. Additionally, FTA wishes to continue timely support of meritorious projects previously funded by FTA. Selecting proposals at this time rather than issuing a new (FY) 2001 solicitation will significantly speed project implementation. To afford a full opportunity to all interested parties to participate in the Job Access and Reverse Commute Grants program, FTA intends to issue a new solicitation for (FY) 2002 funding in the near future. This will permit FTA to announce proposal selections at the beginning of (FY) 2002 rather than at the end of the year as has occurred in the past. We believe this will improve program timing and make program announcements more predictable in the future.

SUPPLEMENTARY INFORMATION: The Job Access and Reverse Commute Grants program is intended to establish an area-wide regional planning approach to job access challenges. This is accomplished through a coordinated transportation/human services planning activity developed as part of or in conjunction with the established transportation planning process conducted by MPOS in metropolitan areas and under state guidance in rural and small urban areas. Projects derived from this process support the implementation of a variety of transportation services that may be needed to connect welfare recipients to jobs and related employment activities. All projects funded under the Job Access and Reverse Commute Grants program must be derived from this area-wide planning process.

The Job Access and Reverse Commute Grants program has two major goals: to provide transportation services in urban, suburban and rural areas to assist welfare recipients and low income individuals in gaining access to employment opportunities; and to increase collaboration among transportation providers, human service agencies, employers, metropolitan planning organizations (MPOs), states, and affected communities and individuals.

The following table lists the successful competitive applicants for fiscal year 2001, by state:

FISCAL YEAR 2001 COMPETITIVE PROJECTS

State	Locality	Applicant (Sub-applicant)	FTA Funds
Alabama	Montgomery	City of Montgomery	$250,000
California	Oakland	AC Transit	130,108
California	Napa	Napa County Transportation Planning Agency	62,500
California	Sacramento	CALTRANS	500,000
California	Sacramento	Sacramento County Public Works Agency	96,395
California	San Diego	San Diego Association of Governments	800,000
California	San Francisco Metro Area	Metropolitan Transportation Commission	316,500
California	Ukiah	Mendocino Transit Authority	79,368
California	Woodland	YOLOBUS	137,440
Colorado	Breckenridge	Summit County (Summit Stage)	75,000
Colorado	Denver	Regional Transportation District	100,000
Connecticut	New Britain, Bristol, Plainville	Connecticut Department of Transportation (North Central Region).	857,786
Connecticut	Bridgeport	Connecticut Department of Transportation (Southwest Region).	309,623
Connecticut	Bridgeport, New Haven	Connecticut Department of Transportation (South Central Region).	473,000

