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U.S. GOVERNMENT
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Federal Register

5–18–01 Friday
Vol. 66 No. 97 May 18, 2001
Pages 27591–27824

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WHERE: Office of the Federal Register
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Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Rules and Regulations

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–347–AD; Amendment 39–12231; AD 2001–10–05]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–100, –200, and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–100, –200, and –300 series airplanes, that requires removing certain foam filters from the cabin ducting installation located below the dado panels on the left- and right-hand sides of the airplane. The actions specified by this AD are intended to prevent an increased risk of spreading a fire or failure of the cabin to pressurize adequately if certain foam filters are installed. This action is intended to address the identified unsafe condition.

DATES: Effective June 22, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 22, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7505; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–100, –200, and –300 series airplanes was published in the **Federal Register** on February 14, 2001 (66 FR 10232). That action proposed to require removing certain foam filters from the cabin ducting installation located below the dado panels on the left-and right- hand sides of the airplane.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 38 Bombardier Model DHC–8–100, –200, and –300 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $18,240, or $480 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–10–05 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–12231. Docket 2000–NM–347–AD.

Applicability: Model DHC–8–100, –200, and –300 series airplanes, certificated in any category, having serial numbers 408, 413, 434 through 463 inclusive, 465 through 489 inclusive, 491 through 505 inclusive, and 507.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an increased risk of spreading a fire, or failure of the cabin to pressurize adequately if certain foam filters are installed, accomplish the following:

Removal of Foam Filters

(a) Within 4 months after the effective date of this AD, remove the foam filters from the cabin ducting installation located below the dado panels on the left- and right-hand sides of the airplane (including verifying that the foam filters are installed behind the grille assemblies, inspecting the grille assemblies on both the port and starboard sides and along the entire length of the interior of the airplane, removing all foam filters and ensuring that no pieces remain, and reinstalling the grille assemblies by locating the fasteners and pressing each with a quarter-turn), per Bombardier Aerospace Repair Drawing RD8–21–23, Issue 2, dated December 16, 1999.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Bombardier Aerospace Repair Drawing RD8–21–23, Issue 2, dated December 16, 1999, which contains the following list of effective pages:

Page No.	Revision Level shown on page	Date shown on page
1	2	Dec. 16, 1999.
2	1	Dec. 18, 1998.
3	2	Dec. 16, 1999.

(Only page 1 contains the issue date of the drawing; no other page contains this information.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–2000–25, dated August 28, 2000.

Effective Date

(e) This amendment becomes effective on June 22, 2001.

Issued in Renton, Washington, on May 8, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–12007 Filed 5–17–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–05–AD; Amendment 39–12233; AD 2001–10–07]

RIN 2120–AA64

Airworthiness Directives; General Electric Co. CF6–80C2 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to General Electric Co. (GE) CF6–80C2 turbofan engines with certain stage 1 high pressure turbine (HPT) rotor disks installed. This amendment requires initial and repetitive inspections of certain HPT rotor disks for cracks in the bottom of the dovetail slot. This amendment is prompted by a report of an uncontained failure of an engine during a high-power ground run for maintenance. The actions specified by this AD are intended to detect cracks in the bottoms of the dovetail slots that could propagate to failure of the disk and cause an uncontained engine failure.

DATES: Effective date June 18, 2001. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 18, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ann Mollica, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7740, fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to General Electric Co. (GE) CF6–80C2 turbofan engines with certain stage 1 HPT rotor disks installed was published in the **Federal Register** on March 12, 2001 (66 FR 14348). That action proposed to detect cracks in the bottoms of the dovetail slots that could propagate to failure of the disk and cause an uncontained engine failure.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Include Alert Service Bulletin Revision 1

One commenter states that Table 1 should reference GE Alert Service Bulletin (ASB) CF6–80C2 72–A1024, Revision 1, dated November 3, 2000, as well as the original ASB issue.

The FAA agrees. The inspection requirements in ASB Revision 1 are the equivalent of the inspection requirements of original issue ASB CF6–80C2 72–A1024, dated October 13, 2000. Reference to ASB CF6–80C2 72–

A1024, Revision 1 has been added to the final rule.

Change Economic Impact To Reflect Labor Cost for Engines That Are Not Due for HPT Piece-Part Exposure

Three commenters request that the economic impact include labor costs for engines in the shop, that would otherwise not require HPT piece-part exposure. The commenters state that not all engine shop visits (ESV's) (scheduled or unscheduled) require complete disassembly of the HPT rotor. One commenter states that their inventory has 77 HPT rotor stage 1 disks that will require the inspection proposed in the rule over the next year, and an additional 22 units that will require 24 hours of labor to complete piece-part exposure of the HPT rotor that would otherwise have remained assembled during the shop visit. Another commenter estimated it would cost an additional $22,000 per year to complete the additional disassembly required to perform the inspections.

The FAA agrees. After considering the information presented by commenters, the FAA revised the subject work hours in the labor cost impact information. The FAA estimates that approximately 75% of all engines introduced into a shop each year will have the HPT at piece-part level. The remaining 25% would require additional work scope to obtain HPT rotor piece-part exposure. The economic impact is revised to include this additional cost.

Change Economic Impact To Reflect Parts and Labor Costs Per Year, Due to ''Check & Repair'' Engines

One commenter requests that the economic impact include parts and labor costs per year, for ''Check & Repair'' engines that would be upgraded to heavy work scopes due to the ''Next Shop Visit'' provision of the proposed rule. The commenter states that engines, termed as ''Check & Repair'' engines, which is on-average eight engines per year, would have to be upgraded to heavy work scopes due to the ''Next Shop Visit'' provision of the proposed rule. The commenter states that this is an additional $2,000,000 in parts and labor costs per year. The commenter does not provide a breakdown of the total cost, but suggests that the additional exemptions requested to the definition of ESV would minimize the exposure to ''Check & Repair'' increased work scope.

The FAA partially agrees. The FAA's interpretation of a ''Check and Repair'' engine is one that is introduced into a shop to address a known problem, with a limited work scope. The commenter did not provide the breakdown in the stated cost for these engines. The FAA has already included two exemptions to the definition of ESV in the notice of proposed rulemaking (NPRM) to lessen the economic impact of these maintenance actions. Any additional exemptions would result in an unacceptable level of safety. Therefore, the FAA made no changes to the rule with respect to this request. However, the economic impact has been revised to include the cost of the additional work scope required by approximately 25% of the engines affected by this AD, that would not have completed HPT rotor piece-part disassembly otherwise, during their ESV.

Change Economic Impact To Include Disk Replacement Cost

One commenter states that the economic impact in the NPRM did not include the $283,480 cost of a replacement disk when a disk is found unserviceable.

The FAA disagrees. The economic impact section of the NPRM did, in fact, include the cost of a replacement disk, assuming an annual projected rate of disks found unserviceable during the inspection program.

Clarify Inspection Requirements for Disks With Zero Cycles-Since-New (CSN), at Time of Inspection Using GE ASB CF6–80C2 72–A1024

One commenter requests that the inspection requirements for disks with zero CSN at the time of inspection and using ASB CF6–80C2 72–A1024, be clarified. The commenter states the NPRM is unclear, but did not supply any supporting data.

The FAA partially agrees. ASB CF6–80C2 72–A1024 was issued as an interim step for engines undergoing HPT overhaul during the development of, and prior to, the implementation of the eddy current inspection (ECI), as introduced in ASB CF6–80C2 72–A1026. Since ASB CF6–80C2 72–A1024 was issued for shop use during HPT overhaul, the FAA expects there are no disks with zero CSN that were inspected per ASB CF6–80C2 72-A1024. The FAA does not consider it necessary to identify disks with zero CSN, in particular with respect to inspection in accordance with ASB CF6–80C2 72–A1024. However, to help clarify disk inspection requirements, the FAA has changed the inspection requirement of Table 1, row three, to exclude inspection of disks with zero CSN. Furthermore, the intent of the inspections in both ASB CF6–80C2 72–A1024 and ASB CF6–80C2 72–A1026 is to detect cracks in the bottoms of the dovetail slots that have grown during engine service. The propagation occurs during accumulation of disk cycles. Potential cracks have not propagated in unused disks, therefore, inspections of unused disks do not mitigate the risk.

Clarify Inspection Requirements for Disks With Less Than 1,500 CSN

One commenter states that the NPRM is unclear, and requests clarification of the required inspection for a disk that has less than 1,500 CSN on the effective date of this AD, and is at piece-part condition after the effective date of this AD. The commenter speculates that the average Mean Time Between Shop Visit on the CF6–80C2 engine is less than approximately 3,500 CSN, and in some instances the Mean Time Between Shop Visit is less than 1,000 cycles.

The FAA disagrees that clarification is required. If an HPT stage 1 disk is at piece-part condition, this qualifies as an ESV according to the NPRM. Therefore, the disk satisfies the requirements for Table 1, paragraph 1, and must be inspected. The initial inspection of all disks is required to occur at the next ESV. Also, paragraph (c) of this AD clearly states that after the effective date of this AD, stage 1 HPT rotor disks with greater than zero CSN must not be installed until inspected. If the disk has 1,500 or fewer CSN on the effective date of this AD, this initial inspection must occur at the next ESV, but before the disk usage exceeds 5,000 CSN, regardless of whether or not another shop visit is anticipated before the disk reaches 5,000 CSN. The proposed compliance times of the rule considered ESV rates, while maintaining an acceptable level of safety. In determining the calculated risk levels, the engine shop visit cyclic distribution data was used in the statistical model.

Add Contact Information for Reporting Requirements

Two commenters request that contact information such as telephone number, fax number, address, and e-mail address of the Engine Certification Manager be added to the Reporting Requirements Section of the final rule. The FAA agrees. The contact information is added to the final rule.

Change ''Next Engine Shop Visit'' to ''Any Engine Shop Visit''

One commenter requests that the initial inspection be required at any shop visit, not to exceed 3,500 cycles-in-service for used disks, and not to exceed 5,000 CSN for new disks. No substantiating data was included with this comment. The reason for the

request was stated as airline operator convenience.

The FAA disagrees. In determining the calculated risk levels, the ESV cyclic distribution data was used in the statistical model. From a calculated risk standpoint, specifying only cycles is not the same as specifying next shop visit not to exceed a certain number of cycles. The initial inspection intervals of next shop visit are based on the risk assessment of the entire fleet. The change requested by the commenter would result in an extension of the inspection intervals. Extensions to the inspection intervals would increase risks to an unacceptable level of safety.

Incorporate Additional Exemptions to Engine Shop Visit

Four commenters request that paragraph (d)(2) of the Compliance section in the NPRM be changed to add other maintenance actions as exemptions to an ESV, to include the following, individually and in combination:

Introduction of an engine into a shop solely for:

- Removal or replacement of the stage 1 fan disk.
- Replacement of the Turbine Rear Frame.
- Replacement of the Accessory and/or Transfer Gearboxes.
- Replacement of the fan forward case.

One of the four commenters suggests that these proposed exemptions are to address quick turn-time maintenance actions, and that these quick turn-time maintenance actions would otherwise not require HPT rotor piece-part disassembly. Therefore, the commenter suggests that significant additional cost would result if the visits for these maintenance actions were not exempt. In addition, this commenter states that their experience shows the number of engines that fall into the proposed categories are limited, and therefore, the proposed exemptions for ESV's will have no significant detriment to the level of safety over the program. All four commenters recommend that the addition of these exemptions will be consistent with AD 99–24–15 (CF6 High Pressure Compressor (HPC) stage 3–9 Spool Inspection). One of the four commenters states that these ESV exemptions will minimize the operator's exposure during ''Check & Repair'' work scope shop visits.

The FAA disagrees that additional ESV exemptions are appropriate for this rule, based on the severity of the potential unsafe condition. As one commenter cited, the FAA finds that the frequency of these proposed shop visit exemptions is very low. While the four commenters request consistency with the existing AD 99–24–15 (HPC stage 3–9 spool inspection), the FAA notes that the most recent HPC stage 3–9 spool inspection, AD 2000–16–12, contains no exemptions from the definition of shop visit. The NPRM allowed two exemptions to the definition of an ESV, while maintaining the necessary level of safety. The FAA made no changes to the rule. In addition, operators can submit a request for an alternate method of compliance or adjustment of the compliance time that provides an acceptable level of safety. The NPRM definition paragraph (d) is now paragraph (e) in this rule.

Incorporate an Additional Exemption in the Definition of Engine Shop Visit

One commenter requests an additional exemption in the definition of ESV to include a maintenance action that will result in removal of the compressor stator lower case, without need to separate any other major flanges. The commenter has a single engine scheduled for removal for the HPC 3–9 spool inspection. During the shop visit, removal of the compressor stator lower case may arise to replace bushings. The commenter developed an approved method to remove the lower case after reinstalling the top case while the engine is in a horizontal position, without separating any major flanges.

The FAA disagrees. This was the only request of this kind. As the rule is intended to cover the entire fleet, the FAA does not want to revise the AD based on one engine. For unique situations, operators can submit a request for an alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety. Therefore, the FAA made no changes to the rule.

Add a Row to Table 1 for Disks Already Inspected Per GE ASB CF6–80C2 72–A1026

One commenter requests that a row be added to Table 1 for disks already inspected in accordance with GE ASB CF6–80C2 72–A1026 before the effective date of this AD. The added row would state a compliance time of ''any number of CSN if the disk has been inspected using ASB CF6–80C2 72–A1026, dated January 17, 2001, before the effective date of this AD'', with an initial inspection that is ''not applicable'', and a repetitive inspection that is ''at each piece-part exposure''. The commenter provides no substantiating data.

The FAA partially agrees. The FAA has been informed that approximately 20 disks from US operators have been inspected in accordance with ASB CF6–80C2 72–A1026, dated January 17, 2001, since that ASB's issuance. These disks have significant cycles-since-new, and do not require another inspection until next piece-part exposure. Therefore, Table 1 remains as-written and a paragraph has been added to the compliance section stating that, for a stage 1 HPT rotor disk that has been inspected in accordance with 3.A(1) through 3.C.(10)(i) of the Accomplishment Instructions of GE Alert Service Bulletin (ASB) CF6–80C2 72–A1026, dated January 17, 2001, before the effective date of this AD, and had greater than zero cycles-since-new (CSN) at the time of inspection, inspect the disk at each piece-part exposure, and replace as necessary. In addition, operators can submit a request for an alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety.

Option To Perform Initial Inspection for Zero Cycle Disks

One commenter requests an option to perform ASB CF6–80C2 72–A1026, dated January 17, 2001, for zero cycle disks prior to installation. The commenter does not provide technical justification. The commenter states that since GE does not offer an HPT stage 1 disk that is not affected by the proposed AD, all first-run engines and engines in which zero cycle disks are or will be installed, will be limited to 5,000 CSN. Because the inspections cannot be performed on-wing or at engine-level, the proposed rule will cause forced-engine removals and disassembly of the HPT for short range applications.

The FAA disagrees. The intent of the inspection is to detect cracks in the bottoms of the dovetail slots that have grown during engine cyclic service. The propagation occurs during accumulation of disk cycles. Potential cracks have not propagated in unused disks, therefore, inspections of unused disks do not mitigate the risk. The greater the number of cycles accumulated, the greater the risk for fatigue-induced failure. Therefore, short haul operators or operators with fleets that accumulate a large number of cycles per year are more significantly at risk of disk failure.

Change Initial Inspection Threshold, Paragraph 1, of Table 1, for Disks With 1,500 or Fewer CSN

One commenter requests a change in Table 1, paragraph (1), for disks with 1,500 or fewer CSN on the effective date of the AD, to change the initial inspection threshold from ''not to exceed 5,000 CSN'' to ''not to exceed 5,000 CSN or 10,000 hours time-since-

new, whichever comes later.'' The commenter provided no technical substantiation. The commenter states that since all HPT stage 1 disks are affected by the proposed AD, and the inspections cannot be performed on-wing or at engine level, short range applications will cause forced-engine removals.

The FAA disagrees. Specifying hours-since-new does not address the cyclic nature of the crack propagation. The intent of the inspection is to detect cracks in the bottoms of the dovetail slots that have propagated during engine cyclic service. Because the propagation is related to low-cycle fatigue, the propagation occurs during accumulation of disk cycles. The greater the number of cycles accumulated, the greater the risk for fatigue-induced failure. Therefore, short haul operators or operators with fleets that accumulate a large number of cycles per year are more significantly at risk of disk failure. Inspections according to the compliance times in this rule will maintain an acceptable level of safety. Therefore, the FAA made no changes to the rule.

Review Initial Eddy Current Inspection Data

Two commenters request that the ''Next Shop Visit'' accomplishment schedule be reviewed by the FAA, GE, and the airlines, after substantial data has been collected from the initial eddy current inspections. The commenters note that each data point referenced in the discussion of the proposed rule refers to crack initiation due to handling damage. The commenters believe a timely review of the expanded data set resulting from the inspection program is necessary to confirm the proposed schedule ensures safety without placing an unwarranted burden on the operators.

The FAA partially agrees. The FAA considers this rule to be an interim action. A timely review of the expanded data set resulting from the inspection program is appropriate. Additional inspection results will be considered to ensure that the actions and schedule provide an acceptable level of safety. While the rule requires that inspection rejects be reported to the FAA, it is recommended that operators comply with GE's request for all inspection results be sent to GE, regardless of pass or failure of the inspection. All data, including successes and failures, will be analyzed to evaluate the safety level, and risk of a future event. The subject of handling damage will be discussed in the next response.

Initial Inspection Exemption for New Disks Installed in Engines Since New

Two commenters request that the hard time limits for initial inspections in Table 1, items 1 and 2, should not apply to new disks which have been installed in engines since new. The commenters reason that because new disks have not been repaired or handled, this should preclude the disks from incurring the damage referenced in the proposed rule.

The FAA disagrees. It is possible to incur damage during any handling of the disk, such as during part manufacture, engine assembly, engine disassembly, and during engine overhaul. Recent data on a disk previously rejected by an overhaul shop for a fluorescent-penetrant inspection indication at a slot end broaching burr that had not been completely removed at manufacturing, was destructively evaluated. This burr was associated with a crack, which extended into the slot aft corner. The crack had not propagated from fatigue. While this disk did not have cracking in the slot bottom corner, this finding suggests that it is possible for a disk to have a manufactured burr-related crack as a potential root cause for this series of events. Based on this data, the FAA made no changes to the rule.

Change to Definition of Piece-Part Exposure

The FAA has also changed the definition of piece-part exposure in paragraph (e) of the final rule. The proposal provided that a piece-part exposure would be achieved by a complete disassembly performed in accordance with the engine manufacturer's manual. It is possible that some operators may disassemble the HPT rotor disk using their own manual. Therefore, to make clear that a complete disassembly performed in accordance with an FAA-approved manual other than the manual published by the engine manufacturer, would constitute a piece-part exposure of the HPT rotor disk, the FAA has added the phrase ''or other FAA-approved'' to paragraph (e)(1)(i) of the final rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Impact

There are approximately 2,954 engines of the affected design in the worldwide fleet. The FAA estimates that 637 engines installed on aircraft of U.S. registry will be affected by this AD. The FAA estimates that it will take approximately three work hours per engine to accomplish the required actions, and the average labor rate is $60 per work hour. Required parts will cost approximately $283,480 per engine. The FAA also estimates that approximately 191 engines per year will have shop visits, and that of those 191 engines, approximately two disks per year will have to be replaced. Also, based on information provided by NPRM commenters to the FAA, approximately 48 (25%) of the shop visits will require additional work scope because they would not otherwise have required HPT rotor piece-part disassembly. The FAA estimates it will take approximately 50 work hours per engine to accomplish the required additional work scope actions, and the average labor rate is $60 per work hour. Based on these figures, the total additional work scope labor cost will be approximately $144,000. Based on all of these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $745,340 per year.

Regulatory Impact

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule. For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2001–10–07 General Electric Co.: Amendment 39–12233. Docket No. 2001–NE–05–AD.

Applicability

This airworthiness directive (AD) is applicable to General Electric Company (GE) CF6–80C2 series turbofan engines with stage 1 high pressure turbine (HPT) rotor disks, part numbers (P/N's) 1531M84G02, 1531M84G06, 1531M84G08, 1531M84G10, 9392M23G10, 9392M23G12, 9392M23G21, and 1862M23G01 installed. These engines are installed on, but not limited to Airbus Industrie A300 and A310 series, Boeing 747 and 767 series, and McDonnell Douglas MD–11 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated below, unless already done.

To detect cracks in the bottoms of the dovetail slots that could propagate to failure of the disk and cause an uncontained engine failure, perform the following inspections:

(a) For stage 1 HPT rotor disks that have been inspected prior to the effective date of this AD, in accordance with 3.A(1) through 3.C.(10)(i) of the Accomplishment Instructions of GE Alert Service Bulletin (ASB) CF6–80C2 72–A1026, dated January 17, 2001, and had greater than zero cycles-since-new (CSN) at the time of inspection, inspect the disk at each piece-part exposure, and replace as necessary.

(b) For stage 1 HPT rotor disks not previously inspected, inspect the disk in accordance with 3.A.(1) through 3.C.(10)(i) of the Accomplishment Instructions of GE ASB CF6–80C2 72–A1026, dated January 17, 2001, and Table 1 of this AD, and replace if necessary, as follows:

TABLE 1.—COMPLIANCE TIMES FOR STAGE 1 HPT ROTOR DISK INSPECTIONS

Stage 1 HPT Rotor Disk Cycles-since-new (CSN) on the effective date of this AD	Initial inspection	Repetitive inspections
(1) 1,500 CSN or fewer	At the next engine shop visit (ESV) after the effective date of this AD, but not to exceed 5,000 CSN.	At each piece-part exposure.
(2) More than 1,500 CSN	At the next ESV after the effective date of this AD, but not to exceed 3,500 cycles-in-service (CIS) after the effective date of this AD.	At each piece-part exposure.
(3) Any number of CSN if the disk has been inspected using ASB CF6–80C2 72–A1024, Revision 1, dated November 3, 2000, or original ASB issue, dated October 13, 2000, before the effective date of this AD, and, if the disk had greater than zero CSN at the time of inspection.	At the next ESV after the effective date of this AD.	At each piece-part exposure.