FISCAL YEAR 2001 COMPETITIVE PROJECTS—Continued

State	Locality	Applicant (Sub-applicant)	FTA Funds
Connecticut	Groton, Mystic, Montville, New London, Norwich, Pawcatuck, Foxwoods.	Connecticut Department of Transportation (Eastern Region)	127,714
Delaware	Sussex County	Delaware Department of Transportation	95,000
Delaware	Wilmington Metro Area	Delaware Department of Transportation	432,500
Florida	Clearwater—Tampa Metro Area.	Pinellas County MPO (Pinellas Suncoast Transit Authority, Pasco County).	2,400,000
Florida	Jacksonville	Jacksonville Transportation Authority	930,000
Georgia	Atlanta	Georgia Department of Transportation (Hall County: rural)	150,000
Illinois	Chester	Interagency Transportation Consortium	93,868
Illinois	Chicago	Chicago Area Transportation Study (Chicago Transit Authority).	136,314
Illinois	Chicago	Chicago Area Transportation Study (Metra)	92,934
Illinois	Chicago Metro Area	Chicago Area Transportation Study (PACE)	362,445
Illinois	Karnak	Massac County (Shawnee Development Council)	53,600
Illinois	Rock Island	Rock Island County Metropolitan Mass Transit	316,368
Indiana	South Bend	South Bend Public Transportation Group	245,919
Kentucky	Louisville	Transit Authority of River City	1,097,400
Massachusetts	Boston	Massachusetts Bay Transportation Authority	601,900
Massachusetts	Haverhill	Merrimack Valley Regional Transit Authority	500,000
Michigan	Barry	Michigan Department of Transportation (Barry County)	44,000
Michigan	Benzie County—Leelanau	Michigan Department of Transportation (Benzie County—Leelanau).	45,000
Michigan	Berrien, Cass, Van Buren	Michigan Department of Transportation (Berrien—Cass—Van Buren).	150,000
Michigan	Charlevoix, Emmet	Michigan Department of Transportation (Charlevoix—Emmet).	17,500
Michigan	Detroit	Southeastern Michigan Council of Governments (City of Detroit Department of Transportation).	200,000
Michigan	Eaton	Michigan Department of Transportation (Eaton County)	58,939
Michigan	Ionia County	Michigan DOT (Ionia County)	81,570
Michigan	Lake Mason, Oceana Counties.	Michigan Department of Transportation (Lake—Mason—Oceana Counties).	150,000
Michigan	Lansing	Capital Area Transportation Authority	26,000
Michigan	Midland	Michigan Department of Transportation (Midland County)	71,281
Nebraska	Buffalo County	Nebraska Department of Roads (Buffalo County Community).	131,925
New York	New York City	MTA/Human Resource Administration	477,568
New York	New York City	Non-Profit Assistance Corp.	929,040
New York	New York City	Phipps Community Development Corp	760,284
New York	New York City	Project Renewal	400,577
New York	New York City Metro—Westchester.	Westchester County	55,000
New York	New York City Metro—Westchester.	Westchester County Department of Transportation (Westchester Community Opportunity Program).	175,320
North Dakota	Fort Yates	Sitting Bull College	79,208
Ohio	Akron	Metro Regional Transit Authority	33,378
Ohio	Lorain	Lorain County Transit	300,000
Ohio	Muskingum	Ohio Department of Transportation (Muskingum Transit Authority).	142,582
Ohio	Pike County	Ohio Department of Transportation (Pike County Community Action Committee).	36,921
Ohio	Youngstown	Western Reserve Transit Authority	50,000
Oregon	Baker City	Oregon Department of Transportation (Community Connection of Baker County).	28,600
Oregon	LaGrande	Oregon Department of Transportation (Community Connection of Union County).	16,500
Oregon	Redmond	Oregon Department of Transportation (Central Oregon Intergovernmental Council).	110,000
Pennsylvania	Indiana	Indiana County Transit Authority	51,580
Tennessee	Knoxville	Knoxville-Knox County Community Action Committee	200,000
Tennessee	Memphis	Memphis Area Transit Authority	275,000
Texas	Austin, Colorado Counties	Texas Department of Transportation (Colorado Valley)	150,000
Texas	Dallas-Fort Worth	North Central Texas Council of Governments	1,500,000
Texas	El Paso	City of El Paso	720,000
Texas	Fort Worth	Fort Worth Transit	240,000
Texas	Guadalupe, Comal Counties	Texas Department of Transportation (Alamo Area Council of Governments).	150,000
Texas	Hunt, Rockwell, Dallas Counties.	Texas Department of Transportation (The Connection)	200,000

FISCAL YEAR 2001 COMPETITIVE PROJECTS—Continued

State	Locality	Applicant (Sub-applicant)	FTA Funds
Texas	Robstown, Petronila, Banquete, Driscoll.	Texas Department of Transportation (Institute for Urban Development).	60,000
Virginia	Richmond	Greater Richmond Transit Company	1,000,000
Washington	Seattle	Puget Sound Regional Council	2,780,000

Pre-Award Authority

FTA is providing pre-award spending authority for this program which permits successful applicants to incur costs on eligible projects without prejudice to possible Federal participation in the cost of the project or projects. However, in exercising pre-award authority, successful applicants must comply with all Federal requirements. Failure to do so will render a project ineligible for FTA financial assistance. Successful applicants must consult the appropriate regional office regarding the eligibility of the project for future FTA funds or the applicability of the conditions and Federal requirements. Pre-award spending authority is provided to projects selected and announced by this notice effective October 23, 2000. Congressionally designated projects are likewise granted pre-award authority effective October 23, 2000. The Department of Transportation (DOT) and Related Agencies Appropriations Act for Fiscal Year 2001 (FY 2001 DOT Appropriations Act) (Pub. L. 106–346) was signed into law by President Clinton on October 23, 2000.

Certifications and Assurances Requirements

In accordance with 49 U.S.C. 5323(n), certifications and assurances have been compiled for the various FTA programs. Before FTA may award a Federal grant, each successful applicant must provide to FTA all certifications and assurances required by Federal laws and regulations applicable to itself and its project. A state providing certifications and assurances on behalf of its prospective subrecipients should obtain sufficient documentation from those subrecipients needed to provide informed certifications and assurances. A successful applicant for funds under the Job Access and Reverse Commute Grants program will be required to comply with the requirements of the FTA's Annual Certifications and Assurances. It is important that each successful applicant be familiar with all certifications and assurances as they are a prerequisite for receiving FTA financial assistance. All successful applicants are advised to read the entire text of those Certifications and Assurances to be confident of their responsibilities and commitments.

The signature page accompanying the Certifications and Assurances contains the current fiscal year's certifications and, when properly attested to and submitted to FTA, assures FTA that the applicant intends to comply with the requirements for the specific program involved. FTA will not award any federal assistance until the successful applicant provides assurance of compliance by selecting Category I on the signature page and all other categories applicable to itself and its project.

FTA's (FY) 2001 Certifications and Assurances Notice is expected to be published in the **Federal Register** on or about January 18, 2001. They are also available on the World Wide Web at [*http://www.fta.dot.gov/library/legal/ca.htm*]. Copies may also be obtained from FTA regional offices. Applicants that need further assistance should contact the appropriate FTA regional office (see Appendix A) for further information.

U.S. Department of Labor Certification

As a condition of release of Federal funds for this program, Federal Transit law requires that applicants must comply with 49 U.S.C. 5333(b), administered under the Department of Labor's (DOL) Mass Transit Employee Protection Program. These employee protections include the preservation of rights, privileges, and benefits under existing collective bargaining agreements, the continuation of collective bargaining rights, the protection of individual employees against a worsening of their positions related to employment, assurances of employment to employees of acquired mass transportation systems, priority of reemployment, and paid training or retraining. Generally, DOL processes the employee protection certification required under Section 5333(b) in accordance with the procedural guidelines published at 29 CFR 215.3. However, for the Job Access and Reverse Commute Grants program, DOL has proposed to apply appropriate protections without referral for Job Access and Reverse Commute Grant applications serving populations under 200,000 and to utilize the guidelines for Job Access and Reverse Commute Grant applications serving populations of 200,000 or more. FTA will submit the grant application to DOL for certification.

Grant funds will NOT be released without DOL certification. Where there are questions regarding the DOL certification process and/or information needed by DOL to obtain a labor certification, successful applicants must contact the appropriate FTA regional office (See Appendix A). Additionally, guidance is provided on the World Wide Web at [*http://www.fta.dot.gov/wtw/labor.htm*].

Completed Application

All successful applicants must now proceed to complete their grant application by fully documenting all the Job Access and Reverse Commute Grants program requirements that were not fully documented when the original grant proposal was submitted. FTA regional offices will advise applicants by letter of any remaining outstanding items, as well as stipulations specific to the Job Access and Reverse Commute Grant projects that need to be addressed and/or fully documented prior to grant approval.

Successful applicants will be notified in writing by the FTA regional offices with further guidance.

Issued on: January 16, 2001.

Nuria I. Fernandez,

Acting Administrator.

Appendix A—FTA Regional Offices

Region I

Maine, New Hampshire, Vermont, Connecticut, Rhode Island, and Massachusetts. Richard Doyle, FTA Regional Administrator, Volpe National Transportation Systems Center, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093, (617) 494–2055

Region II

New York, New Jersey, and Virgin Islands. Letitia Thompson, FTA Regional Administrator, One Bowling Green, Room 429, New York, NY 10004–1415, (212) 668–2170

Region III

Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and District of Columbia. Susan Schruth, FTA Regional Administrator, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, (215) 656–7100

Region IV

Kentucky, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, and Puerto Rico. Jerry Franklin, FTA Regional Administrator, 61 Forsyth Street, S.W., Suite 17T50, Atlanta, GA 30303, (404) 562–3500

Region V

Minnesota, Wisconsin, Michigan, Illinois, Indiana, and Ohio. Joel Ettinger, FTA Regional Administrator, 200 West Adams Street, Suite 2410, Chicago, IL 60606–5232, (312) 353–2789

Region VI

Arkansas, Louisiana, Oklahoma, Texas, and New Mexico. Robert Patrick, FTA Regional Administrator, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, (817) 978–0550

Region VII

Missouri, Iowa, Kansas, and Nebraska. Mokhtee Ahmad, FTA Regional Administrator, 901 Locust Street, Suite 404, Kansas City, MO 64106, (816) 329–3920

Region VIII

Colorado, Utah, Wyoming, Montana, North Dakota, South Dakota. Lee Waddleton, FTA Regional Administrator, Columbine Place, 216 16th Street, Suite 650, Denver, CO 80202–5120, (303) 844–3242

Region IX

California, Hawaii, Guam, Arizona, Nevada, American Samoa, and the Northern Mariana Islands. Leslie Rogers, FTA Regional Administrator, 201 Mission Street, Suite 2210, San Francisco, CA 94105–1839, (415) 744–3133

Region X

Idaho, Oregon, Washington, and Alaska. Helen Knoll, FTA Regional Administrator, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174–1002, (206) 220–7954