(c) After the effective date of this AD, do not install any stage 1 HPT rotor disk with greater than zero CSN until it has been inspected in accordance with 3.A.(1) through 3.C.(10)(i) of the Accomplishment Instructions of GE ASB CF6–80C2 72–A1026, dated January 17, 2001.

(d) Thereafter, inspect the disk at each piece-part exposure, and replace if necessary.

Definitions

(e) The following definitions apply for this AD:

(1) Piece-part exposure means the stage 1 HPT rotor disk is considered completely disassembled as follows:

(i) When done in accordance with the disassembly instructions in the engine manufacturer's, or other FAA-approved engine manual, AND

(ii) The disk has accumulated more than 100 CIS since the last piece-part opportunity inspection, if the disk was not damaged or related to the cause for its removal from the engine.

(2) An ESV is defined as the induction of an engine into a shop where the separation of a major engine flange will occur after the effective date of this AD. The following actions, either separately or in combination, are not considered ESV's for the purpose of this AD:

(i) Induction of an engine into a shop solely for removal of the upper compressor stator case for airfoil maintenance.

(ii) Induction of an engine into a shop solely for the module level inspection of the high pressure compressor rotor 3–9 spool.

Reporting Requirements

(f) Report the results of inspections on all disks that equal or exceed the reject criteria of GE ASB CF6–80C2 72–A1026, dated January 17, 2001, within 5 calendar days of the inspection, to the Manager, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7140; fax: (781) 238–7199. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056. The following information must be included in the report:

(1) Engine model in which the stage 1 HPT rotor disk was installed, AND

(2) Disk P/N, AND

(3) Disk serial number, AND

(4) CSN on the disk, AND

(5) Cycles-since-last-inspection, AND

(6) Date and location of the inspection.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of

compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(i) The inspections must be done in accordance with GE ASB CF6–80C2 72–A1026, dated January 17, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone: (513) 672–8400, fax: (513) 672–8422. Copies may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date of This AD

(j) This amendment becomes effective on June 18, 2001.

Issued in Burlington, Massachusetts, on May 10, 2001.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–12374 Filed 5–17–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[TD 8945]

RIN 1545–AY85

Taxable Fuel Measurement

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the measurement of taxable fuel. The regulations affect certain blenders, enterers, refiners, terminal operators, and throughputters.

DATES: *Effective Date:* These regulations are effective May 18, 2001.

Applicability Date: These regulations are applicable January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Frank Boland (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 4081 imposes a tax on certain removals, entries, and sales of taxable fuel. Section 4083 provides that taxable fuel means gasoline, diesel fuel, and kerosene.

Before July 1, 2000, regulations provided that gallons of taxable fuel could be measured on the basis of actual volumetric gallons or gallons adjusted to 60 degrees Fahrenheit. However, regulations that were published in the **Federal Register** on March 31, 2000, (TD 8879; 65 FR 17149) provide that beginning July 1, 2000, for each period from July 1 through the following June 30 a person liable for tax on a removal may use only one of the two bases of measurement with respect to taxable fuel removed from any particular terminal, refinery, or blending facility. This rule (the consistency requirement) also applies to taxable entries and sales.

After publication of TD 8879, the IRS and the Treasury Department determined that many taxpayers would have had to change their accounting systems to comply with the consistency requirement and would have been unable to complete the necessary changes by July 1, 2000. Accordingly, Notice 2000–33 (2000–27 I.R.B. 97) provided that taxpayers would not be required to comply with the consistency requirement before July 1, 2001. In the meantime, a taxpayer could use either basis of measurement for each taxable removal, entry, or sale of taxable fuel.

Explanation of Provisions

The IRS and the Treasury Department have now determined that the consistency requirement would force many taxpayers to alter current standard business practices and potentially could make routine IRS examinations more time consuming and burdensome. To avoid these adverse consequences, the final regulations in this document remove the consistency requirement and reinstate the provision that was in effect before July 1, 2000.

Effect on Other Documents

Notice 2000–33 (2000–27 I.R.B. 97) is obsolete as of May 18, 2001.

Special Analyses

This rule relieves taxpayer burden by eliminating a requirement with respect to the measurement of taxable fuel. Therefore, it has been determined that notice and public comment are unnecessary and contrary to the public interest. For the same reason, a delayed effective date under 5 U.S.C. 553(d) is not required. Because no preceding notice of proposed rulemaking is required for this Treasury decision and the rule does not impose on small entities a collection of information requirement, the provisions of the Regulatory Flexibility Act do not apply. It also has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Pursuant to section 7805(f) of the Code, these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Frank Boland, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 48

Excise taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 48 is amended as follows:

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Paragraph 1. The authority citation for part 48 continues to read in part as follows:

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

Par. 2. Section 48.4081–8 is revised to read as follows:

§ 48.4081–8 Taxable fuel; measurement.

(a) *In general.* Volumes of taxable fuel may be measured on the basis of actual volumetric gallons or gallons adjusted to 60 degrees Fahrenheit.

(b) *Effective date.* This section is applicable January 1, 1994.

Approved: May 10, 2001.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Mark A. Weinberger,

Assistant Secretary of the Treasury.

[FR Doc. 01–12600 Filed 5–17–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AK56

U.S. Flags for Burials of Certain Members of the Selected Reserve

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends Department of Veterans Affairs (VA) adjudication regulations to reflect changes made by The Strom Thurmond National Defense Authorization Act of Fiscal Year 1999. These changes concern issuance of United States flags for burials of certain members of the Selected Reserve.

DATES: *Effective Dates:* The amendment is effective October 17, 1998.

FOR FURTHER INFORMATION CONTACT: Diane Fuller, Assistant Director, Compensation and Pension Service (216), Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: On October 17, 1998, the President signed into law the Strom Thurmond National Defense Authorization Act of Fiscal Year 1999, Public Law 105–261 (the Act). One provision of the Act directly affects issuance of United States flags for burial purposes by the Department of Veterans Affairs. The provision requires VA to issue United States flags for burials of certain members of the Selective Reserve, when VA receives a claim for such a flag.

This regulatory amendment reflects that provision by stating that VA will provide a burial flag, upon receipt of a claim, upon the death of any deceased member or former member of the Selected Reserve (as described in section 10143 of title 10) who is not otherwise eligible for a flag under this section or section 1482(a) of title 10 and (1) who completed at least one enlistment as a member of the Selected Reserve or, in the case of an officer, completed the period of initial obligated service as a member of the Selected Reserve; or (2) who was discharged before completion of the person's initial enlistment as a member of the Selected Reserve or, in the case of an officer, period of initial obligated service as a member of the Selected Reserve, for a disability incurred or aggravated in the line of duty; or (3) who died while a member of the Selected Reserve.

(Authority: 38 U.S.C. 2301(a)(1))

Changes made by this final rule merely reflect the statutory requirements in Pub. L. 105–261. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. These amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance program number is 64.101.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Investigations, Parking, Penalties, Postal Service, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, and Wages.

Approved: May 3, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 1 is amended as follows:

PART 1—GENERAL PROVISIONS

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

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 1.10 is amended by adding paragraph (a)(1)(v) immediately following the authority citation at the end of paragraph (a)(1)(iv) to read as follows:

§ 1.10 Eligibility for and disposition of the United States flag for burial purposes.

(a) * * *

(1) * * *

(v) Any deceased member or former member of the Selected Reserve (as described in section 10143 of title 10) who is not otherwise eligible for a flag under this section or section 1482(a) of title 10 and who:

(A) Completed at least one enlistment as a member of the Selected Reserve or, in the case of an officer, completed the period of initial obligated service as a member of the Selected Reserve;

(B) Was discharged before completion of the person's initial enlistment as a member of the Selected Reserve or, in the case of an officer, period of initial obligated service as a member of the Selected Reserve, for a disability incurred or aggravated in the line of duty; or

(C) Died while a member of the Selected Reserve.

(Authority: 38 U.S.C. 2301(f)(1))

[FR Doc. 01–12525 Filed 5–17–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 416, 482, and 485

RIN 0938–AK08

Medicare and Medicaid Programs: Hospital Conditions of Participation: Anesthesia Services: Delay of Effective Date

AGENCY: Health Care Financing Administration, (HCFA), Department of Health and Human Services (DHHS).

ACTION: Final Rule; Delay of Effective Date.

SUMMARY: To give the Department an opportunity to obtain comment on modifications to the rule entitled Medicare and Medicaid Programs: Hospital Conditions of Participation: Anesthesia Services, the Department is delaying until November 14, 2001 the effective date of the rule, which was published in the **Federal Register** on January 18, 2001, 66 F.R. 4674, pending the Department's action on a forthcoming notice of proposed rulemaking. The rule's effective date was previously delayed by 60 days on March 19, 2001, in accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled A Regulatory Review Plan, published in the **Federal Register** on January 24, 2001. *See* 66 F.R. 15352.

DATES: The final rule, Medicare and Medicaid Programs; Hospital Conditions of Participation; Anesthesia Services, published in the **Federal Register** on January 18, 2001, at 66 FR 4674 and delayed on March 19, 2001 at 66 FR 15352 until May 18, 2001 is further delayed until November 14, 2001.

FOR FURTHER INFORMATION CONTACT: Stephanie Dyson, Health Care Financing Administration, (410) 786–9226.

SUPPLEMENTARY INFORMATION: On January 18, 2001, the Department of Health and Human Services (DHHS) published in the **Federal Register** a Final Rule, with an effective date of March 19, 2001 (66 F.R. 4674), intended to amend Subpart D of 42 CFR part 482, Subpart C of 42 CFR part 416, and Subpart F of 42 CFR part 485 of the Code of Federal Regulations.

The Department has determined that there is a need to delay this rule's effective date in order to consider (1) whether a Governor may certify to the Department, after consultation with the State's Boards of Medicine and Nursing, or their equivalents, and consistent with State law, that it is in the best interests of the citizens of the State that licenced Certified Registered Nurse Anesthetists (CRNAs) within the State administer anesthesia services without physician supervision, and (2) whether a prospective study should be undertaken to assess the impact of different state CRNA practices. The Department will, therefore, very shortly issue a proposed rule to afford the public the opportunity to comment on these changes.

The notice and comment requirements of 5 U.S.C. 553 do not apply to this delay of the rule's effective date, which is a rule of procedure. See 5 U.S.C. 553(b)(3)(A). To the extent that section 553 applies in these circumstances, however, the Department finds that the action comes within that provision's good cause exceptions in that obtaining public comment is impracticable, unnecessary, and contrary to the public interest. See 5 U.S.C. 553(b)(3)(B). Given the imminence of the effective date, and the imminence of a new notice of proposed rulemaking, seeking prior public comment on this delay is impracticable, as well as contrary to the public interest in the orderly promulgation and implementation of regulations. Further, comment is unnecessary because no harm is caused by delay of the effective date of the regulations, as the current rules will remain in effect pending any further action by the Department, and any action taken will be subject to notice and comment before final publication.

Dated: May 16, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–12765 Filed 5–17–01; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 46

RIN: 0925–AA14

Protection of Human Research Subjects: Delay of Effective Date

AGENCY: Department of Health and Human Services (DHHS).

ACTION: Final Rule; Delay of Effective Date.

SUMMARY: To give the Department an opportunity to obtain comment on three modifications to the rule entitled Protection of Human Subjects, Additional Protections for Pregnant Women and Human Fetuses Involved in Research, and Pertaining to Human In Vitro Fertilization, the Department is delaying until November 14, 2001 the effective date of the rule, which was published in the **Federal Register** on January 17, 2001, 66 F.R. 3878, pending the Department's action on forthcoming notice of proposed rulemaking. The rule's effective date was previously delayed by 60 days on March 19, 2001, in accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled A Regulatory Review Plan, published in the **Federal Register** on January 24, 2001. See 66 F.R. 15352.

DATES: The final rule, Protection of Human Subjects, published in the **Federal Register** on January 17, 2001, at 66 F.R. 3878 and delayed on March 19, 2001 at 66 FR 15352 is further delayed until November 14, 2001.

FOR FURTHER INFORMATION CONTACT: Irene Stith-Coleman, Ph.D., Office of Human Research Protections (OHRP) 200 Independence Avenue, S.W., Room 733–E, Washington, D.C., 20201. Telephone 202–260–1587. Email *istithco@osophs.dhhs.gov.*

SUPPLEMENTARY INFORMATION: On January 17, 2001, the Department of Health and Human Services (DHHS) published in the **Federal Register** a Final Rule, with an effective date of March 19, 2001 (66 Fed. Reg. 3878), intended to amend Subpart B of 45 CFR Part 46 of the Code of Federal Regulations. These regulations provide additional protections for pregnant women and human fetuses involved in research.

The Department has determined that there is a need to delay this rule's effective date in order to consider three limited aspects: (1) Whether paternal consent (when the father is readily available) should be obtained for participation in federally funded research that is directed solely at a fetus; (2) whether the definition of ''fetus'' should be modified so that it describes only the stage prior to delivery; and (3) whether the rule should be modified to make clear that fetuses of uncertain viability may be subjected to added risk only if the research is intended to enhance the probability of survival of the particular fetus to the point of viability. The Department will, therefore, very shortly issue a proposed rule to afford the public the opportunity to comment on these changes. In the meantime, current Subpart B remains in effect for the special protection of pregnant women and human fetuses involved in research.

The notice and comment requirements of 5 U.S.C. section 553 do not apply to this delay of the rule's effective date, which is a rule of procedure. See 5 U.S.C. 553(b)(3)(A). To the extent that section 553 applies in these circumstances, however, the Department finds that the action comes within that provision's good cause exceptions in that obtaining public comment is impracticable, unnecessary, and contrary to the public interest. See 5 U.S.C. 553(b)(3)(B). Given the imminence of the effective date, and the imminence of a new notice of proposed rulemaking, seeking prior public comment on this delay is impracticable, as well as contrary to the public interest in the orderly promulgation and implementation of regulations. Further, comment is unnecessary because no harm is caused by delay of the effective date of the regulations, as the current rule, 45 CFR part 46, Subpart B, Protection of Human Subjects, Additional Protections for Pregnant Women and Human Fetuses Involved in Research, and Pertaining to Human In Vitro Fertilization, published in the **Federal Register** on August 8, 1975 and amended January 11, 1978 and June 1, 1994, will remain in effect pending any further action by the Department, and any action taken will be subject to notice and comment before final publication.

Dated: May 16, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–12755 Filed 5–17–01; 8:45 am]

BILLING CODE 4160–17–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 68

[GEN Docket No. 98–68; FCC 01–141]

Streamlining the Equipment Authorization Process; Implementation of Mutual Recognition Agreements and the GMPCS MOU

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document responds to the Petition for Reconsideration filed by Motorola. The petition requested clarification of the Report and Order in this proceeding regarding the handling of confidential information by ''Telecommunication Certification Bodies.''

DATES: Effective June 18, 2001.

FOR FURTHER INFORMATION CONTACT: Hugh Van Tuyl, Office of Engineering and Technology, (202) 418–7506.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, GEN Docket No. 98–68, FCC 01–141, adopted April 24, 2001, and released April 30, 2001. The full text of this Commission decision is available on the Commission's Internet site at www.fcc.gov. It is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Summary of the Memorandum Opinion and Order

1. The *Report and Order*, 64 FR 4984, February 2, 1999, in this proceeding, established a process through which private sector organizations could be designated to approve radio frequency devices and telephone terminal equipment in essentially the same manner as the Commission. These organizations are called Telecommunication Certification Bodies (TCBs). The rules we adopted specify the criteria that an organization must meet to be eligible for designation as a TCB, the designation procedure, the scope of responsibility of TCBs, and the requirements that TCBs must follow after issuing equipment approvals. Motorola, Inc. (Motorola) filed a petition requesting a clarification of the confidentiality of applications filed with TCBs. By this action, we clarify the confidentiality requirements in Parts 2 and 68 of the rules that TCBs must follow in certifying radio frequency devices and telephone terminal equipment as compliant with the Commission's rules.

2. Equipment authorization applications and related materials are not routinely available for public inspection prior to the effective date of the authorization. Upon grant of an application, the application file is routinely available for public inspection. However, the party filing an application for equipment authorization may request that the Commission hold certain exhibits confidential. Those exhibits for which confidentiality have been requested and granted are not routinely available for public inspection even after grant of the application. The factors that the Commission considers in determining whether to grant confidentiality include, among others, whether the material contains information that is commercial, financial, privileged or a trade secret, and whether disclosure of the information could result in substantial competitive harm.

3. When the requirements for TCBs were established, one of the rules adopted states that, upon request from the Commission, a TCB shall provide a copy of an application file to the Commission accompanied by a request for confidentiality for any information that qualifies as trade secrets. This requirement is intended to ensure the appropriate handling of materials filed with a TCB that are not routinely available for public inspection. Just as similar materials filed with the Commission are not routinely available for public inspection, TCBs are obligated to safeguard the confidentiality of information obtained in the course of their certification activities.

4. In its petition, Motorola requests that we clarify § 2.962(g)(4) of the rules regarding the handling of confidential information by TCBs. Specifically, Motorola is concerned about the use of the term trade secrets in this section to identify confidential materials. It states that this term as construed by the courts refers to a process that a business does not disclose publicly. Thus, it contends, this wording of the rule provides less protection to material included with applications filed with TCBs than those filed with the Commission. It believes that the rules for TCBs we adopted in this proceeding should refer more broadly to material that qualifies for confidential treatment under the Commission's rules rather than to trade secrets.

5. Motorola is correct that our rules permit material besides trade secrets to be held as confidential. We find that its recommended change to the rules we adopted in this proceeding more clearly reflects the intent of the rules, which is to ensure that applications processed by TCBs are treated in the same manner as applications processed by the Commission. We are therefore adopting this change. Motorola only specifically requested that we change § 2.962(g)(4) of the rules, which applies to the authorization of radio frequency devices by TCBs. However, on our own motion we are also making this change to § 68.162(g)(4) of the rules which applies to authorization of telephone terminal equipment by TCBs because the same confidentiality requirements that apply to radio frequency devices apply to telephone terminal equipment. This change will ensure consistent treatment of applications for both types of equipment.

Final Regulatory Flexibility Certification

6. The Regulatory Flexibility Act of 1980, as amended (RFA),[1] requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that ''the rule will not have a significant economic impact on a substantial number of small entities.''[2] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[3] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[4] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria

[1] The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1966) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] 5 U.S.C. 605(b).

[3] 5 U.S.C. 601(6).

[4] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

established by the Small Business Administration.

7. The *Report and Order*, 64 FR 4984, February 2, 1999, established a process through which private sector organizations could be designated to approve radio frequency devices and telephone terminal equipment. These TCBs were required under the *Report and Order* to keep ''trade secret'' information confidential. A Final Regulatory Flexibility Analysis was incorporated in the *Report and Order*.[5] Following publication of the *Report and Order*, Motorola filed its petition seeking clarification of the confidentiality of applications filed with TCBs. In this *Memorandum Opinion and Order* we are amending the rules to indicate that confidentiality should apply to ''any material that qualifies for confidential treatment under the Commission's Rules.''

8. This amendment to the rules will affect the 15 to 20 TCBs in operation; and it is the Commission's belief that most of the TCBs are small businesses. Most applications filed with TCBs do not require that any information be held confidential. Where material does require confidential treatment it is predominantly because the materials are ''trade secrets.'' Systems for determining and storing ''trade secrets'' are already in place. The small amount of additional material required to be stored because it is ''material considered to be confidential by the Commission'' is insignificant. Therefore, we expect that the increased burden on TCBs caused by this amendment is nominal and does not rise to the level of a ''significant economic burden.'' Therefore, we certify that the amendments included in this *Memorandum Opinion and Order* will not have a significant economic impact on a substantial number of small entities.

9. The Commission will send a copy of the *Memorandum Opinion and Order*, including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.[6] In addition, the *Memorandum Opinion and Order* and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration.[7]

10. The petition for clarification filed by Motorola is granted. It is further ordered that Parts 2 and 68 of the Commission's Rules are amended June 18, 2001. Pursuant to the authority contained in sections 4(i), 303(f), 303(g) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f), 303(g) and 303(r).

11. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of the *Memorandum Opinion and Order*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

[5] 13 FCC Rcd 24737 (1999).

[6] *See* 5 U.S.C. 801(a)(1)(A).

[7] *See* 5 U.S.C. 605(b).

List of Subjects in 47 CFR Parts 2 and 68

Communications equipment, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rules Changes

For the reasons discussed in the preamble, parts 2 and 68 of title 47 of the Code of Federal Regulations is amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303 and 336, unless otherwise noted.

2. Section 2.962 is amended by revising paragraph (g)(4) to read as follows:

§ 2.962 Requirements for Telecommunication Certification Bodies.

* * * * *

(g) * * *

(4) Where concerns arise, the TCB shall provide a copy of the application file to the Commission within 30 calendar days of a request for the file made by the Commission to the TCB and the manufacturer. Where appropriate, the file should be accompanied by a request for confidentiality for any material that may qualify for confidential treatment under the Commission's Rules. If the application file is not provided within 30 calendar days, a statement shall be provided to the Commission as to why it cannot be provided.

* * * * *

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

3. The authority citation for part 68 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

4. Section 68.162 is amended by revising paragraph (g)(4) to read as follows:

§ 68.162 Requirements for Telecommunication Certification Bodies.

* * * * *

(g) * * *

(4) Where concerns arise, the TCB shall provide a copy of the application file to the Commission within 30 calendar days of a request for the file made by the Commission to the TCB and the manufacturer. Where appropriate, the file should be accompanied by a request for confidentiality for any material that may qualify for confidential treatment under the Commission's Rules. If the application file is not provided within 30 calendar days, a statement shall be provided to the Commission as to why it cannot be provided.

* * * * *

[FR Doc. 01–12609 Filed 5–17–01; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

RIN 1018–AH63

Changes in List of Species in Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, or ''the Convention'') regulates international trade in certain animals and plants. Species for which such trade is controlled are listed in Appendices I, II, and III to the Convention. This final rule announces decisions made by the eleventh meeting of the Conference of the Parties to CITES (COP11) in April 2000 on amendments to Appendices I and II, and incorporates those decisions in 50 CFR 23.23. This rule also discusses the issue of entering of reservations by the United States on any of the amendments. The effect of a reservation would be to exempt the United States from implementing CITES for a particular species. The United States has entered no reservations. The CITES amendments to Appendices I and II described in this rule entered into effect on July 19, 2000, unless specifically indicated otherwise.

DATES: This final rule is effective May 18, 2001. The amendments to Appendices I and II adopted at the recent meeting of the Conference of the Parties held in Gigiri, Kenya, on April 10–20, 2000, entered into force 90 days after their adoption under the terms of CITES and, therefore, were enforceable as of July 19, 2000.

ADDRESSES: Please send correspondence concerning this rule to Chief, Division of Scientific Authority, U.S. Fish and Wildlife Service, Mail Stop ARLSQ–750, Washington, DC 20240; (fax number: 703–358–2276;).

FOR FURTHER INFORMATION CONTACT: Dr. Susan Lieberman, Chief, Division of Scientific Authority, U.S. Fish and Wildlife Service, Mail Stop ARLSQ–750, Washington, DC 20240 (phone: 703–358–1708; fax: 703–358–2276; e-mail: r9osa@fws.gov).

SUPPLEMENTARY INFORMATION:

Background

CITES regulates import, export, reexport, and introduction from the sea of certain animal and plant species. Species for which trade is controlled are included in one of three Appendices. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that, although not necessarily threatened with extinction now, may become so unless trade in them is strictly controlled. Appendix II also lists species that must be subject to regulation in order that trade in other listed species may be brought under effective control (e.g., because of similarity-of-appearance problems). Appendix III includes species that any Party to CITES (i.e., a country that has ratified the treaty) identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which the Party needs the cooperation of other Parties to regulate trade. Any Party may propose amendments to Appendices I and II for consideration at biennial meetings of the Conference of the Parties. The text of any proposal must be communicated to the CITES Secretariat at least 150 days before the meeting. The Secretariat must then consult the other Parties and appropriate intergovernmental agencies, and communicate their responses to all Parties no later than 30 days before the meeting.

Recent Decisions

The eleventh meeting of the Conference of the Parties to CITES (COP11) was held April 10–20, 2000, in Gigiri, Kenya, at the headquarters of the United Nations Environment Programme (UNEP). The meeting was hosted by UNEP. At the meeting, the Parties considered 21 different plant proposals and 41 different animal proposals to amend the Appendices (see Table 1 below). We described those proposals in the **Federal Register** on February 17, 2000, for proposals submitted by the United States (65 FR 8190), and on March 8, 2000, for proposals submitted by other countries (65 FR 12400). In the **Federal Register** of March 8, 2000, we also discussed the proposed U.S. negotiating positions on those proposals submitted by other countries.

The CITES COP meeting was divided into two simultaneous committees. Committee II discussed management, implementation, and enforcement issues. Committee I considered and acted upon all proposals to amend the Appendices (except, of course, those that were withdrawn by the proponents during the meeting). Each duly accredited attending Party had one vote, and countries and approved observer organizations were afforded the opportunity to comment on the proposals. Adoption of amendments by Committee I required either consensus or, in case of a vote, a two-thirds majority of those Parties present and voting (abstentions were not included). The Plenary Session accepted actions by Committee I on species proposals, unless a motion to reopen debate was put to vote and approved by one-third of the non-abstaining Parties voting.

Debate was reopened and votes recast on the following proposals that had not received the required two-thirds majority in Committee I: the proposal submitted by Norway to transfer the Northeast Atlantic and North Atlantic Central stocks of minke whales (*Balaenoptera acutorostrata*) from Appendix I to Appendix II; the proposal submitted by Cuba to transfer the ''Cuban'' population of the hawksbill sea turtle (*Eretmochelys imbricata*) from Appendix I to Appendix II; and the proposal submitted by the United Kingdom to include the basking shark (*Cetorhinus maximus*) in Appendix II. All these proposals were amended in Plenary, and were rejected by the Parties in Plenary.

Secret ballots were cast in Committee I or Plenary on seven different proposals. The proposals that were decided by secret ballot were for the following species: all whale proposals, hawksbill sea turtle, great white shark, and basking shark. All proposals brought to a vote in Plenary were also conducted by secret ballot. The United States considers this proliferation of secret ballots to be unfortunate for a number of reasons. We believe that the position of CITES Parties on species proposals should be public and the voting process transparent. Governments must be accountable to their citizens. In addition, secret ballots take significant time away from the deliberations in both Committee and Plenary. Consequently, the U.S. delegation to the COP always made public (on the floor or in other public fora) its vote on species proposals conducted by secret ballot at COP11. In Committee I, the United States voted for the proposals on basking shark and great white shark, and against all proposals for downlisting of whales and sea turtles.

Species proposals submitted or cosponsored by the United States met with mixed results. The proposals on white wicky (*Kalmia cuneata*), Asian box turtles (*Cuora* spp.; cosponsored by Germany), Sonoran green toad (*Bufo retiformis*), and *Mantella* frogs (*Mantella* spp.; cosponsored by The Netherlands) were adopted. The proposals on gyrfalcon (*Falco rusticolus*), spotted turtle (*Clemmys guttata*), whale shark (*Rhincodon typus*), great white shark (*Carcharodon carcharias;* cosponsored by Australia), and Eastern Hemisphere tarantulas (*Poecilotheria* spp.; cosponsored by Sri Lanka) were rejected. It is notable that the proposals for whale shark, great white shark, and tarantulas received a simple majority of votes, although they did not receive the two-thirds majority required for adoption. The proposal on Asian pangolins (*Manis crassicaudata, M. pentadactyla,* and *M. javanica;* cosponsored by India, Nepal, and Sri Lanka) was amended (species maintained in Appendix II, with a zero quota for wild specimens) and subsequently adopted. The proposal on musk deer (*Moschus* spp.), cosponsored by India and Nepal, was withdrawn, but a resolution and decision were adopted instead.

The proposal on Black Sea bottlenose dolphin (*Tursiops truncatus ponticus;* cosponsored by Georgia), pancake tortoise (*Malacochersus tornieri;* cosponsored by Kenya), and timber rattlesnake (*Crotalus horridus*) were withdrawn, for varying reasons. A number of range countries supported the bottlenose dolphin proposal, but Georgia was unable to attend the meeting; the proposal did generate an official COP decision directing action by the CITES Animals Committee. The timber rattlesnake proposal was withdrawn by the United States after significant opposition from European countries led to defeat of the spotted

turtle proposal. That bloc opposition was based on opposition to submission of a proposal for an endemic species (spotted turtle). Parties argued that it should be up to the United States to adopt domestic laws regulating their trade as they are native species. We disagree, since CITES is by definition a multilateral instrument to deal with the conservation of species subject to international trade. We continue to assert, and the representatives of U.S. States concurred at the COP, that the spotted turtle and timber rattlesnake qualify for CITES Appendix II, and any country has a right to recommend the inclusion of endemic species in the CITES Appendices. By precedent, a large number of endemic plant and animal species are already included in the CITES Appendices. The proposals to include three shark species (whale shark, great white shark, and basking shark) in Appendix II encountered bloc opposition from Parties opposed to any CITES involvement in marine species issues and were defeated. The gyrfalcon proposal (*Falco rusticolus*), involving another U.S. species, was opposed primarily by members of the European Union and other European countries, which claimed that such a split-listing would encourage illegal collection and trade in wild specimens originating in Europe.

The United States is currently considering, at least for the spotted turtle and timber rattlesnake, an Appendix III listing as an alternative conservation strategy for these native species subject to international trade. In considering this approach, we will fully consult State wildlife agencies. If we decide to pursue this course of action, we will solicit public comments.

TABLE 1.—RESULTS OF ACTIONS BY THE ELEVENTH MEETING OF THE CONFERENCE TO THE PARTIES (COP11) TO CITES

Proposal	Species/taxon	Proposed amendment	Proponent	Decision
		PLANTS		
		Proposals submitted on behalf of the Plants Committee		
11.1	*Ceropegia* spp	Delete from Appendix II	Switzerland	Adopted.
11.2	*Frerea indica*	Delete from Appendix II	Switzerland	Adopted.
11.3	*Byblis* spp	Delete from Appendix II	Australia	Adopted.
11.4	*Disocactus macdougalli* (McDougal's cactus).	Transfer from Appendix I to Appendix II.	Switzerland	Adopted.
11.5	*Sclerocactus mariposensis* (Mariposa cactus).	Transfer from Appendix I to Appendix II.	Switzerland	Rejected.
11.6	*Cephalotus follicularis*	Delete from Appendix II	Australia	Adopted.
11.7	*Dudleya stolonifera Dudleya traskiae* (Laguna Beach and Santa Barbara Island Dudleya).	Transfer from Appendix I to Appendix II.	Switzerland	Adopted as amended.[1]
11.8	*Cyathea* spp	(a) Change listings of Cyatheaceae spp. to *Cyathea* spp (including *Alsophila, Nephelea, Sphaeropteris, Trichipteris*).	Switzerland	Adopted.
	Cibotium barometz Dicksonia spp.	(b) Change listing of *Dicksoniaceae* spp. to *Dicksonia* spp. (the Americas only) and *Cibotium barometz*.		
11.9	*Shortia galacifolia* (Oconee bells).	Delete from Appendix II	Switzerland	Withdrawn.
11.10	*Lewisia cotyledon* (Siskiyou lewisia) *Lewisia maguirei* (Maguire's lewisia) *Lewisia serrata* (Saw-toothed lewisia).	Delete from Appendix II	Switzerland	Adopted as amended.[2]
11.11	*Darlingtonia californica* (California pitcher plant, cobra-lily).	Delete from Appendix II	Switzerland	Adopted.
		OTHERS		
11.53		Harmonize exemptions for medicinal products: combine annotation #2—*P. hexandrum* and *R. serpentina* with annotation #8—*Taxus wallichiana*.	Switzerland	Adopted.
11.54	*Panax ginseng* (Ginseng)	Inclusion in Appendix II of roots	Russia	Adopted as amended.[3]
11.55	*Araucaria araucana* (Monkey-puzzle tree).	Transfer from Appendix II to Appendix I (Argentina population).	Argentina	Adopted.
11.56	*Cactaceae* spp	Exempt up to 3 specimens of rainsticks (Cactaceae, *Echinopsis, Eulychnia*) per person.	Chile	Withdrawn.*
11.57	*Kalmia cuneata* (White wicky)	Delete from Appendix II	United States	Adopted
11.58	*Camptotheca acuminata* (Happy tree).	Inclusion in Appendix II	China	Withdrawn.
11.59	*Cistanche deserticola* (Desert cistanche).	Inclusion in Appendix II	China	Adopted as amended.[4]

TABLE 1.—RESULTS OF ACTIONS BY THE ELEVENTH MEETING OF THE CONFERENCE TO THE PARTIES (COP11) TO CITES—Continued

Proposal	Species/taxon	Proposed amendment	Proponent	Decision
11.60	*Harpagophytum procumbens Harpagophytum zeyheri* (Devil's claw).	Inclusion in Appendix II	Germany	Withdrawn.
11.61	*Adonis vernalis* (Spring adonis)	Inclusion in Appendix II (excluding potted live plants).	Germany	Adopted as amended.[5]
11.62	*Guaiacum sanctum* (Lignum vitae).	Transfer from Appendix II to Appendix I.	United States	Withdrawn.*
		ANIMALS		
		Proposals with export quotas		
11.12	*Crocodylus niloticus* Nile crocodile.	Maintain Tanzanian population in Appendix II; annual export quota of 1,600.	Tanzania	Adopted.
		OTHER PROPOSALS		
		MAMMALS		
		Order Pholidota		
11.13	*Manis crassicaudata Manis pentadactyla Manis javanica* (Asian pangolins).	Transfer from Appendix II to Appendix I.	India; Nepal; Sri Lanka; United States.	Adopted as amended.[6]
		Order Cetacea		
11.14	*Tursiops truncatus ponticus* (Black Sea bottlenose dolphin).	Transfer from Appendix II to Appendix I.	Georgia; United States	Withdrawn.*
11.15	*Eschrichtius robustus* (Gray whale).	Transfer the Eastern North Pacific stock from Appendix I to Appendix II.	Japan	Rejected.
11.16	*Balaenoptera acutorostrata* (Minke whale).	Transfer the Southern Hemisphere stock from Appendix I to Appendix II.	Japan	Rejected as originally submitted and as amended.[7]
11.17	*Balaenoptera acutorostrata* (Minke whale).	Transfer the Okhotsk Sea-W. Pacific stock from Appendix I to Appendix II.	Japan	Rejected.
11.18	*Balaenoptera acutorostrata* (Minke whale).	Transfer the NE Atlantic stock & the N. Atlantic Central stock from Appendix I to Appendix II.	Norway	Rejected as originally submitted and as amended.[8]
		Order Carnivora		
11.19	*Parahyaena (Hyaena) brunnea* (Brown hyaena).	Delete from Appendix II	Namibia; Switzerland	Adopted.
		Order Proboscidea		
11.20	*Loxodonta africana* (African elephant).	Transfer South African population from Appendix I to Appendix II with annotations for trade (30 tons of ivory, hides and leather goods, trophies, live animals).	South Africa	Adopted as amended.[9]
11.21	*Loxodonta africana* (African elephant).	Maintain the Botswana population in Appendix II, with annotations for trade (12 tons of ivory, hides and leather goods, trophies, live animals).	Botswana	Withdrawn.
11.22	*Loxodonta africana* (African elephant).	Maintain the Namibia population in Appendix II, with annotations for trade (2 tons of ivory, hides and leather goods, trophies, live animals).	Namibia	Withdrawn.
11.23	*Loxodonta africana* (African elephant).	Maintain the Zimbabwe population in Appendix II, with annotations for trade (10 tons of ivory, hides and leather goods, ivory carvings, live animals, trophies).	Zimbabwe	Withdrawn.

TABLE 1.—RESULTS OF ACTIONS BY THE ELEVENTH MEETING OF THE CONFERENCE TO THE PARTIES (COP11) TO CITES—Continued

Proposal	Species/taxon	Proposed amendment	Proponent	Decision
11.24	*Loxodonta africana* (African elephant).	Transfer to Appendix I all populations currently listed in Appendix II.	India; Kenya	Withdrawn.
11.25	*Loxodonta africana* (African elephant).	Amend the annotation for Appendix II populations (regarding the destination of live animals).	Switzerland	Adopted.
		Order Sirenia		
11.26	*Dugong dugon* (Dugong)	Transfer the Australian population from Appendix II to Appendix I.	Australia	Adopted.
		Order Artiodactyla		
11.27	*Vicugna vicugna* (Vicuña)	Transfer all populations in Bolivia that are in Appendix I to Appendix II.	Bolivia	Withdrawn.
11.28	*Vicugna vicugna* (Vicuña)	Delete the zero quota for trade in cloth from populations in Appendix II.	Bolivia	Adopted.
11.29	*Moschus* spp. (Musk deer)	Transfer to Appendix I all populations listed in Appendix II.	India; Nepal; United States	Withdrawn.*
11.30	*Ovis vignei* (Urial)	Include in Appendix I all subspecies not yet listed in the Appendices.	Germany	Adopted as amended.[10]
		BIRDS		
		Order Rheiformes		
11.31	*Rhea pennata* (= *Pterocnemia pennata pennata*) (Darwin's rhea).	Transfer Argentine populations from Appendix I to Appendix II.	Argentina	Adopted.
		Order Falconiformes		
11.32	*Falco rusticolus* (Gyrfalcon)	Transfer the North American population from Appendix I to Appendix II, with a zero quota for export of wild birds.	United States	Rejected.
		Order Psittaciformes		
11.33	*Eunymphicus cornutus cornutus* (Horned parakeet).	Transfer from Appendix II to Appendix I.	France	Adopted.
11.34	*Eunymphicus cornutus uveaensis* (Horned parakeet).	Transfer from Appendix II to Appendix I.	France	Adopted.
		Order Passeriformes		
11.35	*Garrulax canorus* (Hwamei)	Inclusion in Appendix II	China	Adopted.
		REPTILES		
		Order Testudinata		
11.36	*Cuora* spp. (Asian box turtles) ...	Inclusion in Appendix II	Germany; United States	Adopted.
11.37	*Clemmys guttata* (Spotted turtles).	Inclusion in Appendix II	United States	Rejected.
11.38	*Geochelone sulcata* (African spurred turtle).	Transfer from Appendix II to Appendix I.	France	Adopted as amended.[11]
11.39	*Malacochersus tornieri* (Pancake tortoise).	Transfer from Appendix II to Appendix I.	Kenya; United States	Withdrawn.[12]
11.40	*Eretmochelys imbricata* (Hawksbill sea turtle).	Transfer ''Cuban Population'' from Appendix I to Appendix II, with annotation for: (1) export of stocks (6,900 kg) to Japan; (2) export each year thereafter, to Japan or to other Parties (up to 500 turtles).	Cuba; Dominicia	Withdrawn.

TABLE 1.—RESULTS OF ACTIONS BY THE ELEVENTH MEETING OF THE CONFERENCE TO THE PARTIES (COP11) TO CITES—Continued

Proposal	Species/taxon	Proposed amendment	Proponent	Decision
11.41	*Eretmochelys imbricata* (Hawksbill sea turtle).	Transfer ''Cuban population'' from Appendix I to Appendix II, with annotation for export in one shipment of registered stocks (6,900 kg) to Japan only.	Cuba	Rejected as originally submitted and as amended.[13]
		Order Sauria		
11.43	*Varanus melinus* (Quince monitor).	Transfer from Appendix II to Appendix I.	Germany	Withdrawn.
		Order Serpentes		
11.44	*Crotalus horridus* (Timber rattlesnake).	Inclusion in Appendix II	United States	Withdrawn.
		AMPHIBIANS		
		Order Anura		
11.45	*Bufo retiformis* (Sonoran green toad).	Delete from Appendix II	United States	Adopted.
11.46	*Mantella* spp. (Mantella frogs)	Inclusion in Appendix II (*Mantella aurantiaca* already in Appendix II).	Netherlands; United States	Adopted.
		FISH		
		Order Orectolobiformes		
11.47	*Rhincodon typus* (Whale shark)	Inclusion in Appendix II	United States	Rejected.
		Order Lamniformes		
11.48	*Carcharodon carcharias* (Great white shark).	Inclusion in Appendix I	Australia; United States	Rejected as originally submitted and amended.[14]
11.49	*Cetorhinus maximus* (Basking shark).	Inclusion in Appendix II	United Kingdom	Rejected as amended.[15]
		Order Coelacanthiformes		
11.50	*Latimeria* spp. (Coelacanths)	Inclusion in Appendix I (*Latimeria chalumnae* is already in Appendix I).	Germany; France	Adopted.
11.51	*Latimeria menadoensis*	Inclusion in Appendix I	Indonesia; Germany	Withdrawn.
		INVERTEBRATES		
		Order Araneae		
11.52	*Poecilotheria* spp. (Eastern Hemisphere tarantulas).	Inclusion in Appendix II	United States; Sri Lanka	Rejected.

[1] *Dudleya stolonifera* transferred to Appendix II. *Dudleya traskiae* to remain in Appendix I.
[2] *Lewisia cotyledon* deleted. *Lewisia maguirei* and *Lewisia serrata* retained in Appendix II.
[3] Russian population only.
[4] Amended annotation (now same as annotation #3).
[5] Annotation for dried specimens (either whole or in part) only.
[6] Species remain in Appendix II with a zero quota for trade from the wild.
[7] Proposal was amended twice. First amended by Japan to allow only trade between Parties with a DNA identification. Then, Suriname proposed amendment for zero quota until COP12.
[8] Limited trade to animals taken within Norwegian waters, and only for trade to countries with DNA-based identification systems.
[9] Amendment: Zero quota on ivory.
[10] All unlisted populations listed in Appendix II.
[11] Species remains in Appendix II with a zero quota for exports from the wild.
[12] Withdrawn after discussions between Kenya and Tanzania. Tanzania committed to not allow any exports from the wild.
[13] Cuba proposed annotation that trade would not take place until the control systems in Japan were reviewed by the Standing Committee.
[14] Amended to Appendix II.
[15] Amended to include a 12-month delay in effective date for implementation.
* A Resolution or Decision of the Conference of the Parties was adopted dealing with this species.

Nomenclature Changes

At each meeting of the Conference of the Parties, the Parties also adopt certain nomenclature changes to the Appendices, based on adoption of new references or other scientific information. The adoption of the Nomenclature Report does not change the Appendix in which a species appears, but does change what name must be used for the species. As a result of the adoption by the Conference of the Parties of nomenclature changes, the names of the following taxa have been included in the CITES Appendices:

TABLE 2.—TAXONOMIC CHANGES TO THE CITES APPENDICES AS DECIDED AT COP11

Common name	Currently listed as	Previously listed as	Class, order, and family
Southern or Antarctic minke whale	*Balaenoptera bonaerensis*	*Balaenoptera acutorostrata*	Class Mammalia, Order Cetacea, Family Balaenopteridae
Cuatro Cienagas spiny soft-shell turtle.	*Apalone ater*	*Trionyx ater*	Class Reptilia, Order Testudinata, Family Trionychidae
Indian soft-shell turtle	*Aspideretes gangeticus*	*Trionyx gangeticus*	Class Reptilia, Order Testudinata, Family Trionychidae.
Peacock soft-shell turtle	*Aspideretes hurum*	*Trionyx hurum*	Class Reptilia, Order Testudinata, Family Trionychidae.
Black soft-shell turtle	*Aspideretes nigricans*	*Trionyx nigricans*	Class Reptilia, Order Testudinata, Family Trionychidae.
Pythons	Family Pythonidae	Family Boidae	Class Reptilia, Order Serpentes.
Round Island boas	Family Bolyeriidae	Family Boidae	Class Reptilia, Order Serpentes.
Mexican dwarf boas	Family Loxocemidae	Family Boidae	Class Reptilia, Order Serpentes.
Small ground boas	Family Tropidophiidae	Family Boidae	Class Reptilia, Order Serpentes.
Chameleons	*Calumma* spp. and *Furcifer* spp	*Chamaeleo* spp.	Class Reptilia, Order Sauria, Family Chamaeleonidae.