APPENDIX B—(FY) 2001 PROJECTS DESIGNATED BY CONGRESS

State	FY 2001 funds allocated	Location/description
Alabama	$249,450	Mobile, Alabama.
Alabama	1,995,600	Troy State University, Alabama—Rosa Parks Center.
Alabama	1,496,700	State of Alabama.
Alabama	848,130	Easter Seals West Alabama work transition programs.
Alaska	59,868	Mantanuska-Susitna borough, M.A.S.C.O.T, Alaska.
Alaska	399,120	Sitka, Alaska transit expansion program.
Alaska	498,900	Central Kenai Peninsula public transportation.
Arizona	997,800	Tucson, Arizona.
Arkansas	3,991,200	State of Arkansas.
California	498,900	Alameda and Contra-Costa counties, California.
California	2,993,400	Fresno, Tulare, Kings and Kern Counties, California.
California	3,492,300	Los Angeles, California.
California	149,670	Monterey, California.
California	997,800	Sacramento, California.
California	274,395	San Francisco, California.
California	498,900	Santa Clara County, California.
Colorado	74,835	Archuleta County, Colorado.
District of Columbia.	997,800	District of Columbia.
Florida	1,995,600	Broward County, Florida.
Florida	598,680	Hillsborough County, Florida.
Georgia	498,900	Chatham, Georgia.
Illinois	997,800	Chicago, Illinois.
Illinois	498,900	DuPage County, Illinois.
Illinois	149,670	Southern Illinois RIDES.
Illinois	997,800	State of Illinois.
Indiana	997,800	Indianapolis, Indiana.
Iowa	1,596,480	Des Moines, Dubuque, Sioux City, Delaware and Jackson Counties, Iowa.
Kansas	997,800	Kansas City, Kansas.
Maine	498,900	State of Maine.
Maine	898,020	York County, Maine.
Maryland	2,394,720	State of Maryland.
Massachusetts	399,120	Athol/Orange Community Transportation, Massachusetts.
Massachusetts	349,230	Western Massachusetts.
Michigan	249,450	North Oakland County, Michigan.
Missouri	748,350	OATS job access programs, Missouri.
Missouri	149,670	Meramec Community Transit programs, Missouri.
Nevada	997,800	Washoe County, Nevada.
New Hampshire	339,252	State of New Hampshire.
New Mexico	249,450	Doña Ana County, New Mexico.
New Mexico	259,428	Las Cruces, New Mexico.
New Mexico	1,995,600	State of New Mexico.
New York	249,450	Capital District Authority, New York.
New York	249,450	Broome County Transit, New York.
New York	498,900	Buffalo, New York.
New York	498,900	Nassau County, New York.
New York	299,340	Rochester, New York.
New York	444,021	Suffolk County, New York.
New York	199,560	Sullivan County, New York.
New York	299,340	Tompkins County, New York.
New York	199,560	Ulster County, New York.

APPENDIX B—(FY) 2001 PROJECTS DESIGNATED BY CONGRESS—Continued

State	FY 2001 funds allocated	Location/description
Ohio	748,350	Central Ohio.
Oklahoma	4,490,100	State of Oklahoma.
Oregon	1,835,952	Portland, Oregon.
Pennsylvania	399,120	Greater Erie Community Action Committee, Pennsylvania.
Pennsylvania	2,993,400	SEPTA, Philadelphia, Pennsylvania.
Pennsylvania	1,995,600	Pittsburgh Port Authority of Allegheny County, Pennsylvania.
Rhode Island	99,780	Rhode Island community food bank transportation.
Rhode Island	997,800	Rhode Island Public Transit Authority.
Tennessee	1,995,600	State of Tennessee.
Texas	548,790	Corpus Christi RTA, Texas.
Vermont	1,496,700	State of Vermont.
Virginia	498,900	Tysons Corner/Dulles Corridor, Virginia.
Virginia	4,490,100	Commonwealth of Virginia.
Washington	1,995,600	State of Washington.
West Virginia	1,496,700	State of West Virginia.
Wisconsin	4,689,660	State of Wisconsin.
	1,995,600	Ways to Work family loan program, Southeastern U.S.

[FR Doc. 01–2188 Filed 1–24–01; 8:45 am]

BILLING CODE 4910–57–P

Federal Register

Thursday,
January 25, 2001

Part III

The President

Executive Order 13197—Governmentwide Accountability for Merit System Principles; Workforce Information

Proclamation 7402—Establishment of the Governors Island National Monument

Federal Register
Vol. 66, No. 17
Thursday, January 25, 2001

Presidential Documents

Title 3—

The President

Executive Order 13197 of January 18, 2001

Governmentwide Accountability for Merit System Principles; Workforce Information

In an era of decentralization of Federal human resources management, it is increasingly important to ensure that merit system principles are applied consistently across the Federal Government and that the Executive branch has the ability to collect information about its workforce. The President and the public need to be assured that Federal agencies are monitoring the exercise of all human resources management authorities that have been delegated to them.

Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 1104(a)(1), 2301(c), and 3302 of title 5, United States Code, it is hereby ordered as follows:

Section 1. Civil Service Rule V (5 CFR Part 5) is amended in section 5.2 by striking subsection (d).

Sec. 2. Civil Service Rule VII (5 CFR Part 7) is amended —

(a) by striking section 7.2;

(b) by redesignating sections 7.3 and 7.4 as sections 7.2 and 7.3, respectively; and

(c) by amending the table of sections to read as follows:

''Sec.

7.1 Discretion in filling vacancies.

7.2 Reemployment rights.

7.3 Citizenship.''

Sec. 3. Two new Civil Service Rules are added at the end of Civil Service Rule VIII to read as follows:

''PART 9—WORKFORCE INFORMATION (RULE IX)

Sec.

9.1 Definition.

9.2 Reporting workforce information.

§ 9.1 Definition.

As used in this rule, 'Executive agency' means an Executive department, a Government corporation, and an independent establishment, as those terms are defined in chapter 1 of title 5, United States Code, but does not include the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Imagery and Mapping Agency, the National Security Agency, and, as determined by the President, any Executive agency or unit within an Executive agency which has as its principal function the conduct of foreign intelligence or counterintelligence activities.

§ 9.2 Reporting workforce information.

The Director of the Office of Personnel Management may require all Executive agencies to report information relating to civilian employees, including positions and employees in the competitive, excepted, and Senior Executive

services, in a manner and at times prescribed by the Director. The Director shall establish standards for workforce information submissions under this section, and agencies shall ensure that their submissions meet these standards consistent with the Privacy Act. The Director may exempt from this section a specific agency or group of employees when the Director determines that an exemption is appropriate because of special circumstances.

PART 10—AGENCY ACCOUNTABILITY SYSTEMS;

OPM AUTHORITY TO REVIEW PERSONNEL MANAGEMENT PROGRAMS (RULE X)

Sec.

10.1 Definitions.

10.2 Accountability systems.

10.3 OPM authority to review personnel management programs and practices.

§ 10.1 Definitions.

For purposes of this rule —

(a) 'agency' means an Executive agency as defined in Rule IX, but does not include a Government corporation or the General Accounting Office; and

(b) 'merit system principles' means the principles for Federal personnel management that are set forth in section 2301(b) of title 5, United States Code.

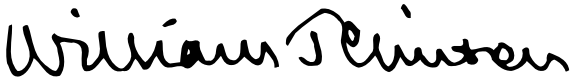
§ 10.2. Accountability systems.

The Director of the Office of Personnel Management may require an agency to establish and maintain a system of accountability for merit system principles that (1) sets standards for applying the merit system principles, (2) measures the agency's effectiveness in meeting these standards, and (3) corrects any deficiencies in meeting these standards.

§ 10.3. OPM authority to review personnel management

programs and practices.

The Office of Personnel Management may review the human resources management programs and practices of any agency and report to the head of the agency and the President on the effectiveness of these programs and practices, including whether they are consistent with the merit system principles.''



THE WHITE HOUSE,
January 18, 2001.

[FR Doc. 01–2398
Filed 1–24–01; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7402 of January 19, 2001

Establishment of the Governors Island National Monument

By the President of the United States of America

A Proclamation

On the north tip of Governors Island, between the confluence of the Hudson and Eastern Rivers, Governors Island National Monument served as an outpost to protect New York City from sea attack. The monument, part of a larger 1985 National Historic Landmark District designation, contains two important historical objects, Castle William and Fort Jay. Between 1806 and 1811, these fortifications were constructed as part of the First and Second American Systems of Coastal Fortification. Castle William and Fort Jay represent two of the finest types of defensive structures in use from the Renaissance to the American Civil War. The monument also played important roles in the War of 1812, the American Civil War, and World Wars I and II.

The fortifications in the monument were built on the most strategic defensive positions on the island. Fort Jay, constructed between 1806 and 1809, is on the highest point of the island from which its glacis originally sloped down to the waterfront on all sides. Castle William, constructed between 1807 and 1811, occupies a rocky promontory as close as possible to the harbor channels and served as the most important strategic defensive point in the entrance to the New York Harbor. The monument also includes a number of associated historical buildings constructed as part of the garrison post in the early part of the 19th century.