COP11 Results

Results of the actions by the Conference of the Parties on the Appendices are given in tables 3–5 below. Details on the actual votes for proposals and related information are available from the Division of Scientific Authority (see **ADDRESSES**, above), our web site (http://international.fws.gov/cop11/cop11.html), and the CITES Secretariat's web site (www.wcmc.org.uk/CITES/eng/index.shtml).

TABLE 3.—TAXA REMOVED FROM THE CITES APPENDICES

Species	Common name	Appendix
CLASS MAMMALIA	MAMMALS.	
Order Carnivora	Canids, Cats, Bears, Mustelids, etc.	
Parahyaena brunnea	Brown hyaena	II
CLASS AMPHIBIA	AMPHIBIANS.	
Order Anura	Frogs, Toads.	
Bufo retiformis	Sonoran green toad	II
PLANT KINGDOM	PLANTS.	
Family Asclepiadaceae	Milkweed family.	
Ceropegia spp	Ceropegia family	II
Frerea indica		II
Family Byblidaceae	Byblis family.	
Byblis spp	Byblis, Rainbow plants	II
Family Cephalotaceae	Australian pitcher-plant family.	
Cephalotus follicularis	West Australian pitcher-plant	II
Family Ericaceae	Heath family.	
Kalmia cuneata	White wicky	II
Family Portulacaceae	Portulaca family.	
Lewisia cotyledon	Siskiyou lewisia	II
Family Sarraceniaceae	New World pitcher plant family.	
Darlingtonia californica	Western pitcher plant, Cobra-lily	II

TABLE 4.—NEW TAXA OR POPULATIONS ADDED TO THE CITES APPENDICES

Species	Common name	Appendix
CLASS MAMMALIA	MAMMALS.	
Order Artiodactyla	Even-toed ungulates.	
Ovis vignei [all previously unlisted subspecies]	Urial	II
CLASS AVES	BIRDS.	
Order Passeriformes	Perching birds, Songbirds.	
Garrulax canorus	Hwamei	II
CLASS REPTILIA	REPTILES.	
Order Testudinata	Turtles, Tortoises.	

TABLE 4.—NEW TAXA OR POPULATIONS ADDED TO THE CITES APPENDICES—Continued

Species	Common name	Appendix
Cuora spp.	Asian box turtles	II
CLASS AMPHIBIA	AMPHIBIANS.	
Order Anura	Frogs, Toads.	
Mantella spp. [all previously unlisted species]	Mantella frogs	II
CLASS OSTEICHTHYES	BONY FISHES.	
Order Coelacanthiformes	Coelacanth.	
Latimeria spp. [all previously unlisted species]	Coelacanth	I
PLANT KINGDOM	PLANTS.	
Family Araliaceae	Ginseng family.	
Panax ginseng [population of Russia]	Ginseng	II
Family Orobanchaceae.		
Cistanche deserticola	Desert cistanche	II
Family Ranunculaceae.		
Adonis vernalis	Spring adonis	II

TABLE 5.—REVISIONS IN THE CITES APPENDICES RESULTING FROM NOMENCLATURE CHANGES AND SPLIT-LISTING OF SPECIFIC POPULATIONS

Species	Common name	Appendix
CLASS MAMMALIA	MAMMALS.	
Order Cetacea	Whales, Porpoises, Dolphins.	
Balaenoptera bonaerensis [1]	Southern minke whale	I
Order Proboscidea	Elephants.	
Loxodonta africana [population of South Africa [2]]	African elephant	II
Order Sirenia	Dugongs, Manatees.	
Dugong dugon [population of Australia [3]]	Dugong	I
CLASS AVES	BIRDS.	
Order Rheiformes	Rheas.	
Rhea pennata pennata [population of Argentina [2]]	Darwin's rhea	II
Order Psittaciformes	Parrots, Parakeets, Macaws, Lories, Cockatoos, etc.	
Eunymphicus cornutus cornutus [3]	Horned parakeet	I
Eunymphicus cornutus uveaensis [3]	Horned parakeet	I
CLASS REPTILIA	REPTILES.	
Order Testudinata	Turtles, Tortoises.	
Apalone ater [4]	Cuatro Cienegas softshell turtle	I
Aspideretes gangeticus [4]	Indian soft-shell turtle	I
Aspideretes hurum [4]	Peacock soft-shell turtle	I
Aspideretes nigricans [4]	Black soft-shell turtle	I
Order Sauria	Lizards.	
Calumma spp. [5]	Chamaeleons	II
Furcifer spp. [5]	Chamaeleons	II
Order Serpentes	Snakes.	
Atropoides nummifer [6]	Jumping pit-viper	III (Honduras)
Bolyeriidae spp. [7]	Round island boas	II
Daboia russellii [8]	Russell's viper	III (India)
Bothriechis schlegelii [6]	Eyelash palm pit-viper	III (Honduras)
Porthidium nasutus [6]	Rainforest hognosed pit-viper	III (Honduras)
Porthidium ophryomegas [6]	Slender hognosed pit-viper	III (Honduras)
Loxocemidae spp. [7]	Mexican dwarf boas	II
Pythonidae spp. [7]	Pythons	II
Tropidophiidaedae spp. [7]	Small ground boas	II
PLANT KINGDOM	PLANTS.	
Family Araucariaceae	Monkey-puzzle tree family.	
Araucaria araucana [population of Argentina] [3]	Monkey-puzzle tree	I
Family Cactaceae	Cactus family.	
Disocactus (= Lobeira, = Nopalxochia) macdougallii [2]	MacDougall's cactus	II
Family Crassulaceae	Stonecrop family.	
Dudleya stolonifera [2]	Laguna Beach dudleya	II
Family Cyatheaceae	Tree-fern family.	
Cyathea spp. [9]		II
Family Dicksoniaceae	Tree-fern family.	
Cibotium barometz [10]		II
Dicksonia spp. [the Americas only] [10]		II

[1] Previously considered a southern population of *Balaenoptera acutorostrata.*
[2] Downlisted from Appendix I to Appendix II.
[3] Uplisted from Appendix II to Appendix I.
[4] Previously in genus *Trionyx.*
[5] Previously member of genus *Chamaeleo.*
[6] Previously in genus *Bothrops.*

[7] Previously listed as family Boidae.
[8] Previously *Vipera russellii*.
[9] Previously entire family Cyatheaceae listed.
[10] Previously entire family Dicksoniaceae listed.

Consequences of Amendments of Appendices I and II

All proposals in table 1 that were approved by the Conference of the Parties entered into effect 90 days after the meeting (i.e., on July 19, 2000) under the terms of the CITES treaty. Article XV of CITES enables any Party to exempt itself from implementing CITES for any particular species, if the Party enters a reservation with respect to that species. A Party desiring to enter a reservation must do so during the 90-day period immediately following the close of the meeting at which the Parties voted to include the species in Appendix I or Appendix II. If the United States were to decide to enter any reservation, this action must have been transmitted to the Depositary Government (Switzerland) by July 19, 2000.

Reservations, if entered, do little to relieve importers in the United States from the need for foreign export permits, because the U.S. Lacey Act Amendments of 1981 (16 U.S.C. 3371 *et seq.*) make it a Federal offense to import into the United States any animals taken, possessed, transported, or sold in violation of foreign conservation laws. If a foreign country has enacted CITES as part of its positive law, and that country has not taken a reservation with regard to the animal or plant, or its parts or derivatives, the United States (even if it had taken a reservation on a species) would continue to require CITES export documents as a condition of import.

Any reservation by the United States would provide exporters in this country with little relief from the need for U.S. export documents. Importing countries that are party to CITES would generally require CITES-equivalent documentation from the United States, even if it enters a reservation, because the Parties have agreed to allow trade with non-Parties (including reserving Parties) only if they issue documents containing all the information required in CITES permits or certificates. In addition, if a reservation is taken on a species listed in Appendix I, the species should still be treated by the reserving Party as in Appendix II according to Resolution Conf. 4.25, thereby still requiring CITES documents for export.

The United States has never entered a reservation to a CITES listing, including the listings resulting from COP11. It is the policy of the United States that commercial trade in Appendix I species for which a country has entered a reservation undermines the effectiveness of CITES. All new listings in the Appendices adopted at COP11 (all previously unlisted populations of urial, hwamei, Asian box turtles, Mantella frogs, all coelacanths, ginseng, desert cistanche, and spring adonis) and all transfers from Appendix II to Appendix I (dugong, horned parakeets, and monkey-puzzle tree) were supported by the United States. Because we announced our position on all of these proposals well in advance of the meeting, we did not solicit public comments on whether we should enter any reservations following COP11.

Requirements of Other Laws

Changes in the CITES listing status of species as a consequence of actions taken at COP11 do not supersede import or export requirements pursuant to other wildlife conservation laws. For example, import or export of species listed as ''threatened'' or ''endangered'' under the U.S. Endangered Species Act (ESA) still must meet the provisions of that law and its implementing regulations in 50 CFR part 17, even if those species have been transferred to a less protective CITES Appendix or removed from the Appendices entirely.

Among the species downlisted to Appendix II at COP11, or with an amended annotation, but still subject to stricter ESA provisions are the African elephant, Darwin's rhea, and the vicuña. The brown hyena, removed from Appendix II, also remains listed under the ESA. The African elephant is also subject to provisions of the U.S. African Elephant Conservation Act (AECA). Because of the high public interest in this species and the complexity of the terms of the CITES downlistings, the effects of the downlistings on trade in African elephant products is treated separately in more detail below. Species of birds included in the CITES Appendices for the first time (hwamei) are now subject to the terms and provisions of the U.S. Wild Bird Conservation Act (WBCA) and its regulations in 50 CFR part 15. This inclusion will result in a prohibition on the importation of this species unless they qualify for exemptions established by regulation. Copies of these implementing regulations are available from the Service's Division of Management Authority and from our web site at http://international.fws.gov/.

Importation Into the United States of Sport-Hunted Trophies of African Elephants From the Republic of South Africa

The African elephant is listed as ''threatened'' under the ESA with a special rule at 50 CFR 17.40(e). Under the special rule, a personally taken sport-hunted trophy may be imported into the United States when it has (1) originated in a country for which the Service has received notice for that country's African elephant ivory quota for the year of export; (2) the permit requirements of the regulations for CITES permits (50 CFR 13 and 23) have been met; (3) the Service has determined that the take of the trophy for import would enhance the survival of the species; and (4) the ivory has been marked as outlined in the special rule. All these conditions continued to apply after the Appendix II listing for the elephant populations of South Africa became effective on July 19, 2000.

In making the required enhancement findings, the Service reviews the status of the population and the total management program for the elephant in each country to ensure the program is promoting the conservation of the species. The Service will make such findings on a periodic basis upon receipt of new information on the species' population or management. The enhancement findings for importation of sport-hunted elephant trophies from South Africa are on file in the Division of Management Authority and remain in effect until the Service finds, based on new information, that the conditions of the special rule are no longer met and has published a notice of any change in the **Federal Register**.

The practical effect of the downlisting of the South African population for sport hunters is that an import permit will no longer be required for noncommercial imports of African elephant sport-hunted trophies from South Africa, as well as Namibia, Botswana, and Zimbabwe only (elephant populations in the latter three countries were downlisted to Appendix II in 1997 during COP10). Only a CITES export permit from the country of origin or a reexport certificate from an intermediate country will be required. Populations of African elephants in all other countries, however, remain in Appendix I. Therefore, importation into the United States of sport-hunted elephant trophies from these other

countries will continue to require prior issuance of both an import and export permit. As in the past, under the requirements of the AECA, no sport trophies of African elephants, or the raw ivory derived from sport-hunted trophies, whether from Appendix I or Appendix II populations, may be exported from the United States.

Importation of Live African Elephants, Ivory, and Other African Elephant Products

When the downlisting of the elephant populations of South Africa became effective on July 19, 2000, it became possible to import live elephants from that country into the United States ''to appropriate and acceptable destinations'' without an import permit and without need for an enhancement finding. Only an export permit from the country of origin, or a reexport certificate from an intermediate country, is now necessary. Commercial trade in hides and leather products will also be allowed. Hides or leather products from elephant populations other than those of South Africa and Zimbabwe are still considered to be specimens included in Appendix I and cannot be imported by any CITES Party for commercial purposes. Regardless of any provisions of the African elephant downlistings at COP10 and COP11 for export of elephant ivory or ivory products, import of worked ivory into the United States continues to be prohibited under the terms of AECA or under the provisions of the ESA 4(d) special rule, unless they meet any of the following exceptions: (1) Bona fide antiques more than 100 years old; (2) personal and household effects registered with U.S. Customs on export and now being reimported; or (3) pre-Convention items for noncommercial use acquired prior to the first listing of the elephants under CITES in 1977. With the exception of appropriately marked sport-hunted trophies, import of raw ivory is strictly prohibited.

Required Determinations

This rule was not subject to Office of Management and Budget review under Executive Order 12866. Because these amendments are simply notifications of actions taken by the CITES Parties, they are not ''rules'' as defined in 5 U.S.C. 551. Similarly, the Regulatory Flexibility Act (5 U.S.C. 601) does not apply to the CITES listing process. The proposed adjustments to the list in 50 CFR 23.23 are solely informational to provide the public with accurate data on the species covered by CITES. The listing changes adopted by the Parties took effect on July 19, 2000, under the terms of the CITES treaty.

This rule does not contain new or revised information collection for which Office of Management and Budget (OMB) approval is required under the Paperwork Reduction Act. Information collection associated with CITES permits is covered by an existing OMB approval, and is assigned clearance No. 1018–0093, Form 3–200–27, with an expiration date of February 28, 2001. Detailed information for the CITES documentation appears at 50 CFR 23.15(g). The Service may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The Department of the Interior has determined that amendments to the CITES Appendices, which result from actions of the Parties to the Convention, do not require the preparation of Environmental Assessments as defined under authority of the National Environmental Policy Act (42 U.S.C. 4321–4347). This rule is categorically excluded from further National Environmental Policy Act requirements, under Part 516 of the Departmental Manual, Chapter 2, Appendix 1.10.

This document is issued under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq. and 87 Stat. 884, as amended). It was prepared by Dr. Javier Alvarez, Division of Scientific Authority.

List of Subjects in 50 CFR Part 23

Endangered and threatened species, Exports, Fish, Imports, Marine mammals, Plants, Reporting and recordkeeping requirements, Treaties.

Regulation Promulgation

For the reasons set forth in the preamble, the Service amends title 50, chapter I, subchapter B, part 23 of the Code of Federal Regulations as follows:

PART 23—ENDANGERED SPECIES CONVENTION

1. The authority citation for part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, 27 U.S.T. 1087; and Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

2. In § 23.23, amend the table in paragraph (f) as follows:

a. Remove the following entries:

In CLASS MAMMALIA (common name, MAMMALS):

Parahyaena brunnea (common name, brown hyaena; in Order Carnivora, common name, Carnivores: Cats, Bears, etc.);

D. dugon (Australian population) (common name, Dugong; in Order Sirenia, common name, Dugongs, Manatees);

O. vignei vignei (common name, Shapo; in Order Artiodactyla, common name, Even-toed ungulates).

In CLASS REPTILIA (common name, REPTILES):

B. nasutus (common name, Rainforest hognosed pit-viper; in Order Serpentes, common name, Snakes).

In CLASS AMPHIBIA (common name, AMPHIBIANS):

B. retiformis, (common name, Sonoran green toad; In Order Anura, common name Frogs, Toads).

In PLANT KINGDOM:

Araucaria araucana (all populations except that of Chile) (common name, Monkey-puzzle tree; in Family Araucariaceae, common name Monkey-puzzle tree family);

A. araucana (population of Chile) (common name, Monkey-puzzle tree; in Family Araucariaceae, common name Monkey-puzzle tree family);

Family Asclepiadaceae (common name, Milkweed family), including Ceropegia spp. (common name, Ceropegias) and *Frerea indica;*

Family Byblidaceae (common name, Byblis family), including *Byblis* spp. (common name, Byblis, Rainbow plants);

Disocactus (=*Lobeira,* =*Nopalxochia*) *macdougallii* (common name, MacDougall's cactus; in Family Cactaceae, common name, Cactus family);

Family Cephalotaceae (common name, Australian pitcher-plant family), including *Cephalotus follicularis* (common name, West Australian pitcher plant);

Family Ericaceae (common name, Heath family), including *Kalmia cuneata* (common name, White wicky);

Lewisia cotyledon (common name, Siskiyou lewisia; in Family Portulacaceae, common name, Portulaca family);

Darlingtonia californica (common name, Western pitcher plant, Cobra-lily; in Family Sarraceniaceae, common name, New World pitcher plant family).

b. Revise the following entries:

In CLASS MAMMALIA (common name, MAMMALS):

Manis spp. (common name, pangolins; in Order Pholidota, common name, Pangolins, Scaly Anteaters);

Balaenoptera acutorostrata (common name, Minke whale; in Order Cetacea, common name, Whales, Porpoises, Dolphins);

Loxodonta africana (common name, African elephant; in Order Proboscidea, common name, Elephants) (both entries);

Dugong dugon (except for Australian population) (common name, Dugong; in Order Sirenia, common name, Dugongs, Manatees);

Bos gaurus (common name, Seladang, Guar; in Order Artiodactyla, common name, Even-toed ungulates);

V. vicugna (Bolivia) (common name, Vicuña; in Order Artiodactyla, common name, Even-toed ungulates).

In CLASS AVES (common name, BIRDS):

Rhea pennata pennata (common name, Darwin's rhea; in Order Rheiformes, common name Rheas);

Eunymphicus cornutus (common name, horned parakeet; in Order Psittaciformes, common name Parrots, Parakeets, Macaws, Lories, Cockatoos, etc.).

In CLASS REPTILIA (common name, REPTILES):

Trionyx ater (common name, Cuatro Cienegas softshell turtle; in Order Testudinata, common name, Turtles, Tortoises);

Trionyx gangeticus (common name, Indian softshell turtle; in Order Testudinata, common name, Turtles, Tortoises);

Trionyx hurum (common name, Peacock softshell turtle; in Order Testudinata, common name, Turtles, Tortoises);

Trionyx nigricans (common name, Black softshell turtle; in Order Testudinata, common name, Turtles, Tortoises);

Boidae spp. (common name, Boa Constrictors and Pythons; in Order Serpentes, common name, Snakes);

Bothrops nummifer (common name, Jumping pit-viper; in Order Serpentes, common name, Snakes);

Bothrops ophryomegas (common name, Slender hognosed pit-viper; in Order Serpentes, common name, Snakes);

Bothrops schlegelii (common name, Eyelash palm pit-viper; in Order Serpentes, common name, Snakes);

Vipera russellii (common name, Russell's viper; in Order Serpentes, common name, Snakes).

In PLANT KINGDOM (common name, PLANTS):

Rauvolfia serpentina (common name, Snake-root devil-pepper; in Family Apocynaceae, common name, Dogbane family);

Podophyllum hexandrum (common name, Himalayan may-apple; in Family Berberidaceae, common name Barberry family);

Dudleya stolonifera (common name, Laguna Beach dudleya; in Family Crassulaceae, common name, Stonecrop family);

Family Cyatheaceae (common name, Tree-fern family);

Family Dicksoniaceae (common name, Tree-fern family);

Taxus wallichiana (common name, Himalayan yew; in Family Taxaceae, common name, Yew family).

c. Add new entries as set forth below.

Note: In the animal classes (Mammals, Birds, Reptiles, Amphibians, and Bony Fishes), the orders are listed in taxonomic sequence, and the species are listed alphabetically within each order; in the plant kingdom, the families are listed alphabetically, and the species are listed alphabetically within each family.

The revisions and additions read as follows:

§ 23.23 Species listed in Appendices I, II, and III.

* * * * *

(f) * * *

Species	Common name	Appendix	First listing date (month/day/year)
CLASS MAMMALIA:	MAMMALS:		
* * *	* *	*	*
Order Pholidota:	Pangolins, Scaly Anteaters:		
Manis spp. (all species except those with an annual export quota).	Pangolins	II	7/1/75
Manis crassicaudata [zero quota for wild specimens].	Indian pangolin	II	7/1/75
Manis javanica [zero quota for wild specimens]	Malayan pangolin	II	7/1/75
Manis pentadactyla [zero quota for wild specimens].	Chinese pangolin	II	7/1/75
* * *	* *	*	*
Order Cetacea:	Whales, Porpoises, Dolphins:		
* * *	* *	*	*
Balaenoptera acutorostrata (all populations except that of West Greenland).	Northern minke whale	I	6/28/79
Balaenoptera bonaerensis	Southern minke whale	I	6/28/79
* * *	* *	*	*
Order Proboscidea:	Elephants:		
* * *	* *	*	*
Loxodonta africana [except populations of Botswana, Namibia, South Africa, and Zimbabwe].	African elephant	I	2/4/77

Species	Common name	Appendix	First listing date (month/day/year)
L. africana [only the populations of Botswana, Namibia, South Africa and Zimbabwe, to allow: (1) Export of hunting trophies for noncommercial purposes; (2) export of live animals to appropriate and acceptable destinations (Namibia: for noncommercial purposes only; South Africa: for reintroduction purposes); (3) export of hides and leather goods (South Africa and Zimbabwe); (4) export of ivory carvings for noncommercial purposes (Zimbabwe only); (5) export of ivory tusks from Kruger National Park (South Africa; zero quota)].	African elephant	II	2/4/77
Order Sirenia:	Dugongs, Manatees:		
Dugong dugon	Dugong	I	7/1/75
* * *	* *	*	*
Order Artiodactyla:	Even-toed ungulates:		
* * *	* *	*	*
B. gaurus (excluding domestic forms)	Seladang, Gaur	I	7/1/75
* * *	* *	*	*
Ovis vignei (except subspecies listed below)	Urial	II	7/19/00
O. vignei vignei	Ladakh urial	I	7/1/75
* * *	* *	*	*
Vicugna vicugna (except populations listed below, under the conditions specified).	Vicuña	I	7/1/75
* * *	* *	*	*
V. vicugna [Bolivia: populations of the Conservation Units of Mauri-Desaguadero, Ulla Ulla and Lipez-Chichas (export limited to wool sheared from live animals and to cloth and items made thereof, including luxury handicrafts and knitted articles; the reverse side of cloth and cloth products must bear the logo adopted by countries signatory to the Convenio para la Conservación y Manejo de la Vicuña and the words, ''VICUÑA-BOLIVIA''; all specimens not meeting any of the above conditions shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly)].	Vicuña	II	7/1/75
* * *	* *	*	*
CLASS AVES:	BIRDS:		
* * *	* *	*	*
Order Rheiformes:	Rheas:		
* * *	* *	*	*
R. pennata pennata (Argentina only)	Darwin's rhea	II	7/1/75
R. pennata pennata (except population of Argentina).	Darwin's rhea	I	7/1/75
* * *	* *	*	*
Order Psittaciformes:	Parrots, Parakeets, Macaws, Lories, Cockatoos, etc.:		
* * *	* *	*	*
Eunymphicus cornutus (except subspecies listed below).	Horned parakeet	II	7/1/75
Eunymphicus cornutus cornutus	Horned parakeet	I	7/1/75
Eunymphicus cornutus uveaensis	Horned parakeet	I	7/1/75
* * *	* *	*	*
Order Passeriformes:	Perching birds, Songbirds:		
* * *	* *	*	*
Garrulax canorus	Hwamei	II	7/19/00

Species	Common name	Appendix	First listing date (month/day/year)
* * *	* *	*	*
CLASS REPTILIA:	REPTILES:		
Order Testudinata:	Turtles, Tortoises:		
Apalone ater	Cuatro Cienegas softshell turtle	I	7/1/75
Aspideretes gangeticus	Indian soft-shell turtle	I	7/1/75
Aspideretes hurum	Peacock soft-shell turtle	I	7/1/75
Aspideretes nigricans	Black soft-shell turtle	I	7/1/75
* * *	* *	*	*
Cuora spp.	Asian box turtles	II	7/19/00
* * *	* *	*	*
Geochelone sulcata [zero quota for wild specimens].	African spurred tortoise	II	7/1/75
* * *	* *	*	*
Trionyx ater (see *Apalone ater*)			
T. gangeticus (see *Aspideretes gangeticus*)			
T. hurum (see *Aspideretes hurum*)			
T. nigricans (see *Aspideretes nigricans*)			
* * *	* *	*	*
Order Sauria:	Lizards:		
* * *	* *	*	*
Calumma spp.	Chamaeleons	II	2/4/77
* * *	* *	*	*
Furcifer spp.	Chamaeleons	II	2/4/77
* * *	* *	*	*
Order Serpentes:	Snakes:		
* * *	* *	*	*
Atropoides nummifer	Jumping pit-viper	III (Honduras)	4/13/87
* * *	* *	*	*
Boidae spp. (all species except those in App. I or with earlier date in App. II).	Boas	II	2/4/77
* * *	* *	*	*
Bolyeriidae spp. (all species except those in App. I or with earlier date in App. II).	Round island boas	II	2/4/77
Bothriechis schlegelii	Eyelash palm pit-viper	III (Honduras)	4/13/87
* * *	* *	*	*
Bothrops nasutum (see *Porthidium nasutum*)			
B. nummifer (see *Atropoides nummifer*)			
B. ophryomegas (see *Porthidium ophryomegas*)			
B. schlegelii (see *Bothriechis schlegelii*)			
* * *	* *	*	*
Daboia russellii	Russell's viper	III (India)	2/12/84
* * *	* *	*	*
Loxocemidae spp. (all species except those in App. I or with earlier date in App. II).	Mexican dwarf boas	II	2/4/77
* * *	* *	*	*
Porthidium nasutum	Rainforest hognosed pit-viper	III (Honduras)	4/13/87
Porthidium ophryomegas	Slender hognosed pit-viper	III (Honduras)	4/13/87
* * *	* *	*	*
Pythonidae spp. (all species except those in App. I or with earlier date in App. II).	Pythons	II	2/4/77
* * *	* *	*	*
Tropidophiidae spp. (all species except those in App. I or with earlier date in App. II).	Small ground boas	II	2/4/77
* * *	* *	*	*
Vipera russellii (see *Daboia russellii*).			

Species	Common name	Appendix	First listing date (month/day/year)
* * *	* * *	*	*
CLASS AMPHIBIA:	AMPHIBIANS:		
* * *	* * *	*	*
Order Anura:	Frogs, Toads:		
* * *	* * *	*	*
Mantella spp. (except species below)	Mantella frogs	II	7/19/00
* * *	* * *	*	*
CLASS OSTEICHTHYES:	BONY FISHES:		
* * *	* * *	*	*
Order Coelacanthiformes:	Coelacanth:		
Latimeria spp. (except species below)	Coelacanth	I	7/19/00
Latimeria chalumnae	Gombessa coelacanth	I	7/1/75
* * *	* * *	*	*
PLANT KINGDOM (note general exclusions and exceptions in introductory text):	PLANTS:		
* * *	* * *	*	*
Family Apocynaceae:	Dogbane family:		
* * *	* * *	*	*
Rauvolfia serpentina (except chemical derivatives and finished pharmaceutical products).	Snake-root devil-pepper	II	1/18/90
Family Araliaceae:	Ginseng family:		
Panax ginseng [population of Russia] (whole and sliced roots and parts of roots, excluding manufactured parts or derivatives such as powders, pills, extracts, tonics, teas, and confectionery).	Ginseng	II	7/19/00
* * *	* * *	*	*
Family Araucariaceae:	Monkey-puzzle tree family:		
Araucaria araucana	Monkey-puzzle tree	I	7/1/75
* * *	* * *	*	*
Family Berberidaceae:	Barberry family:		
Podophyllum hexandrum (=*P. emodi,* =*Sinopodophyllum hexandrum*) (except chemical derivatives and finished pharmaceutical products).	Himalayan may-apple	II	1/18/90
* * *	* * *	*	*
Family Crassulaceae:	Stonecrop family:		
Dudleya stolonifera	Laguna Beach dudleya	II	7/29/83
* * *	* * *	*	*
Family Cyatheaceae:	Tree-fern family:		
Alsophila spp. (see *Cyathea* spp.)			
Cyathea spp. (includes *Alsophila* spp., *Nephelea* spp., *Sphaeropteris* spp., *Trichipteris* spp.).		II	2/4/77
Cyathea (=*Hemitelia*) *capensis*		II	7/1/75
C. dredgei		II	7/1/75
C. mexicana		II	7/1/75
C. (=*Alsophila*) *salvini*		II	7/1/75
Nephelea spp. (see *Cyathea* spp.)			
Sphaeropteris spp. (see *Cyathea* spp.)			
Trichipteris spp. (see *Cyathea* spp.)			
* * *	* * *	*	*
Family Dicksoniaceae:	Tree-fern family:		
Cibotium barometz		II	2/4/77
Dicksonia spp. (the Americas only)		II	2/4/77
* * *	* * *	*	*
Family Orobanchaceae:	Broomrape family:		
Cistanche deserticola	Desert cistanche	II	7/19/00

Species	Common name	Appendix	First listing date (month/day/year)
* * *	* *	*	*
Family Ranunculaceae:	Buttercup family:		
Adonis vernalis	Spring adonis	II	7/19/00
* * *	* *	*	*
Family Taxaceae:	Yew family:		
Taxus wallichiana (=*T. baccata* subs. *wallichiana*) (except chemical derivatives and finished pharmaceutical products).	Himalayan yew	II	2/16/95
* * *	* *	*	*

Dated: January 18, 2001.

Kenneth L. Smith,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 01–10144 Filed 5–17–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 001121328–1066–03; I.D. 050801C]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for Maine and Delaware

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

ACTION: Commercial quota harvest.

SUMMARY: NMFS announces that the summer flounder commercial quotas available to the States of Maine and Delaware have been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Maine and Delaware for the remainder of calendar year 2001, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise the States of Maine and Delaware that their quotas have been harvested and to advise Federal vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in Maine and Delaware.

DATES: Effective 0001 hours, May 18, 2001, through December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, (978) 281–9273, e-mail: paul.h.jones@noaa.gov

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2001 calendar year was set equal to 10,747,535 lb (4,875,000 kg)(66 FR 16151, March 23, 2001). The percent allocated to vessels landing summer flounder in Maine is 0.04756 percent, or 5,112 lb (2,319 kg). The allocation for Maine was adjusted due to an overage in 2000, as provided in § 648.100(i)(2), for a final allocation of 2,146 lb (973 kg).

The percent allocated to vessels landing summer flounder in Delaware is 0.01779 percent, or 1,912 lb (867 kg). In 2000, NMFS prohibited Federal permit holders from landing summer flounder in the State of Delaware because there was no quota available after the deduction from the 2000 quota of quota overages in 1999 (65 FR 33486, May 24, 2000). As a result of those deductions and further quota reductions published in the **Federal Register** on August 18, 2000 (65 FR 50463), and December 29, 2000 (65 FR 82945), the 2000 quota allocation to the State of Delaware was -31,303 lb (-14,199 kg). An additional 12,317 lb (5,587 kg) of summer flounder were landed in Delaware in 2000. The 2001 quota for Delaware is not sufficient to offset this negative 2000 allocation and the additional landings in 2000.

Section 648.101(b) requires the Administrator, Northeast Region, NMFS to monitor state commercial quotas and to determine when a state's commercial quota is harvested. NMFS will then publish a notification in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the States of Maine and Delaware have attained their quotas for 2001.

The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of the permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, May 18, 2001, further landings of summer flounder in Maine and Delaware by vessels holding commercial Federal fisheries permits are prohibited for the remainder of the 2001 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, May 18, 2001, federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in Maine and Delaware for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: May 15, 2001.

Bruce C. Morehead,

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

[FR Doc. 01–12606 Filed 5–17–01; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 97
Friday, May 18, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CA–019–FOI, FRL–6982–5]

Clean Air Act Reclassification, San Joaquin Valley Nonattainment Area; Designation of East Kern Nonattainment Area and Extension of Attainment Date; California; Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to change the boundary for the San Joaquin Valley (SJV) serious ozone nonattainment area by separating out the eastern portion of Kern County into its own nonattainment area. We are also proposing to extend the attainment deadline for the new East Kern serious ozone nonattainment area from November 15, 1999 to November 15, 2001.

As a result of this boundary change proposal, EPA is reproposing its June 19, 2000 proposed finding (65 FR 37926) that the SJV area did not attain the 1-hour ozone national ambient air quality standard (NAAQS) by the November 15, 1999 Clean Air Act (CAA) deadline. If we finalize this proposal, the SJV nonattainment area with its revised boundaries will be reclassified by operation of law as severe, and the East Kern nonattainment area will remain classified as serious.

DATES: Comments on these proposed actions must be received by June 18, 2001.

ADDRESSES: Comments may be mailed to: John Ungvarsky, Planning Office (AIR–2), Air Division, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; ungvarsky.john@epa.gov.

Copies of the proposed rule and technical support document (TSD) are contained in the docket for this rulemaking. The docket is available for inspection during normal business hours at the address listed above. A copy of this proposed rule and the TSD are also available in the air programs section of EPA Region 9's website, *http://www.epa.gov/region09/air.*

FOR FURTHER INFORMATION CONTACT: John Ungvarsky, Planning Office (AIR–2), Air Division, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1286.

SUPPLEMENTARY INFORMATION:

I. Introduction

On June 19, 2000 EPA proposed to find that the SJV serious ozone nonattainment area did not attain the 1-hour ozone NAAQS by November 15, 1999, the CAA attainment deadline for serious ozone nonattainment areas.[1] 65 FR 37926. The current SJV nonattainment area includes the counties of San Joaquin, Kern, Fresno, Kings, Madera, Merced, Stanislaus and Tulare. 40 CFR 81.301. During the public comment period for the proposal, EPA received a substantial number of comments requesting that EPA remove the eastern portion of Kern County from the SJV nonattainment area and designate it a separate ozone nonattainment area. On August 28, 2000, The California Air Resources Board (CARB) formally requested that EPA create a separate ozone nonattainment area for eastern Kern County.

Based on the public's comments, the State's request and our own analysis, we are today proposing to revise the SJV ozone nonattainment area by changing its boundaries to remove eastern Kern County. In order to reflect this proposed boundary change, we are reproposing our finding that the SJV did not attain the ozone NAAQS by the statutory deadline. If we finalize this proposal, the SJV nonattainment area with its revised boundaries will be reclassified by operation of law to severe.

We are today also proposing to designate eastern Kern County as a new, separate ozone nonattainment area, which would keep its serious classification. That is because we are proposing to extend the attainment deadline for the proposed East Kern County serious ozone nonattainment area from November 15, 1999 to November 15, 2001. This proposed extension is based in part on monitoring data that indicate there were no exceedances of the 1-hour ozone NAAQS during 1999 and 2000 in eastern Kern County.

II. Proposed Boundaries for the Revised San Joaquin Valley Nonattainment Area and the New East Kern Nonattainment Area

During the public comment period for our proposed finding that the SJV had failed to attain the ozone NAAQS, CARB, the Kern County Air Pollution Control District (KCAPCD), and the U.S. Department of Defense submitted information supporting the removal of eastern Kern County from the SJV nonattainment area.

As stated above, CARB subsequently requested, pursuant to CAA section 107(d)(3)(D), that EPA create a separate ozone nonattainment area for East Kern County. That section provides that the Governor of any State may submit a revised designation of any area or portion of an area within the State. Based on our analysis of the information provided and under the authority in section 107(d)(3)(D), we are proposing to remove eastern Kern County from the SJV nonattainment area and to designate East Kern County as a new, separate ozone planning area.

The only change to the existing SJV nonattainment area would be within Kern County, where the new boundary would divide the county into two parts, generally following the ridge line of the Sierra Nevada and Tehachapi Mountain Ranges. It would be the same as the current boundary line for the Kern County and San Joaquin Valley air districts. The portion of Kern County that is west of the proposed split, which includes the Bakersfield area, would remain in the SJV ozone nonattainment area. The area east of the proposed split, which includes Ridgecrest, Mojave, California City, and the remainder of Kern County, would be designated the East Kern ozone nonattainment area. The specific boundary proposal for the new East Kern nonattainment area is as follows:

Kern County (part)—that portion of Kern County east and south of a line described below:

Beginning at the Kern-Los Angeles County boundary and running north and east along the northwest boundary of the Rancho La Liebre Land Grant to the point of intersection

[1] EPA also proposed to find that the approved serious area ozone California state implementation plan (SIP) for the SJV nonattainment area has not been fully implemented. The Agency intends to take final action on that proposal in a separate rulemaking.

with the range line common to Range 16 West and Range 17 West, San Bernardino Base and Meridian; north along the range line to the point of intersection with the Rancho El Tejon Land Grant boundary; then southeast, northeast, and northwest along the boundary of the Rancho El Tejon Grant to the northwest corner of Section 3, Township 11 North, Range 17 West; then west 1.2 miles; then north to the Rancho El Tejon Land Grant boundary; then northwest along the Rancho El Tejon line to the southeast corner of Section 34, Township 32 South, Range 30 East, Mount Diablo Base and Meridian; then north to the northwest corner of Section 35, Township 31 South, Range 30 East; then northeast along the boundary of the Rancho El Tejon Land Grant to the southwest corner of Section 18, Township 31 South, Range 31 East; then east to the southeast corner of Section 13, Township 31 South, Range 31 East; then north along the range line common to Range 31 East and Range 32 East, Mount Diablo Base and Meridian, to the northwest corner of Section 6, Township 29 South, Range 32 East; then east to the southwest corner of Section 31, Township 28 South, Range 32 East; then north along the range line common to Range 31 East and Range 32 East to the northwest corner of Section 6, Township 28 South, Range 32 East, then west to the southeast corner of Section 36, Township 27 South, Range 31 East, then north along the range line common to Range 31 East and Range 32 East to the Kern-Tulare County boundary.[2]

III. Proposed Finding of Failure To Attain for the Revised San Joaquin Valley Nonattainment Area

A. June 19, 2000 Proposal

In order to reflect the proposed change to the boundaries for the SJV ozone nonattainment area, we must repropose our June 19, 2000 proposed finding (65 FR 37926) that the SJV ozone nonattainment area failed to attain the ozone NAAQS. In addition to the proposed boundary change, EPA is also revising the original proposal by proposing a new deadline for the State to submit a severe area attainment plan (discussed below).

EPA intends to respond to the comments submitted concerning the original proposed finding of failure to attain along with the comments on this reproposal in the final action for this rulemaking. A brief summary of the June 19, 2000 proposed failure to attain finding follows.

Based on air quality data for the 1997–1999 period, at least twelve ozone monitoring sites in the current SJV nonattainment area, excluding monitors in eastern Kern County, averaged more than one exceedance per year. Because the average number of exceedance days per year for 1997–99 exceeded one, we proposed to find that the San Joaquin Valley serious ozone nonattainment area failed to attain by its applicable CAA deadline of November 15, 1999. 65 FR at 37927.

When EPA finalizes a finding of failure to attain the 1-hour ozone standard, the area is reclassified by operation of law to a higher classification (CAA section 181(b)(2)(a)). The impact that a reclassification to severe would have on the San Joaquin Valley nonattainment area includes the establishment of a new attainment deadline, as expeditiously as practicable but no later than November 15, 2005, and the requirement to submit a new attainment plan that meets the CAA requirements for severe ozone nonattainment areas (CAA section 182(d)).

Under CAA section 182(d), the new severe area plan must meet all the requirements for serious area plans plus the requirements for severe areas, including, but not limited to: (1) A 25 ton per year major stationary source threshold; (2) additional reasonably available control technology (RACT) rules for sources subject to the new lower major source applicability cutoff; (3) a new source review (NSR) offset ratio of at least 1.3 to 1; (4) a rate of progress demonstration showing emissions reductions of at least 3 percent per year from 2000 until the attainment year; and (5) a fee requirement[3] for major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X)[4] should the area fail to attain by the attainment deadline. Failure to submit the severe area requirements can result in the start of a sanctions clock (CAA section 179(a)).

Also, the severe area plan must include new transportation conformity emissions budgets for the SJV nonattainment area. The current SIP-approved attainment year budgets for VOC and NO_X will remain in place until new severe area budgets are submitted and have been determined adequate. For a detailed discussion of the requirements that the severe area plan must meet, see 65 FR at 37928–37930; June 19, 2000.

B. Modifications to June 19, 2000 Proposal

Having been put on notice by the June 19, 2000 proposal, the State has been working with the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) to prepare for the severe area plan requirements. In recent discussions with EPA, the State suggested that despite past progress and future reductions, attainment by 2005 may not be possible given the air quality problem in the area. The current design value in the SJV is .161.[5] This design value is higher than all other areas in the country with a 2005 attainment deadline. We are therefore soliciting comment on the viability of the 2005 attainment deadline. We are also soliciting comment on any legal, policy, and technical rationale for allowing a 2007 attainment deadline that would justify EPA establishing a 2007 attainment deadline when the Agency takes final action on the proposed finding. The 2007 date is the attainment deadline for areas originally classified as ''severe 17'' on November 15, 1990 pursuant to CAA section 181(a)(2).

In the June 19, 2000 proposal we stated that the State would be required to submit the severe area SIP revisions no later than 18 months from the effective date of the area's reclassification. 65 FR at 37928. Pursuant to section 182(i), EPA can adjust any applicable deadline (other than the attainment date) as appropriate. EPA is today proposing a new submittal deadline of May 31, 2002 to ensure that control measures are put in place as quickly as possible and there is ample time for the control measures to take effect before the attainment deadline. EPA believes the May 31, 2002 SIP submittal deadline is both reasonable and feasible given the advance notice provided by our June 19, 2000 proposal and the planning efforts already under way at the SJVUAPCD and the State.

IV. Rationale for Establishing a New, Separate East Kern Nonattainment Area

A. Background

EPA is proposing the designation of the new East Kern ozone nonattainment area pursuant to CAA section

[2] The revised SJV ozone nonattainment area would include the following counties: Fresno, Kings, Madera, Merced, San Joaquin, Stanislaus, Tulare, and that portion of Kern County which lies west and north of the line described above.

[3] Section 182(d)(3) sets a deadline of December 31, 2000 to submit the plan revision requiring fees for major sources should the area fail to attain. This date can be adjusted pursuant to CAA section 182(i). We propose to adjust this date to coincide with the submittal deadline for the rest of the severe area plan requirements.

[4] Ozone is not emitted directly into the air, but is formed through the photochemical reaction of NO_X and VOCs.

[5] A design value is an ambient ozone concentration that indicates the severity of the ozone problem in an area and is used to determine the level of emission reductions needed to attain the standard, that is, it is the ozone level around which a State designs its control strategy for attaining the ozone standard. A monitor's design value is the fourth highest ambient concentration recorded at that monitor over the previous three-year period. An area's design value is the highest of the design values from the area's monitors.