Governors Island has been managed by the U.S. Army and the U.S. Coast Guard over the past 200 years. With the site no longer required for military or Coast Guard purposes, it provides an excellent opportunity for the public to observe and understand the harbor history, its defense, and its ecology.

Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

WHEREAS it appears that it would be in the public interest to reserve such lands as the Governors Island National Monument:

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), do proclaim that there are hereby set apart and reserved as the Governors Island National Monument for the purpose of protecting the objects identified above, all lands and interests in lands owned or controlled by the United States within the boundaries of the area described on the map entitled ''Governors Islands National Monument'' attached to and forming a part of this proclamation. The Federal land and interests in land reserved consist of approximately 20 acres, which is the smallest area compatible with the proper care and management of the objects to be protected.

Subject to existing law, including Public Law No. 105-33, Title IX, section 9101(a), 111 Stat. 670 (Aug. 5, 1997), all Federal lands and interests in lands within the boundaries of this monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or leasing or other disposition under the public land laws, including but not limited to withdrawal from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral and geothermal leasing.

The Secretary of the Interior (''Secretary''), acting through the National Park Service, shall manage the monument in consultation with the Administrator of General Services, consistent with the purposes and provisions of this proclamation. For the purpose of preserving, restoring, and enhancing the public visitation and appreciation of the monument, the Secretary, acting through the National Park Service, shall prepare, in consultation with the Administrator of General Services, a management plan for the monument within 3 years of this date. Further, to the extent authorized by law, the Secretary, acting through the National Park Service, shall promulgate, in consultation with the Administrator of General Services, regulations for the proper care and management of the objects identified above.

The establishment of this monument is subject to valid existing rights.

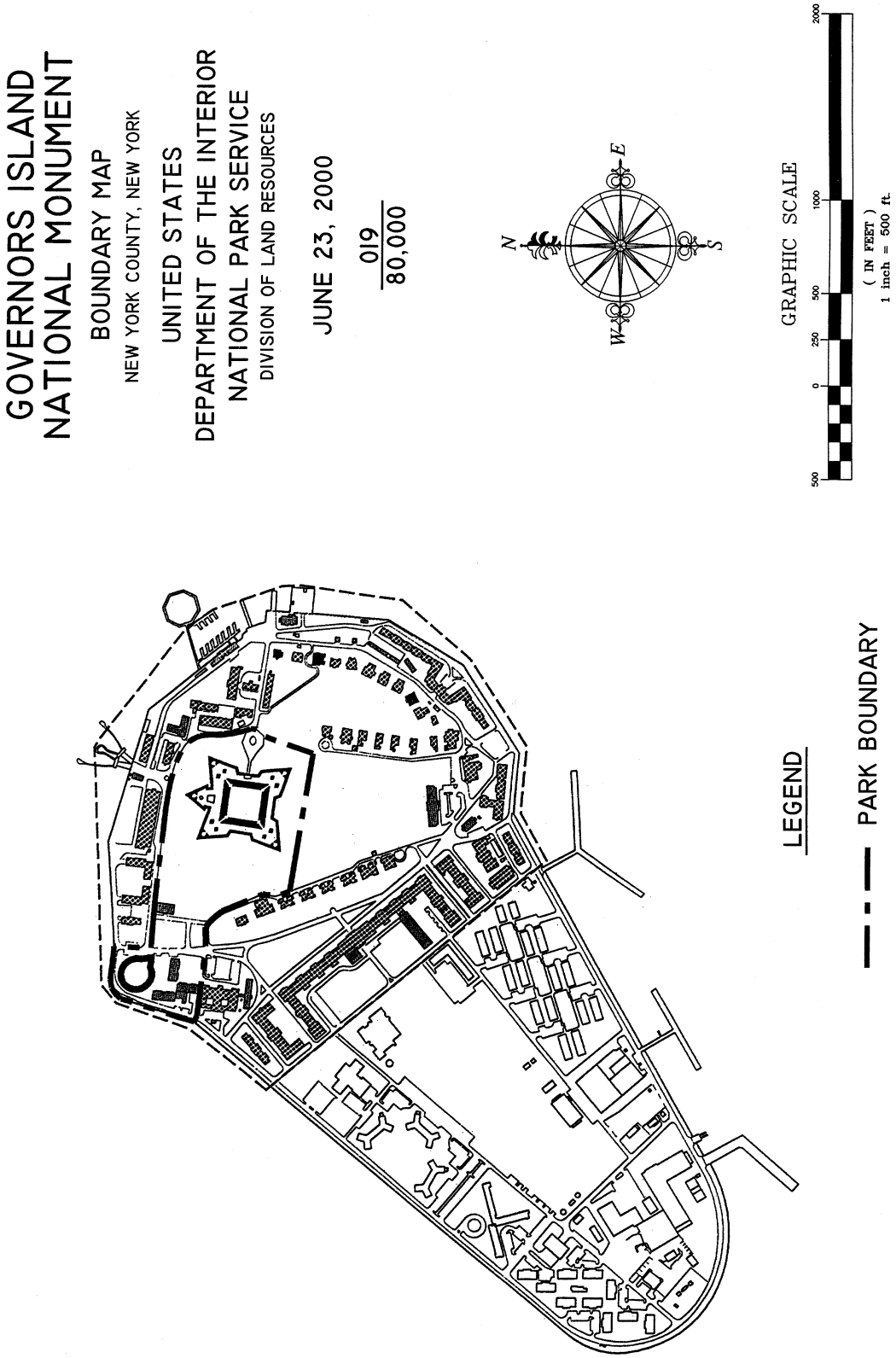
Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of January, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-fifth.