107(d)(3)(D). CAA section 107(d)(3)(D) states that the Governor may, on the Governor's own motion, submit a revised designation request to EPA. On August 28, 2000, in a letter from Michael Kenny, Executive Director, CARB, to Felicia Marcus, EPA Region 9 Administrator, the State formally requested that EPA split the SJV nonattainment area into two separate nonattainment areas. While section 107(d)(3)(D) does not contain criteria upon which to evaluate the request, EPA believes it can rely on the criteria listed in an analogous CAA provision, section 107(d)(3)(A), which authorizes EPA to notify the Governor that the designation of an area should be revised on the basis of air quality data, planning and control considerations, or any other air quality-related considerations that EPA deems appropriate.

The SJV 1-hour ozone nonattainment area currently includes all of Kern County, a region that straddles the Sierra Nevada and Tehachapi mountains. It is located in two separate air basins: the SJV and the Southeast Desert (SED) air basins. The dividing line between these two air basins coincides with the jurisdictional boundary between the KCAPCD and the SJVUAPCD;[6] it is also consistent with the boundary that we are today proposing to draw between eastern Kern and the rest of the SJV nonattainment area.

Prior to 1991, the eastern portion of Kern County was designated unclassified. 43 FR 8964, 8972 (March 3, 1978). On November 6, 1991, all of Kern County became part of the SJV ozone nonattainment area as recommended by the Governor of California and promulgated by EPA. 56 FR 56693. In 1991, we generally relied on the Metropolitan Statistical Area (MSA) boundaries for the purpose of designating nonattainment areas consistent with CAA section 107(d)(4)(A)(iv), and all of Kern County is in the same MSA as the other counties in the SJV nonattainment area. While the State acknowledged that eastern Kern County did not have any monitoring sites established in 1991, the State supported eastern Kern's inclusion in the nonattainment area because ''ozone is clearly a regional pollutant, and violations of both the state and federal ozone standards have been measured within 10 miles of Kern County's desert border.''[7]

The 1991 designation also pre-dated the consolidation of the SJV counties into a single air district, the SJVUAPD. With this change, the western portion of Kern County was annexed into the newly-formed SJVUAPCD. At the same time, the eastern portion of Kern County, which was within the SED air basin, became an independent air district, the KCAPCD.

Commenters on EPA's June 19, 2000 proposal, including the State, KCAPCD, and the Department of Defense, provided a compelling technical justification as to why eastern Kern County should be designated a separate ozone planning area.[8] A summary of their reasoning follows, and a more in-depth technical discussion is found in the companion TSD for this notice.

B. Justification for New Boundaries

1. *Geography.* Eastern Kern is in a different air basin than the SJV; it is separated from the SJV by the Sierra Nevada and Tehachapi Mountain Ranges at elevations up to 7,500 feet. Eastern Kern is a vast arid desert, 3,700 square miles in size.

2. *Population and Employment.* There are no major or fast growing population centers in eastern Kern County. Eastern Kern's population of approximately 92,000 has stayed constant over the past 10 years. The area has a low population density of approximately 25 persons per square mile. People tend to live and work in eastern Kern, and because of its geographic isolation there is no convenient commute to cities outside the region. The major employers in eastern Kern are Edwards Air Force Base (AFB) and China Lake Naval Weapons Station (NAWS), which employ over half of the eastern Kern workforce. Two of the three major towns within eastern Kern are Ridgecrest, which is located just outside the China Lake NAWS, and California City, located 9 miles from Edwards AFB. This close correlation between population and workforce suggests that a large percentage of the traffic in eastern Kern is independent of western Kern and urban areas in the SED nonattainment area. Ridgecrest, the largest town in eastern Kern, has a population of approximately 28,000. It is located in the portion of eastern Kern with air quality well below the 1-hour standard and farthest from any major urban areas in western Kern or SED. The SED urban areas nearest to eastern Kern, Palmdale and Lancaster, are bedroom communities for the Los Angeles area. There are no significant commute patterns from eastern Kern into the SED, SJV or the South Coast Air Basin (SCAB) or vice versa.

3. *Commercial Development.* Eastern Kern County is not strongly integrated economically with western Kern County or the SED urban areas. The economy of western Kern is largely based on the oil and agricultural industries. Eastern Kern's economy is based largely on the aerospace, defense, and mineral extraction industries. Also, eastern Kern residents are not dependent on western Kern for economic activities such as employment, shopping, or other services.

4. *Sources of Emissions.* There are only a handful of major emission sources in eastern Kern, and projected industrial growth is minimal. The 1996 annual emissions inventory for eastern Kern indicates 11 tons per day (tpd) of VOC and 33 tpd of NO_X.[9] Total emissions in the area are not sufficient to cause violations of the federal 1-hour ozone standard.

5. *Air Quality.* During the late 1990s, eastern Kern County averaged only a few days over the 1-hour ozone NAAQS each year; the SJV averaged approximately 30 days over the NAAQS each year. Ozone levels in eastern Kern are markedly lower than the SJV and marginally lower than the SED. For the 1997–1999 period, the 1-hour design value for eastern Kern was 0.139 parts per million (ppm) compared to 0.154 ppm for western Kern, 0.161 ppm for the highest site in the SJV, and 0.147 for Victorville in the SED.

[6] Prior to the formation of the SJVUAPCD in 1992, the SJV ozone nonattainment area consisted of eight county air pollution control districts (i.e., San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare, and Kern).

[7] See March 15, 1991 letter from CARB Executive Officer, James D. Boyd, to Daniel McGovern, Regional Administrator, EPA, Region IX.

[8] The SJVUAPCD indicated in its comments that it supports the split.

[9] Ozone is not emitted directly into the air, but is formed through the photochemical reaction of NO_X and VOCs.

TABLE 1.—OZONE AIR QUALITY IN EASTERN KERN COUNTY (1997–1999)

Monitoring site	Number of days over the standard 1997–1999 [10]	Average number of exceedance days per year	Site design value (ppm)
China Lake NAWS [11]	0	0.0	0.083
Mohave	2	0.6	0.119
Edwards AFB [12]	6	2.0	0.139

[10] No exceedances of the 1-hour ozone standard were recorded in 1999 or 2000 in eastern Kern County.

[11] The China Lake monitor is a special purpose monitor (SPM) operated by the Navy at China Lake NAWS in eastern Kern County. It began operation in April, 1998. EPA's policy on the use of ozone special purpose monitoring data is described in a memorandum entitled "Agency Policy on the Use of Ozone Special Purpose Monitoring Data" from John Seitz, Director, Office of Air Quality Planning and Standards, to the Regional Air Directors, August 22, 1997. Until three years of data can be collected, the design value for the China Lake monitoring site is based on its highest recorded value.

[12] The Edwards AFB monitor is a SPM operated by the Air Force on Edwards AFB in eastern Kern County. We have evaluated the Edwards site and its quality assurance information and have determined that its data are valid.

6. *Pollution Transport.* The State has completed three reviews of the impacts of pollution transport on ozone concentrations in California. The State has determined that the few exceedances that have occurred in eastern Kern County were the result of pollutant transport from the SJV Air Basin and SCAB.[13] Wind patterns are such that eastern Kern does not contribute to exceedances in the SJV, SED, or SCAB.

Based on the above factors, EPA believes that the criteria listed in CAA section 107(d)(3)(A) have been met. Eastern Kern is in a separate air basin than the SJV and has a small population that primarily lives and works in the immediate area. Furthermore, eastern Kern has minimal VOC and NO_X emission sources with markedly better air quality than the SJV. In addition, the few exceedances of the ozone NAAQS that have occurred in eastern Kern are a result of overwhelming transport from outside the eastern Kern air basin. EPA is therefore proposing to approve the State's section 107(d)(3)(D) request to change the boundaries of the current SJV ozone nonattainment area to remove eastern Kern County and make it its own nonattainment area.

V. Proposed Attainment Date Extension for Proposed East Kern Nonattainment Area

Because a new East Kern nonattainment area would retain the serious classification that it had as part of the originally designated SJV nonattainment area, the attainment deadline for the area would be November 15, 1999. CAA section 181(a)(1). On December 15, 2000, the State requested two one-year attainment date extensions for the proposed East Kern ozone nonattainment area.[14]

CAA section 181(a)(5) provides that, upon application by any State, the Administrator may extend the attainment deadline for one year if the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and no more than one exceedance of the NAAQS has occurred in the area in the year preceding the extension year. This section further provides that up to two one-year extensions may be granted.

We interpret this provision to authorize the granting of a one-year extension under the following minimum conditions: (1) The State requests a one-year extension; (2) all requirements and commitments in the EPA-approved SIP for the area have been complied with; and (3) at any one monitor, the area has no more than one measured exceedance of the NAAQS during the year that includes the attainment date (or the subsequent year, if a second one-year extension is requested). See generally 57 FR 13506 (April 16, 1992) and Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, EPA, to Regional Air Office Directors; "Procedures for Processing Bump Ups and Extensions for Marginal Ozone Nonattainment Areas," February 3, 1994.[15] Granting extensions is discretionary; EPA guidance states that, in exercising this discretion, the Agency will examine the air quality progress made in the nonattainment area. Specifically, EPA will expect the state to have adopted and substantially implemented control measures necessary to reduce emissions in the area.[16]

We have determined that both the mandatory and discretionary requirements for one-year extensions of the attainment date for both 1999 and 2000 have been fulfilled as follows:

(1) CARB has formally submitted the attainment date extension request, in a letter dated December 15, 2000, from Michael P. Kenny, Executive Officer, CARB, to Felicia Marcus, EPA Regional Administrator, Region 9.

(2) California is currently implementing the EPA-approved SIP. The State's letter, cited above, discusses implementation of State measures in the SIP, and shows that these measures plus new State measures have achieved an overall surplus of emission reductions beyond those assumed in the SIP. In addition, a letter dated December 1, 2000 from Thomas Paxson, Air Pollution Control Officer, KCAPCD, provides evidence that all District SIP

[13] Transport Assessment, November 1996 and November 1999, California Air Resources Board (http://www.arb.ca.gov/aqd/transport/transport.htm).

[14] A review of the ambient air quality ozone data from the EPA Aerometric Information Retrieval System (AIRS) and special purpose monitors shows that two of the three air quality monitors located in the proposed East Kern ozone nonattainment area recorded exceedances of the NAAQS for ozone during the three-year period from 1997 to 1999. There were 6 exceedances at the Edwards AFB monitor, an average of more than 1.0 over the three-year period, which constitutes a violation of the ozone NAAQS for the proposed East Kern area during this three-year period. Thus, because we determine attainment status on the basis of the expected number of exceedances of the NAAQS over the three-year period up to, and including, the attainment date (57 FR 13498, 13506, April 16, 1992), the area needs the two 1-year extensions to avoid a reclassification to severe.

[15] While explicitly applicable only to marginal areas, the general procedures for processing reclassifications and extension requests described in this memorandum apply regardless of the initial classification of an area.

[16] See Memorandum from Sally Shaver, Director, Air Quality Strategies and Standards Division, EPA, to EPA Regional Offices, titled "Criteria for Granting Attainment Date Extensions, Making Attainment Determinations, and Determinations of Failure to Attain the NAAQS for Moderate [carbon monoxide] CO Nonattainment Areas," October 23, 1995. While this memorandum specifically addresses the CAA extension provisions for CO nonattainment areas, it applies equally to ozone areas. Compare the substantially identical language of sections 181(a)(5) (ozone) and 186(a)(4) (CO).

rules and serious area requirements have been fully implemented.[17]

(3) Data recorded at the three eastern Kern monitors (TSD, Appendix A) and confirmed by CARB in its December 15, 2000 letter, indicate no monitored exceedances during 1999 and 2000.

Because the statutory provisions have been satisfied, we are proposing to grant two one-year attainment date extensions for the proposed East Kern ozone nonattainment area. If we finalize this action, the attainment deadline would be extended from November 15, 1999 to November 15, 2001.

VI. Summary of EPA Proposed Rulemaking

We are proposing to change the boundaries for the SJV ozone nonattainment area by removing the eastern portion of Kern County and proposing the designation of a new East Kern ozone nonattainment area with a serious classification. Concurrently, EPA is proposing to grant the State's request for two one-year attainment date extensions for the proposed East Kern ozone nonattainment area, which would make the attainment deadline November 15, 2001.

In order to reflect the proposed boundary change, we are reproposing our finding that the SJV ozone nonattainment area failed to attain the federal 1-hour ozone standard by its CAA deadline of November 15, 1999. If we finalize this nonattainment finding, the revised SJV nonattainment area will be reclassified by operation of law to severe and California must submit to EPA by May 31, 2002 a severe area nonattainment plan that meets the requirements of CAA section 182(d), including providing for the attainment of the federal 1-hour ozone standard as expeditiously as practicable, but no later than November 15, 2005. We are also asking for comment on the legal, technical, and policy justifications for an alternative November 15, 2007 attainment deadline.

VII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

Under section 188(b)(2) of the CAA, findings of failure to attain are based solely upon air quality considerations and the subsequent nonattainment area reclassification must occur by operation of law in light of those air quality conditions. These actions do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities. The proposed designation of eastern Kern County as a new, separate nonattainment area with a serious classification and the proposed attainment date extensions will not impose any new requirements on any sectors of the economy because the area is already classified as serious.

Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

These proposed actions do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) for the following reasons: (1) The proposed finding of failure to attain is a factual determination based on air quality considerations; (2) the resulting reclassification must occur by operation of law and will not impose any federal intergovernmental mandate; and (3) the proposed designation of eastern Kern County as a separate nonattainment area with a serious classification will not impose any new requirements on any sectors of the economy. For the same reason, this proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). For these same reasons, these proposed actions will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). These proposed actions are also not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because they are not economically significant. Finally, for these same reasons, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing these proposed actions, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. These proposed actions do not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Parts 52 and 81

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, National parks, Nitrogen oxides, Ozone, Volatile organic compounds, Wilderness areas.

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

Dated: May 10, 2001.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. 01–12576 Filed 5–17–01; 8:45 am]

BILLING CODE 6560–50–P

[17] As noted in footnote 1, EPA's June 19, 2000 proposal included a finding of failure to fully implement the SIP. The SIP measures at issue in that proposal are ones committed to by the SJVUAPCD, not the KCAPCD. All KCAPCD SIP measures have been implemented.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 36

Meetings of the Negotiated Rulemaking Committee on Joint Tribal and Federal Self-Governance

AGENCY: Indian Health Service, HHS.

ACTION: Notice of meetings.

SUMMARY: The Secretary of Health and Human Services has established a Negotiated Rulemaking Committee on Joint Tribal and Federal Self-Governance (Committee) to negotiate and develop a proposed rule implementing the Tribal Self-Governance Amendments of 2000 (the Act). We intend to publish the proposed rule for notice and comment no later than one year after the date of enactment of the Act (August 18, 2000 + one year), as required by section 517(a)(2) of the Act.

EFFECTIVE DATES: Meetings of the Committee are as follows:

1. June 11–12, 8:30 a.m.–5:00 p.m.; June 13, 8:30 a.m.–1:00 p.m., St. Paul, MN.
2. July 10–12, 8:30 a.m.–5:00 p.m., Seattle WA,
3. July 30–August 1, 8:30 a.m.–5:00 p.m., Anchorage, AK.

ADDRESSES: The meeting locations are:

1. St. Paul, MN—Radisson City Center, 411 Minnesota St., St. Paul, MN 55101, Phone: 1–800–333–3333.
2. Seattle, WA—Red Lion Hotel in South Center Area, 205 Strander Blvd., Seattle, WA 98188, Phone: 206–575–8220.
3. Anchorage, AK—Hilton Anchorage, 500 West 3rd Avenue, Anchorage, AK 99501, Phone: 1–800–245–2527.

Written statements may be submitted to Paula Williams, Director, Office of Tribal Self-Governance, Indian Health Service, 5600 Fishers Lane, Room 5A–55, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Paula Williams, Director, Office of Tribal Self-Governance, Indian Health Service, 5600 Fishers Lane, Room 5A–55, Rockville, MD 20857, Telephone 301–443–7821. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: All meetings are open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may make statements during the meetings to the extent time permits and file written statements with the Committee for its consideration. Submit your written statements to the address listed above. Summaries of the Committee meetings will be available for public inspection and copying ten days following each meeting at the same address.

Dated: May 14, 2001.

Michel E. Lincoln,

Deputy Director.

[FR Doc. 01–12531 Filed 5–17–01; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 578

[Docket No. NHTSA 2001–9404; Notice 1]

RIN 2127–AI42

Civil Penalties

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposed to adjust certain civil penalties authorized for violations of odometer tampering and theft prevention statutes administered by the National Highway Traffic Safety Administration (NHTSA). The Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, requires us to take this action at least every four years. The penalties that would be increased were last adjusted in March 1997.

DATES: Comments on the proposal are due June 18, 2001.

Proposed effective date: 30 days after date of publication of the final rule in the **Federal Register**.

ADDRESSES: All comments on this document should refer to the docket and notice number set forth above and be submitted to Dockets Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. The docket room hours are from 9:30 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA, telephone (202) 366–5263, facsimile (202) 366–3820, electronic mail ''ATVinson@nhtsa.dot.gov'', 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

In order to preserve the remedial impact of civil penalties and to foster compliance with the law, the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 ((''Adjustment Act''), 28 U.S.C. Sec. 2461 note, Public Law 101–410), as amended by the Debt Collection Improvement Act of 1996 (''Collection Act,'' Pub. L. 104–134), requires us and other Federal agencies to regularly adjust certain civil penalties for inflation. Under these laws, each agency must make an initial inflationary adjustment for all applicable civil penalties, and must make further adjustments of these penalty amounts at least once every four years. The Collection Act limited the initial increase to 10 percent of the penalty being adjusted.

Our initial adjustment of civil penalties under these legislative authorities was published on February 4, 1997 (62 FR 5167). We established 49 CFR part 578, *Civil Penalties,* which applies to violations that occur on and after March 6, 1997. These adjustments resulted in the maximum permissible increases of 10 percent. On July 14, 1999, we further adjusted certain penalties to enhance their deterrent effect (64 FR 37876), effective August 13, 1999. As we are now at the end of the four-year period following the initial adjustment, the purpose of this notice is to review the penalties that have remained unchanged since 1997, and to propose adjusting those penalties where the statutory formulae authorize it.

Method of Calculation

Under the Adjustment Act as amended by the Collection Act, we determine the inflation adjustment for each applicable civil penalty by increasing the maximum civil penalty amount per violation by the cost-of-living adjustment, and then applying a rounding factor. Sec. 5(b) of the Adjustment Act defines the ''cost-of-living'' adjustment as:

> The percentage (if any) for each civil monetary penalty by which—
>
> (1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds
>
> (2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.

Since the proposed adjustment is intended to be effective before December 31, 2001, the ''Consumer Price Index [CPI] for the month of June of the calendar year preceding the adjustment'' would be the CPI for June 2000. This figure is 172.4. NHTSA's penalties were initially adjusted in February 1997 based on the CPI figure for June 1996, which was 156.7. The factor that we are using in calculating the increase, then, is 172.4 divided by 156.7, or 1.1001914. We shall use 1.1 as the appropriate figure. Any calculated increase under this adjustment is then subject to a specific rounding formula set forth in Sec. 5(a) of the Adjustment Act. Under the formula:

Any increase shall be rounded to the nearest

(1) multiple of $10 in the case of penalties less than or equal to $100;

(2) multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000;

(3) multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000;

(4) multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000;

(5) multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and

(6) multiple of $25,000 in the case of penalties greater than $200,000.

Review of Civil Penalties Prescribed by Section 578.6

Section 578.6 contains the civil penalties authorized by the statutes that we enforce. We have reviewed these penalties, multiplied each of them by 1.1, considered the nearest higher multiple specified in the rounding provisions, and concluded that only the penalties discussed below may be increased.

Section 578.6(f) Odometer Tampering and Disclosure

The maximum civil penalty for a related series of violations of 49 U.S.C. Chapter 327 is $110,000, as specified in § 578.6(f)(1). The inflation factor raises this figure to $121,000. Under the formula, any increase in a penalty shall be rounded to the nearest multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000. Accordingly, we propose that § 576.8(f)(1) be amended to increase the maximum civil penalty to $120,000 for a related series of violations of the odometer tampering and disclosure provisions. However, the maximum civil penalty for a single violation remains at $2,200 because the inflation-adjusted figure of $2,420 is not yet at a level to be rounded to the nearest multiple of $1,000.

Section 578.6(g) Vehicle Theft Prevention

Under § 578.6(g)(1), the maximum civil penalty for a related series of violations of 49 U.S.C. 33114(a)(1–4) is $275,000. The inflation factor raises this figure to $302,500. Under the formula, any increase in a penalty shall be rounded to the nearest multiple of $25,000 in the case of penalties greater than $200,000. Accordingly, we propose that Sec. 576.8(g)(1) be amended to increase the maximum civil penalty to $300,000 for a related series of violations of the vehicle theft prevention provisions. However, the maximum penalty for a single violation remains at $1,100.

Under § 578.6(g)(2), a person that violates 49 U.S.C. 33114(a)(5) is liable for a civil penalty of not more than $110,000 a day for each violation. The inflation factor modified by the rounding factor results in this penalty being raised to $120,000, and we are proposing this adjustment as well.

Effective Date

The amendments would be effective 30 days after publication of the final rule in the **Federal Register**. The adjusted penalties would apply to violations occurring on and after the effective date.

Request for Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the beginning of this document, under **ADDRESSES**.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA (NCC–30), at the address given at the beginning of this document under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies from which you have deleted the claimed confidential business information, to Docket Management at the address given at the beginning of this document under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation, 49 CFR Part 512.