William J. Clinton

Billing code 3195–01–P



[FR Doc. 01–2399

Filed 1–24–01; 8:45 am]

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Federal Register

Thursday,
January 25, 2001

Part IV

The President

Proclamation 7403—National Day of Prayer and Thanksgiving, 2001

Federal Register
Vol. 66, No. 17
Thursday, January 25, 2001

Presidential Documents

Title 3—

The President

Proclamation 7403 of January 20, 2001

National Day of Prayer and Thanksgiving, 2001

By the President of the United States of America

A Proclamation

Nearly 200 years ago, on March 4, 1801, our young Nation celebrated an important milestone in its history, the first transfer of power between political parties, as Thomas Jefferson took the oath of office as President. On this bicentennial of that event, we pause to remember and give thanks to Almighty God for our unbroken heritage of democracy, the peaceful transition of power, and the perseverance of our Government through the challenges of war and peace, want and prosperity, discord and harmony.

President Jefferson also wrote, "The God who gave us life gave us liberty at the same time" and asked, "Can the liberties of a nation be secure when we have removed a conviction that these liberties are of God?" Indeed, it is appropriate to mark this occasion by remembering the words of President Jefferson and the examples of Americans of the past and today who in times of both joy and need turn to Almighty God in prayer. Times of plenty, like times of crisis, are tests of American character. Today, I seek God's guidance and His blessings on our land and all our people. Knowing that I cannot succeed in this task without the favor of God and the prayers of the people, I ask all Americans to join with me in prayer and thanksgiving.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by the authority vested in me by the Constitution and laws of the United States, do hereby proclaim January 21, 2001, a National Day of Prayer and Thanksgiving and call upon the citizens of our Nation to gather together in homes and places of worship to pray alone and together and offer thanksgiving to God for all the blessings of this great and good land. On this day, I call upon Americans to recall all that unites us. Let us become a nation rich not only in material wealth but in ideals—rich in justice and compassion and family love and moral courage. I ask Americans to bow our heads in humility before our Heavenly Father, a God who calls us not to judge our neighbors, but to love them, to ask His guidance upon our Nation and its leaders in every level of government.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of January, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-fifth.

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JANUARY 25, 2001

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Practice and procedure:

FERC Form No. 6 and related Uniform Systems of Accounts; revisions and electronic filing; published 12-26-00

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Arizona; published 12-26-00

District of Columbia; published 12-26-00

FEDERAL RESERVE SYSTEM

Practice and procedure:

Equal opportunity rules; conformance with Federal sector; published 1-25-01

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; published 12-21-00

Class C airspace; published 11-22-00

Class D airspace; published 11-13-00

Class D and Class E4 airspace; published 11-9-00

Class E airspace; published 9-18-00

Class E airspace; correction; published 12-27-00

Class E3 and E4 airspace; published 11-13-00

Federal airways; published 11-9-00

IFR altitudes; published 12-18-00

Jet routes; published 11-20-00

Jet routes; correction; published 1-22-01

Procedural rules:

VOR Federal airways; published 11-22-00

Restricted areas; published 10-5-00

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TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Criminal penalty safe harbor provision; published 12-26-00

Defective or non-compliant tires; sale or lease; reporting requirement; published 12-26-00

TREASURY DEPARTMENT

Customs Service

Articles conditionally free, subject to reduced rates, etc.:

Wool products; limited refund of duties; published 12-26-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Animal welfare:

Dogs intended for hunting, breeding, or security purposes; dealer licensing and inspection requirements; comments due by 2-2-01; published 12-4-00