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated at the beginning of this notice under **DATES**. Because we must issue a final rule not later than June 30, 2002, and a proposed rule in the interim, we are unlikely to extend the comment closing dates for this notice or for the proposed rule. However, in accordance with our policies, to the extent possible, we will also consider comments that Docket Management receives after the specified comment closing date. If Docket Management receives a comment too late for us to consider in developing the proposed rule, we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address and times given near the beginning of this document under **ADDRESSES**.

You may also see the comments on the internet. To read the comments on the internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/).*

(2) On that page, click on ''search.''

(3) On the next page (*http://dms.dot.gov/search/),* type in the four-digit docket number shown at the heading of this document. Example: if the docket number were ''NHTSA–2001–1234,'' you would type ''1234.''

(4) After typing the docket number, click on ''search.''

(5) The next page contains docket summary information for the docket you selected. Click on the comments you wish to see.

You may download the comments. The comments are imaged documents, in either TIFF or pdf format. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under Executive Order 12866, ''Regulatory Planning and Review.'' This action is limited to the proposed adoption of adjustments of civil penalties under statutes that the agency enforces, and has been determined to be not ''significant'' under the Department of Transportation's regulatory policies and procedures.

Regulatory Flexibility Act

We have also considered the impacts of this notice under the Regulatory Flexibility Act. I certify that a final rule based on this proposal will have no significant economic impact on a substantial number of small entities.

The following is my statement providing the factual basis for the certification (5 U.S.C. 605(b)). The proposed amendments primarily affect manufacturers of motor vehicles. Manufacturers of motor vehicles are generally not small businesses within the meaning of the Regulatory Flexibility Act.

The Small Business Administration's regulations define a small business in part as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)) SBA's size standards are organized according to Standard Industrial Classification Codes (SIC), SIC Code 3711 ''Motor Vehicles and Passenger Car Bodies'' has a small business size standard of 1,000 employees or fewer.

For manufacturers of passenger cars and light trucks, NHTSA estimates there are at most five small manufacturers of passenger cars in the U.S. Since each manufacturer serves a niche market, often specializing in replicas of ''classic'' cars, production for each manufacturer is fewer than 100 cars per year. Thus, there are at most 500 cars manufactured per year by U.S. small businesses.

In contrast, in 2001, there are approximately nine large manufacturers producing passenger cars, and light trucks in the U.S. Total U.S. manufacturing production per year is approximately 15 to 15 and a half million passenger cars and light trucks. We do not believe small businesses manufacture even 0.1 percent of total U.S. passenger car and light truck production per year.

Further, small organizations and governmental jurisdictions would not be significantly affected as the price of motor vehicles ought not to change as the result of this proposed rule. As explained above, this action is limited to the proposed adoption of a statutory directive, and has been determined to be not ''significant'' under the Department of Transportation's regulatory policies and procedures.

Finally, this action would not affect our civil penalty policy under the Small Business Regulatory Enforcement Fairness Act (62 FR 37115, July 10, 1997). We shall continue to consider the appropriateness of the penalty to the size of the business charged.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), we state that there are no requirements for information collection associated with this rulemaking action.

National Environmental Policy Act

We have also analyzed this rulemaking action under the National Environmental Policy Act and determined that it has no significant impact on the human environment.

Executive Order 12612 (Federalism)

We have analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 12612, and have determined that it has no significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This proposed rule does not have a retroactive or preemptive effect. Judicial review of a rule based on this proposal may be obtained pursuant to 5 U.S.C. § 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this rule will not have a $100 million effect, no Unfunded Mandates assessment will be prepared.

List of Subjects in 49 CFR Part 578

Imports, Motor vehicle safety, Motor vehicles, Rubber and Rubber Products, Tires, Penalties.

1. The authority citation for 49 CFR Part 578 would continue to read as follows:

Authority: Pub. L. 101–410, Pub. L. 104–134, 49 U.S.C. 30165, 30505, 32308, 32309, 32507, 32709, 32710, 32912, and 33115; delegation of authority at 49 CFR 1.50.

2. Section 578.6 would be amended by revising the last sentence of paragraph (f)(1), the last sentence of paragraph (g)(1), and paragraph (g)(2) to read as follows:

PART 578—CIVIL AND CRIMINAL PENALTIES

* * * * *

§ 578.6 Civil penalties for violations of specified provisions of Title 49 of the United States Code.

* * * * *

(f) *Odometer tampering and disclosure.* (1) * * * The maximum civil penalty under this paragraph for a related series of violations is $120,000.

* * * * *

(g) *Vehicle theft prevention.* (1) * * * The maximum penalty under this paragraph for a related series of violations is $300,000.

(2) A person that violates 49 U.S.C. 33114(a)(5) is liable to the United States government for a civil penalty of not more than $120,000 a day for each violation.

* * * * *

Issued on: May 15, 2001.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 01–12551 Filed 5–17–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 010419099–1099–01; I.D. 040201A]

RIN 0648–AP19

Fisheries off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Hawaiian Islands; Control Date

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

ACTION: Advance notice of proposed rulemaking; consideration of a control date; request for comments.

SUMMARY: This document announces that persons who enter the offshore pelagic handline fishery around the Cross Seamount, four NOAA weather buoys, and the ''Bigeye Buoy'' in the U.S. exclusive economic zone (EEZ) around Hawaii, after February 15, 2001 (control date), may not be assured of continued participation in the fishery if, in the future, the Western Pacific Fishery Management Council (Council) prepares, and NMFS approves, a program limiting entry or effort. This control date supersedes the previous control date of July 2, 1992. This document does not commit the Council to limiting effort or preclude the

Council from using any other date for determining future participation in this fishery. The Council may also use other criteria to limit fishing effort or participation in a limited entry program if one is developed in the future.

DATES: Comments must be submitted by July 2, 2001.

ADDRESSES: Submit written comments to Dr. Charles Karnella, Administrator, NMFS, Pacific Islands Area Office (PIAO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700; or fax to 808–973–2941. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru, PIAO, 808–973–2937.

SUPPLEMENTARY INFORMATION: At its 108th meeting, the Council established February 15, 2001, as a new control date for the offshore pelagic handline fishery around the Hawaiian Islands. The previously established control date (July 2, 1992) is more than 8 years old and considered to be outdated (57 FR 36637, August 14, 1992). The new control date, which supersedes the old control date, applies to the Cross Seamount, four NOAA weather buoys, and one University of Hawaii research buoy off the Hawaiian Islands (''Bigeye Buoy''). The precise areas of application would be determined in a future rulemaking, should the Council decide to proceed with limiting entry or effort. This action responds to concerns associated with changes to the management program governing the Hawaii-based pelagic longline fishery, the participants of which may switch to the offshore pelagic handline fishery resulting in the substantial and unregulated expansion of the currently small fishery.

At present, the fishery consists of 15 to 20 Hawaii-based, small fishing vessels (<50 ft or 15.2 m) employing hook and line handline gear to target bigeye and yellowfin tuna that are seasonally abundant at the Cross Seamount and four NOAA weather buoys, located about 160 nautical miles from the islands of Hawaii. A fifth buoy, the ''Bigeye Buoy'' was placed in the same vicinity approximately 2 years ago by University of Hawaii fishery researchers studying bigeye habitat. This buoy has also been found to aggregate fish and has been utilized by Hawaii-based pelagic handline vessels. The vessels in this fishery primarily operate from the island of Hawaii, although one or two are based on the island of Oahu.

The Council believes that there is a risk of speculative entry into the fishery while the potential benefits and costs of limited entry alternatives and the development of a regulatory amendment to address a substantially expanded fishery are being evaluated. The control date is designed to discourage speculative entry during this period of analysis, as well as to provide notification to new participants that their access may be restricted in the future. The control date does not commit the Council or NMFS to any particular management regime or criteria for entry into the offshore pelagic handline fishery. Fishermen are not guaranteed future participation in this fishery, regardless of their level of participation before or after the control date. The Council may choose a different control date or it may choose a management regime that does not involve a control date. Other criteria, such as documentation of commercial landings and sales, may be used to determine eligibility for participation in the fishery. The Council may also choose to take no further action to control entry or access to the fishery.

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

Dated: May 13, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 01–12605 Filed 5–17–01; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 66, No. 97
Friday, May 18, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TM–01–04]

Notice of Meeting of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS) is announcing a forthcoming meeting of the National Organic Standards Board (NOSB).

DATES: June 6, 2001, from 8 a.m. to 5:30 p.m. and June 7, 2001, from 8:30 a.m. to 5:30 p.m. (Central Time).

Place: Best Western Midway Hotel, 1835 Rose Street, La Crosse, Wisconsin 54603. Telephone: (608) 781–7000.

FOR FURTHER INFORMATION CONTACT: Richard Mathews, Acting Program Manager, National Organic Program, USDA–AMS–TMP–NOP, P.O. Box 96456, Room 2945–So., Ag Stop 0268, Washington, DC 20090–6456, Telephone: (202) 720–3252.

SUPPLEMENTARY INFORMATION: Section 2119 (7 U.S.C. 6518) of the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501 *et seq.*) requires the establishment of the NOSB. The purpose of the NOSB is to make recommendations about whether a substance should be allowed or prohibited in organic production or handling, to assist in the development of standards for substances to be used in organic production and to advise the Secretary on other aspects of the implementation of OFPA. The NOSB met for the first time in Washington, DC, in March 1992 and currently has five committees working on various aspects of the organic program. The committees are: Accreditation, Crops, Livestock, Materials, and Processing.

In August of 1994, the NOSB provided its initial recommendations for the National Organic Program (NOP) to the Secretary of Agriculture. Since that time, the NOSB has submitted 30 addenda to its recommendations and reviewed more than 189 substances for inclusion on the National List of Allowed and Prohibited Substances. The last meeting of the NOSB was held on March 6–7, 2001, in Buena Park, CA.

The Department of Agriculture (USDA) published its final National Organic Program regulation in the **Federal Register** on December 21, 2000 (65 FR 80548). The rule became effective April 21, 2001.

Purpose and Agenda

The principal purposes of the meeting are to provide an opportunity for the NOSB to: receive various committee reports; receive updates from the Aquatic Task Force Working Group, the Task Force on Board Policy for Expert Presentations, and the Task Force on Outreach to Producers; receive an update from the USDA/NOP; review materials to determine if they should be included on the National List of Approved and Prohibited Substances; hear a presentation from the Environmental Protection Agency (EPA) on pesticide product labeling; and hear a presentation from the Foreign Agricultural Service, USDA on trade issues.

The Livestock Committee will present a recommendation to the NOSB on ''access to pasture.'' The Processing Committee will seek from the NOSB adoption of its recommendation for clarifying the materials for which a petition must be submitted requesting a review of a material for inclusion on the National List of substances allowed or prohibited for use in organic production and handling; discuss what ''novel'' processes will be allowed in organic handling; and discuss potential mislabeling issues that might arise in regard to products produced by uncertified processors. The Crops Committee will present a draft guidance document on compost tea and vermiculture; draft recommendations for greenhouse standards; draft recommendations for mushroom standards; and discuss transitional organic labeling and transitional organic operations. The Accreditation Committee will seek adoption of a plan for a Peer Review Panel; make recommendations about what issues guidance should be provided about on the NOP Website; present a new certifier outreach report; and discuss the committee's draft ''Principles of Organic Production and Handling.'' The Materials Committee will present its materials decision matrix for adoption by the Board, review materials for possible inclusion on the National List of Allowed or Prohibited Substances; seek adoption of a policy for updating the National List; and review committee communications with the Organic industry.

Materials to be reviewed at the meeting by the NOSB are as follows: for Livestock production: DL-Methionine (including, DL-Methionine Hydroxy Analog and Hydroxy Analog Calcium); for Crops: Monocalcium Phosphate; and for Processing: Potassium Hydroxide, Ammonium Hydroxide, Cyclohexlamine, Diethylaminoethanol, Morpholine, Octadecylamine.

For further information see *http://www.ams.usda.gov/nop.* Copies of the NOSB meeting agenda can be requested from Mrs. Toni Strother, USDA–AMS–TMP–NOP, P.O. Box 96456, Room 2510-So., Ag Stop 0268, Washington, DC 20090–6456; by telephone at (202) 720–3252; or by accessing the NOP website at *http://www.ams.usda.gov/nop* on or after May 4, 2001.

Type of Meeting

The meeting is open to the public. The NOSB has scheduled time for public input on Wednesday, June 6, 2001, from 8 a.m. until 10 a.m., and on Thursday, June 7, 2001, from 4:30 p.m. until 5:30 p.m. at the Best Western Midway Hotel 1835 Rose Street, La Crosse, WI 54603. Telephone: (608) 781–7000. Individuals and organizations wishing to make an oral presentation at the meeting should forward their request to Mrs. Toni Strother at USDA–AMS–TMP–NOP, P.O. Box 96456, Room 2510–So., Ag Stop 0268, Washington, DC 20090–6456, or by FAX to (202) 205–7808, or by e-mail to *toni.strother2@usda.gov,* by close of business May 31, 2001. While persons wishing to make a presentation may sign up at the door, advance registration will ensure that a person has the opportunity to speak during the allotted time period and will help the NOSB to better manage the meeting and

to accomplish its agenda. Individuals or organizations will be given approximately 5 minutes to present their views. All persons making an oral presentation are requested to provide their comments in writing. Written submissions may contain information other than that presented at the oral presentation. Written comments may be submitted to the NOSB at the meeting or to Mrs. Strother after the meeting at the above address.

Dated: May 16, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–12685 Filed 5–16–01; 11:35 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–033–1]

Notice of Request for Reinstatement of an Expired Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Reinstatement of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a reinstatement of an expired information collection in support of regulations governing the importation of tomatoes from Spain, Chile, France, Morocco, and Western Sahara to prevent the introduction of foreign plant pests into the United States.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by July 17, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 01–033–1, Regulatory Analysis and Development PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 01–033–1.

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

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: For information regarding foreign quarantine regulations, contact Donna L. West, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road, Unit 140, Riverdale, MD 20737–1232; (301) 734–8262. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS'' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Importation of Tomatoes from Spain, Chile, France, Morocco, and Western Sahara.

OMB Number: 0579–0131.

Expiration Date of Approval: April 30, 2001.

Type of Request: Reinstatement of an expired information collection.

Abstract: The United States Department of Agriculture (USDA) is responsible for preventing plant pests from entering the United States and controlling and eradicating plant pests in the United States. The Plant Protection Act authorizes the Department to carry out this mission. The Plant Protection and Quarantine (PPQ) program of USDA's Animal and Plant Health Inspection Service is responsible for implementing the regulations that carry out the intent of this Act.

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56 through 319.56–8) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests, including fruit flies, that are new to or not widely distributed within the United States.

The regulations in § 319.56–2dd allow tomatoes from Spain, Chile, France, Morocco, and Western Sahara to be imported into the United States subject to certain conditions. Allowing tomatoes to be imported necessitates the use of certain information collection activities, including completing phytosanitary inspection certificates and maintaining records regarding trap placement and Medfly captures. The information we collect serves as the supporting documentation needed to confirm that the tomatoes have been produced in accordance with the conditions set forth in the regulations.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning this information collection activity. These comments will help us:

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

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: Foreign plant health protection authorities.

Estimated annual number of respondents: 34.

Estimated annual number of responses per respondent: 72.

Estimated annual number of responses: 2448.

Estimated total annual burden on respondents: 1224 hours.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 14th day of May 2001.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–12535 Filed 5–17–01; 8:45 am]

BILLING CODE 3410–34–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List: Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 18, 2001.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Patrick T. Mooney (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Janitorial/Custodial

Naval & Marine Corps Reserve Center (NMCRC), 1201 N. 35th Avenue, Phoenix, Arizona
NPA: The Centers for Habilitation/TCH, Tempe, Arizona

Janitorial/Custodial

At the following U.S. Army Reserve Center Locations:

Brandt Memorial USARC, Baltimore, Maryland
Fleming Goodwin USARC, Dover, Delaware
Cape Henlopen USARC, Lewes, Delaware
Annapolis USARC, Annapolis, Maryland
Sheridan USARC, Baltimore, Maryland
Jachman USARC, Owings Mills, Maryland
AMSA 83 Curtis Bay, Baltimore, Maryland
Jecelin USARC, Baltimore, Maryland
NPA: CHI Centers, Inc., Silver Spring, Maryland

Janitorial/Custodial

Bombay Hook National Wildlife Refuge, Smyrna, Delaware
NPA: The Chimes, Inc., Baltimore, Maryland

Janitorial/Custodial

St. John's Border Station, Route 9B, New York
NPA: Clinton County Chapter, NYSARC, Inc., Plattsburgh, New York

Janitorial/Custodial

Social Security Administration, Trust Fund Building, Chambersburg, Pennsylvania
NPA: Goodwill Services, Inc., Harrisburg, Pennsylvania

Janitorial/Custodial

Naval and Marine Corps Reserve Center, Milwaukee, Wisconsin
NPA: Milwaukee Center for Independence, Inc., Milwaukee, Wisconsin

Patrick T. Mooney,

Director, Pricing and Program Operations.

[FR Doc. 01–12599 Filed 5–17–01; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Census Bureau

2002 Economic Census Covering Transportation of Commodities

ACTION: Proposed collection; comment request.

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

DATES: Written comments must be submitted on or before July 17, 2001.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to John Fowler, Bureau of the Census, Room 2761, Building 3, Washington, DC 20233 on (301) 457–2108.

SUPPLEMENTARY INFORMATION

I. Abstract

The Commodity Flow Survey, a component of the Economic Census, is the only comprehensive source of multi-modal, system-wide data on the volume and pattern of goods movement in the United States. These data are used by government analysts and policy makers at the Federal, state, and local levels to estimate the future demand for transportation services and facilities; assess the adequacy of our current transportation infrastructure to accommodate the future demand; and to evaluate the economic, social and environmental impacts of transportation flows. The data also are used extensively by academics, researchers, economic planning organizations, and the business community.

The Commodity Flow Survey is co-sponsored by the Bureau of Transportation Statistics, Department of Transportation. The survey provides data on the movement of commodities in the United States from their origin to destination. The survey produces summary statistics on value, tons, ton-miles and average miles for all shipments. The Census Bureau will publish shipment characteristics at the national, census regions and divisions, state, and Metropolitan Areas levels.

Primary strategies for reducing respondent burden in the Commodity Flow Survey include: employing a stratified random sample of business establishments, requesting data on a limited sample of shipment records from each establishment, and accepting estimates.

II. Method of Collection

The Commodity Flow Survey will survey a sample of business establishments in mining, manufacturing, wholesale, and selected retail industries. Each selected establishment will receive, by mail, four questionnaires, one during each quarter of 2002. On each form, an establishment will be asked to report data for an average of 25 shipments, selected during a designated one-week reporting period.

III. Data

OMB Number: Not Available.
Form Number: CFS–1000.
Type of Review: Regular review.

Affected Public: Businesses and other for-profit, small businesses or organizations.

Estimated Number of Respondents: 50,000.

Estimated Time Per Response: 2 hours.

Estimated Total Annual Burden Hours: 400,000.

Estimated Total Annual Cost: $7,280,000.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. 131.

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 utility of the information to businesses/private industry for marketing/cost evaluation/planning; (c) the accuracy of the agency's estimate of burden (including hours and cost) of the proposed collection of information; (d) ways to enhance the quality, utility, and clarity of the information to be collected; and (e) 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: May 15, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–12611 Filed 5–17–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–856, A–580–846, A–469–810]

Antidumping Duty Orders: Stainless Steel Angle From Japan, Korea, and Spain

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

ACTION: Notice of antidumping duty orders.

EFFECTIVE DATE: May 18, 2001.

FOR FURTHER INFORMATION CONTACT: Jarrod Goldfeder (Japan) at (202) 482–0189, Brian Smith (Korea) at (202) 482–1766, or Minoo Hatten (Spain) at (202) 482–1690, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations

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

Scope of Orders

For purposes of these orders, the term ''stainless steel angle'' includes hot-rolled, whether or not annealed or descaled, stainless steel products of equal leg length angled at 90 degrees, that are not otherwise advanced. The stainless steel angle subject to these orders is currently classifiable under subheadings 7222.40.30.20 and 7222.40.30.60 of the *Harmonized Tariff Schedules of the United States* (''HTSUS''). Specifically excluded from the scope of these orders is stainless steel angle of unequal leg length. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these orders is dispositive.

Antidumping Duty Orders

In accordance with section 735(a) of the Act, the Department published its final determinations that stainless steel angle from Japan, Korea, and Spain is being, or is likely to be, sold in the United States at less than fair value. *See Notice of Final Determinations of Sales at Less Than Fair Value: Stainless Steel Angle from Japan, Korea, and Spain,* 66 FR 16175 (March 23, 2001). On May 11, 2001, the International Trade Commission notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Act that an industry in the United States is materially injured by reason of less-than-fair-value imports of subject merchandise from Japan, Korea, and Spain. Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct the Customs Service to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise for all relevant entries of stainless steel angle from Japan, Korea, and Spain. These antidumping duties will be assessed on all unliquidated entries of imports of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after January 12, 2001, the date on which the Department published its notice of affirmative preliminary determinations in the **Federal Register** (66 FR 2880).

On or after the date of publication of this notice in the **Federal Register**, Customs Service officers must require, at the same time as importers would normally deposit estimated duties, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below. The ''All Others'' rates apply to all exporters of subject merchandise not specifically listed. The weighted-average dumping margins are as follows:

	Weighted-average margin percentage
Weighted-Average (Japan):	
Daido Steel Co., Ltd.	114.51
Aichi Steel Corporation	114.51
Sumitomo Metal Industries, Ltd.	114.51
All Others	70.48
Exporter/Manufacturer (Korea):	
Bae Myung Metal Co., Ltd.	99.56
SK Global Co., Ltd.	99.56
All Others	40.21
Exporter/Manufacturer (Spain):	
Roldan, S.A.	61.45
All Others	24.32

This notice constitutes the antidumping duty orders with respect to stainless steel angle from Japan, Korea, and Spain, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

These orders are published in accordance with section 736(a) of Act and 19 CFR 351.211.