Interstate transportation of animal products (quarantine):

Brucellosis in cattle—

State and area classifications; comments due by 2-2-01; published 12-4-00

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:

On-line antimicrobial reprocessing of pre-chill poultry carcasses; performance standards; comments due by 1-30-01; published 12-1-00

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control:

Interstate ozone transport reduction—

Nitrogen oxides budget trading program; Section 126 petitions; findings of significant contribution and rulemaking; comments due by 1-30-01; published 12-21-00

State operating permits programs—-

Washington; comments due by 2-1-01; published 1-2-01

Washington; comments due by 2-1-01; published 1-2-01

Hazardous waste program authorizations:

Florida; comments due by 2-1-01; published 1-2-01

Louisiana; comments due by 2-1-01; published 1-2-01

Oklahoma; comments due by 2-1-01; published 1-2-01

Superfund program:

National oil and hazardous substances contingency plan—

National priorities list update; comments due by 1-30-01; published 12-1-00

Toxic chemical release reporting; community-right-to-know—

Diisononyl phthalate category; comments due by 2-2-01; published 11-21-00

FEDERAL COMMUNICATIONS COMMISSION

Radio and television broadcasting:

Personal attack and political editorial rules; repeal or modification; comments due by 1-31-01; published 10-11-00

Radio stations; table of assignments:

North Carolina and Virginia; comments due by 1-29-01; published 12-19-00

FEDERAL DEPOSIT INSURANCE CORPORATION

Non-complex institutions; simplified capital framework; comments due by 2-1-01; published 11-3-00

FEDERAL RESERVE SYSTEM

Bank holding companies and change in bank control (Regulation Y):

Financial subsidiaries; comments due by 2-2-01; published 1-3-01

Non-complex institutions; simplified capital framework; comments due by 2-1-01; published 11-3-00

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HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicare:

Inpatient rehabilitation facilities; prospectiive payment system; comments due by 2-1-01; published 12-27-00

HEALTH AND HUMAN SERVICES DEPARTMENT

Protection of research misconduct whistleblowers; Public Health Service standards; comments due by 1-29-01; published 11-28-00

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Tidewater goby; northern populations; comments due by 2-2-01; published 1-3-01

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

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West Virginia; comments due by 2-2-01; published 1-3-01

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Immigration:

Deportation proceedings; relief for certain aliens; comments due by 1-29-01; published 11-30-00

JUSTICE DEPARTMENT

Parole Commission

Federal prisoners; paroling and releasing, etc.:

District of Columbia Code—

Supervision of released prisoners serving terms of supervised release; comments due by 1-30-01; published 11-24-00

TRANSPORTATION DEPARTMENT

Coast Guard

Pollution, etc.:

Marine casualties; reporting requirements; comments due by 1-31-01; published 11-2-00

Ports and waterways safety:

Gulf of Mexico; shipping safety fairways and anchorage areas; comments due by 1-29-01; published 12-28-00

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

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Life-limited aircraft parts; safe disposition; comments due by 1-30-01; published 10-2-00

Airworthiness directives:

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Restricted areas; comments due by 2-1-01; published 12-18-00

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Importation of vehicles and equipment subject to Federal safety, bumper, and theft prevention standards:

Vehicles originally manufactured for sale in Canada; importation expedited; comments due by 2-1-01; published 1-2-01

Motor vehicle safety standards:

Tire labeling improvement to assist in identifying tires that are being recalled; comments due by 1-30-01; published 12-1-00

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Hazardous materials transportation:

Registration fees; temporary reduction; comments due by 2-2-01; published 12-7-00

TREASURY DEPARTMENT

Comptroller of the Currency

Non-complex institutions; simplified capital framework; comments due by 2-1-01; published 11-3-00

TREASURY DEPARTMENT

Internal Revenue Service

Procedure and administration:

Subsidiary corporations; entity classification, elective changes (check the box regulations); comments due by 2-2-01; published 1-17-01

TREASURY DEPARTMENT

Financial subsidiaries; comments due by 2-2-01; published 1-3-01

TREASURY DEPARTMENT

Thrift Supervision Office

Non-complex institutions; simplified capital framework; comments due by 2-1-01; published 11-3-00

LIST OF PUBLIC LAWS

Note: The List of Public Laws for the 106th Congress, Second Session has been completed and will resume when bills are enacted into public law during the next session of Congress.

A cumulative List of Public Laws was published in Part II of the **Federal Register** on January 16, 2001.

Public Laws Electronic Notification Service (PENS)

Note: PENS will resume service when bills are enacted into law during the next session of Congress.

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