Dated: May 14, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–12596 Filed 5–17–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar From India: Final Results of Antidumping Duty New Shipper Review

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

ACTION: Notice of final results of antidumping duty new shipper review: Stainless steel bar from India.

SUMMARY: On March 6, 2001, the Department of Commerce published the preliminary results of the new shipper review of the antidumping duty order on stainless steel bar from India. This review covers one manufacturer/exporter, Snowdrop Trading Pvt. Ltd. and sales of the subject merchandise to the United States during the period February 1 through September 30, 2000. We received no comments on the preliminary results of review. The final results do not differ from the preliminary results of review, in which we found that the respondent did not make sales in the United States at prices below normal value.

EFFECTIVE DATE: May 18, 2001.

FOR FURTHER INFORMATION CONTACT: Blanche Ziv, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–4207.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

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

Background

On March 6, 2001, the Department published in the **Federal Register** the preliminary results of its new shipper review of stainless steel bar from India. *See Preliminary Results of the New Shipper Review,* 66 FR 13496 (March 6, 2001). We invited parties to comment on our preliminary results of review. We received no comments. The Department has now completed the new shipper review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by this review are shipments of stainless steel bar (''SSB''). SSB means 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. SSB includes cold-finished SSBs 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 the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), 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 products), and angles, shapes and sections.

The SSB subject to these orders is currently classifiable under subheadings 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Final Results of the Review

We received no comments from interested parties on our preliminary results. In addition, we have determined that no changes to our analysis are warranted for purposes of these final results. The weighted-average dumping margin for Snowdrop for the period February 1, 2000 through September 30, 2000, is as follows:

Manufacturer/Exporter	Margin (percent)
Snowdrop Trading Pvt. Ltd. (''Snowdrop'')	0.00

Because the weighted-average dumping margin is zero, we will instruct the Customs Service to liquidate entries made during this review period without regard to antidumping duties for the subject merchandise that Snowdrop exported.

Cash-Deposit Requirements

The following deposit requirements shall be effective upon publication of this notice of final results of administrative review for all shipments of stainless steel bar from India, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash-deposit rate for the reviewed company will be the rate indicated above; (2) for previously investigated or reviewed companies, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or any previous review or the original less-than-fair-value investigation, but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash-deposit rate for all other manufacturers or exporters will continue to be 12.45 percent, the all-others rate.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these final results in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act, and 19 CFR 351.214.

Dated: May 14, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–12597 Filed 5–17–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 010327081–1106–02]

RIN 0648

Request for Proposals for FY 2001—NOAA Educational Partnership Program With Minority Serving Institutions: Environmental Entrepreneurship Program

AGENCY: Office of Finance and Administration (OFA), National Oceanic and Atmospheric Administration (NOAA). Commerce.

ACTION: Notice of request for proposals.

SUMMARY: The Office of Finance and Administration (OFA) in the National Oceanic and Atmospheric Administration (NOAA), United States Department of Commerce, is soliciting proposals for the NOAA Educational Partnership Program with Minority Serving Institutions (EPP/MSI) Environmental Entrepreneurship Program. The goal of the Program is to strengthen the capacity of Minority Serving Institutions to foster student careers in environmental fields. The Program will provide funds on a competitive basis to eligible minority serving institutions to support education, training, research, and outreach in environmental fields related to NOAA's mission. The term ''environmental fields'' is defined as those environmental, natural and social sciences and engineering, professional and technical fields that are relevant to NOAA's mission which is to ''describe and predict changes in the Earth's environment, and conserve and manage wisely the Nation's coastal and marine resources to ensure sustainable economic opportunities.''

Eligible Minority Serving Institutions (MSIs) include educational institutions identified by the Department of Education as (i) Historically Black Colleges and Universities, (ii) Hispanic-Serving Institutions, and (iii) Tribal Colleges and Universities (see Section III. Eligibility.)

In Fiscal Year 2001, NOAA expects to make available a total of $3,300,000 to support the EPP/MSI Environmental Entrepreneurship Program. The funds will be allocated competitively to support projects at eligible minority serving institutions, of up to three years duration, in the following two categories:

(1) Program Development and Enhancement Grants—approximately six grants, each up to $250,000 total for up to three years. These grants will support the development of effective academic education, training, and research programs, at eligible MSIs, focused on issues directly related to NOAA's environmental management, assessment, and prediction mission. The goal is to enhance education, training, and research opportunities that will strengthen developing environmental programs at MSIs and facilitate the entry of MSI students into careers in environmental fields.

(2) Environmental Restoration Demonstration Projects—approximately six grants, each up to $300,000 total for up to three years. These grants will support the engagement of MSI faculties and students in demonstration projects that integrate education and training opportunities with outreach and/or research activities focused on the application of sound methods and technologies to environmental restoration and ecosystem protection.

While partnerships, particularly with NOAA programs and facilities, are encouraged where appropriate, there is no requirement for a partner or a requirement for the applicant to provide matching funds. NOAA retains the right to allocate funds differently than indicated above if the number of proposals received is not balanced across these two categories, or the proposal quality does not warrant the stated allocation. In such cases, funds may be shifted between the two grant categories.

DATES: A Letter of Intent is requested by June 18, 2001. Proposals must be received by 5 p.m. (Eastern Daylight Savings Time) on July 20, 2001. (See Section VI. Instructions for Application: Timetable)

ADDRESSES: Proposals should be submitted to: Dr. Francis Schuler, EPP/MSI Environmental Entrepreneurship Program, National Oceanic and Atmospheric Administration, Room 11837, SSMC3 (R/SG), 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Francis Schuler, EPP/MSI Environmental Entrepreneurship Program, NOAA, Room 11837 SSMC3 (R/SG), 1315 East-West Highway, Silver Spring, MD 20910. Tel. (301) 713–2445 ext. 158; e-mail: *msi@oar.noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Program Authority

Authority: 15 U.S.C. 1540, 49 U.S.C. 44720, 33 U.S.C. 883d, 33 U.S.C. 1442, 16 U.S.C. 1854(e), 16 U.S.C. 661, 16 U.S.C. 753(a), 16 U.S.C. 1451 et seq., 16 U.S.C. 1431, 33 U.S.C. 883a and Executive Orders 12876, 12900 and 13021. Catalog of Federal Assistance Number: 11.481—Educational Partnership Program with Minority Serving Institutions.

II. Program Description

Background

To meet its principal goals of environmental stewardship, assessment, and prediction, NOAA provides science, technology, and services to describe and predict changes in the Earth's environment, and conserve and manage wisely the Nation's coastal and marine resources to ensure sustainable economic opportunities. NOAA has made a commitment to expand and strengthen its partnership with MSIs. In accordance with NOAA's overall mission, and with the policy of NOAA and the U.S. Department of Commerce to increase education and training of underrepresented minorities in NOAA-related sciences at MSIs, the purposes of the NOAA EPP/MSI Environmental Entrepreneurship Program are:

1. To provide opportunities for undergraduate MSI students to gain exposure to the fields related to NOAA's mission and to increase the number of underrepresented minority students pursuing professional environmental-related career fields.

2. To build the capacity of educational programs in environmental fields at MSIs in order to facilitate entrance of well-prepared students into environmental career fields or advanced academic programs.

3. To accelerate the development of strong partnerships, where appropriate, with NOAA programs and facilities or with other universities and research institutions, industry, government agencies, and organizations (public, nonprofit, or private) that strengthen cooperative education and training, student experiential internships, and faculty development opportunities in environmental fields.

4. To design and encourage the structuring and implementation of curricula and training opportunities that facilitate the integration of environmental knowledge with entrepreneurship for students interested in pursuing careers in the field of environmental restoration.

Rationale

The recruitment of minorities, particularly underrepresented

minorities, in the fields of science and engineering, lags behind expectations. According to the National Science Foundation (NSF), ''Women, Minorities and Persons with Disabilities in Science and Engineering: 2000,'' the percentage of minority scientists and engineers in the workforce ranges from 0.3 percent for American Indians to about 3.0 percent each for African-Americans and Hispanics.

The quality and nature of academic experiences at each point of the educational pipeline are crucial to bringing more minorities into environmental and engineering fields. Bachelors, Masters and Doctoral degrees are the underpinnings of science career achievement and employment. At both the undergraduate and graduate levels, Hispanics, African Americans, and Native Americans complete fewer degrees, relative to their demographic composition in the population, than majority ethnic groups. At the Bachelors level, NSF data show that African Americans received about 7.4 percent of the Bachelors degrees in science and engineering in 1996, Hispanics received 6.4 percent, and American Indians/Alaskan Natives receive 0.6 percent. At the Master's level, African Americans receive about 5.0 percent of the science and engineering degrees, Hispanics about 4.0 percent, and American Indians 0.4 percent. In FY 1998, MSIs received only 5.8 percent of Department of Commerce grants to institutions of higher education.

NOAA EPP/MSI Environmental Entrepreneurship Program

Proposals should be firmly grounded in ''environmental fields'' related to NOAA's mission. The term ''environmental fields'' is defined as those environmental, natural and social sciences and engineering, professional and technical fields that are relevant to NOAA's mission which is to ''describe and predict changes in the Earth's environment, and conserve and manage wisely the Nation's coastal and marine resources to ensure sustainable economic opportunities.'' (See *http://www.noaa.gov/*)

The long-term, underlying objective of the NOAA EPP/MSI Environmental Entrepreneurship Program is to enhance participation of MSI students and faculty in environmental fields related to NOAA's mission. Broadening the opportunity for eligible MSIs to participate in NOAA's missions will also serve to increase understanding of the role of environmental science and technology among underrepresented groups of the American population. Proposals should identify mechanisms to be employed that will encourage and enable members of underrepresented groups to enter and to remain in environmental fields, particularly in the NOAA-related sciences.

Proposals will be accepted that address one of the following categories:

(1) Program Development and Enhancement Grants—approximately six grants, each up to $250,000 total for up to three years. These grants will support the development of effective academic education, training, and research programs, at eligible MSIs, focused on issues directly related to NOAA's environmental management, assessment, and prediction missions. The goal is to enhance education, training, and research opportunities that will strengthen developing environmental programs at MSIs and facilitate the entry of MSI students into careers as entrepreneurs, scientists, resource managers, and community leaders in environmental fields related to NOAA's mission. Developing and enhancing education, training, and research capabilities at MSIs is intended to expand opportunities for students to develop the technical skills, insights, and experiences needed to equip them for the task of environmentally sound decision-making. Typical activities funded under this element may include, but are not limited to: Environmental science courses and curriculum enhancement; faculty exchange opportunities; training and research experiences and active learning opportunities for students; and other activities aimed at improving access to and retention of students from underrepresented groups in environmental fields related to NOAA's mission.

(2) Environmental Restoration Demonstration Project Grants—approximately six grants, each up to $300,000 total for up to three years. These grants will support the engagement of MSI faculty and students in demonstration projects that apply environmentally sound methods and technologies to environmental restoration and ecosystem protection. Demonstration projects should integrate education and training opportunities with outreach and/or research to, among other things, enhance and restore coastal and estuarine habitats, prevent marine pollution, reduce coastal hazards, assess marine protected areas, protect coral reefs, curb the spread of invasive species, restore fisheries and fisheries habitat, develop and expand aquaculture, plan community waterfront revitalization, mitigate and assess impacts of climate variability, or employ remotely sensed data and information systems to support environmental monitoring and prediction. Projects should involve students with academic training across the broad array of environmental fields needed to implement resource restoration projects. Research to understand the nature and extent of environmental degradation within communities and to test and monitor methods for preventing, controlling, and reducing the degradation of natural environments is encouraged.

Partnerships: For both the (1) Program Development and Enhancement Grants and the (2) Environmental Restoration Demonstration Project Grants, proposals should build creatively on existing expertise and research programs, as appropriate. Innovative, imaginative approaches to the issue are sought that take maximum advantage of the synergies of strong linkages and collaborations with partners such as other universities, research institutions, industry, Federal, state, local, and tribal government agencies, and other organizations (public, nonprofit, or private). While partnerships, particularly with NOAA programs and facilities, are encouraged where appropriate, there is no requirement for a partner or a requirement to provide matching funds.

Proposals: Proposals must be submitted by an eligible MSI and are expected to have a rigorous work plan, a strong rationale, and clearly identified and achievable goals. Proposals should emphasize innovative approaches to encouraging, preparing, and graduating MSI students trained in environmental science and related professional career fields. Projects should strive for multiple-year participation by students and include effective use of role models and mentors. A plan for evaluating the outcome of the project should be included.

III. Eligibility

Minority Serving Institutions eligible to submit proposals include institutions of higher education identified by the Department of Education as: (i) Historically Black Colleges and Universities, (ii) Hispanic-Serving Institutions, (iii) Tribal Colleges and Universities, on the ''2001 United States Department of Education Accredited Post-Secondary Minority Institutions'' list: *http://www.ed.gov/ocr/minorityinst.html*

IV. Evaluation Criteria

The evaluation criteria for proposals submitted for support under the NOAA EPP/MSI Environmental

Entrepreneurship Program are weighted as follows:

(1) *Technical and Educational Merit (40 percent):* The degree to which the activity will advance or transfer knowledge and understanding in environmental science, education, or professional fields as they relate to NOAA's mission; the qualifications of the applicant (individual or team) to conduct the project, including the ability to involve individuals from the MSI's student population successfully in the project; the degree to which the activity explores creative and original concepts; the overall design and organization of the planned activity; the strength of the proposed partnership, if any, to help meet the goals of the project; and the sufficiency of resources for the plan of work.

(2) *Impact of Proposed Project (60 percent):* The contributions the project will make to enhancing the capability of the MSI to bring education and training opportunities to its student population in the environmental and professional fields related to NOAA's mission; the benefit accruing to a faculty member and the institution from participation in the NOAA EPP/MSI Environmental Entrepreneurship Program; the degree to which the proposed activity develops mechanisms that will broaden and sustain the participation of MSIs in NOAA-related environmental fields; the extent to which the proposed activity will enhance and improve education, training, and research at MSIs; and the adequacy of the plan for evaluating the outcome of the project. For environmental restoration demonstration projects, the degree to which the project is expected to help prevent, control, and reduce degradation to habitats will be considered.

V. Selection Procedures

Reviews of the proposals will be conducted by an independent peer review panel. Proposals will be ranked in accordance with the above evaluation criteria (Section IV) by the panel members. The panel members will provide individual evaluations on proposals, but there will be no consensus recommendation. Their recommendations and evaluations will be considered by NOAA in the final selection of proposals to be funded. NOAA may also consider programmatic or geographic balance and budget availability in the final selection of proposals to be funded. Investigators may be asked to modify objectives, work plans, budget levels, or project duration prior to final approval of an award.

VI. Instructions for Application

Timetable

June 18, 2001—Letters of Intent: To aid NOAA in planning the review, potential Principal Investigators are strongly encouraged to submit an optional Letter of Intent by June 18, 2001. Letters of Intent should be e-mailed (no attachments) to msi@oar.noaa.gov. Information contained should include a brief description of the scope of the work, the parties involved, and an estimated budget.

July 20, 2001—Proposals are due no later than 5 p.m. (Eastern Daylight Savings Time), July 20, 2001. (See Section VII. HOW TO SUBMIT for further details.)

August, 2001—Successful applicants can expect to be notified during the last week of August, 2001. Successful applicants may be asked to provide revised narratives and/or budgets which would be due the first week of September, 2001.

October 1, 2001—Funds will be awarded through a grant with an expected start date of October 1, 2001.

Proposal Guidelines

All proposals should be typewritten and may not exceed 20-pages. Tables and visual materials, including charts, graphs, maps, photographs and other pictorial presentations are included in the page limitation; literature citations are not included in the page limitation. All information needed for review of the proposal should be included in the main text; no appendices are permitted. The following information should be included:

(1) *Signed title page:* The title page should be signed by the Principal Investigator and the institutional representative and should clearly identify the program area being addressed by starting the project title with ''NOAA EPP/MSI Environmental Entrepreneurship Program'' followed by either ''Program Development and Enhancement'' or ''Environmental Restoration Demonstration Project,'' depending upon the particular type of grant for which you are applying. The Principal Investigator and institutional representative should be identified by full name, title, organization, telephone number, e-mail and mailing address. The total amount of Federal funds being requested should be listed for each budget period.

(2) *Abstract:* This information is very important. It is critical that the abstract accurately describe the essential elements of the project being proposed. The abstract should include: 1. Title: Use the exact title as it appears in the rest of the application. 2. Investigators: List the names and affiliations of each investigator who will significantly contribute to the project. Start with the Principal Investigator. 3. Funding request for each year of the project as well as total funding requested. 4. Project Period: Start and completion dates. Proposals should request a start date of October 1, 2001. 5. Objectives, Methodology, and Rationale: This should include a concise statement of the objectives of the project, the scientific or educational methodology to be used, and the rationale for the work proposed.

(3) *Project Description:* (a) Introduction/Background/Justification: What is the problem or opportunity being addressed and what is its scientific, technical, educational, or socioeconomic importance to the region or nation?

(b) Technical Plan: What are the goals, objectives, and anticipated approach of the proposed project? While a detailed work plan is not expected, the proposal should present evidence that there has been thoughtful consideration of the approach to the problem under study. If a partner is involved, what capabilities does the partner possess that will benefit the project, faculty member and students?

(c) Output/Anticipated Benefits: What measures will be used to evaluate the outcome of the proposed project? Upon completion of the project, what are the anticipated benefits to the MSI and its students?

(d) Literature Cited: Should be included here, but does not count against the page limit.

(4) *Budget and Budget Justification:* Form SF424A Budget Information Non-Construction Programs and budget justification narrative are required. There should be an annual budget for each year of the project as well as a cumulative budget for the entire project. Subcontracts should have a separate budget. Each annual budget should include a separate budget justification page that itemizes all budget items in sufficient detail to enable reviewers to evaluate the appropriateness of the funding requested. (Please see the NOAA budget guidelines at *http://www.rdc.noaa.gov/grants/BUDGTGUD.PDF*).

(5) *Current and Pending Support:* Applicants must provide information on all their current and pending Federal support for ongoing projects and proposals, including potential subsequent funding in the case of continuing grants. The proposed project and all other projects or activities using

Federal assistance and requiring a portion of time of the principal investigator or other senior personnel should be included. The relationship between the proposed project and these other projects should be described, and the number of person-months per year to be devoted to the projects must be stated.

(6) *Vitae* (two pages maximum per investigator).

(7) *Letters of commitment from partnering organizations (if applicable).* Letters of commitment from partners must be included as an attachment to the application. The letters from partnering organizations should describe their commitment, identify key participants, and state briefly their role in the project.

(8) *Standard Application Forms:* Proposals submitted in response to this solicitation must be complete and submitted in accordance with instructions in the standard NOAA Grants Application package. Applicants may obtain all required application forms through the NOAA internet site http://www.rdc.noaa.gov/grants/pdf or from Ms. Arlene Simpson Porter, NOAA Grants Management Division, (301) 713–0962 ext. 152, *Arlene.S.Porter@noaa.gov.*

(a) *Standard Forms 424,* Application for Federal Assistance; SF424A Budget Information Non-Construction Programs; SF424B Assurances Non-Construction, (Rev 4–88). Please note that both the Principal Investigator and an administrative contact should be identified in Section 5 of the SF424 or Section 10, applicants should enter ''11.481'' for the CFDA Number and ''Educational Partnership Program with Minority Serving Institutions'' for the title. The form must contain the original signature of an authorized representative of the applying institution.

(b) *Primary Applicant Certifications.* All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the following explanations are hereby provided:

(i) *Non-Procurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, ''Non-Procurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

(ii) *Drug-Free Workplace.* Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, ''Government-wide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

(iii) *Anti-Lobbying.* Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000; and

(iv) *Anti-Lobbying Disclosures.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR Part 28, Appendix B.

(c) *Lower Tier Certifications.* Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' ORM CD–512 is intended for the use of recipients and should not be transmitted to the Department of Commerce (DOC). SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

VII. How To Submit

Although investigators are not required to submit more than three copies of the proposal, the normal review process utilizes 15 copies. Applicants are encouraged to submit sufficient proposal copies for the full review process if they wish all reviewers to receive color, unusually sized (not 8.5″ × 11″), or otherwise unusual materials submitted as part of the proposal. Only three copies of the Federally required forms are needed.

Proposals must be received by 5 p.m. (Eastern Daylight Savings Time) on July 20, 2001. The address is: Dr. Francis Schuler, EPP/MSI Environmental Entrepreneurship Program, NOAA, Room11837 SSMC3 (R/SG), 1315 East-West Highway, Silver Spring, MD 20910.

Facsimile transmissions and electronic mail submission of applications will not be accepted.

VIII. Other Requirements

(A) *Federal Policies and Procedures*—Recipients and subrecipients are subject to all Federal laws and Federal and Department of Commerce (DOC) policies, regulations, and procedures applicable to Federal financial assistance awards.

(B) *Past Performance*—Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(C) *Pre-Award Activities*—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover pre-award costs.

(D) *No Obligation for Future Funding*—If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

(E) *Delinquent Federal Debts*—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until:

(1) The delinquent account is paid in full,

(2) A negotiated repayment schedule is established and at least one payment is received, or

(3) Other arrangements satisfactory to DOC are made.

(F) *Name Check Review*—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

(G) *False Statements*—A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(H) *Purchase of American-Made Equipment and Products*—Applicants are hereby notified that they will be encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program.

(I) For awards receiving funding for the collection or production of geospatial data (e.g., GIS data layers), the recipient will comply to the

maximum extent practicable with E.O. 12906, Coordinating Geographic Data Acquisition and Access, The National Spatial Data Infrastructure, 59 FR 17671 (April 11, 1994). The award recipient shall document all new geospatial data collected or produced using the standard developed by the Federal Geographic Data Center, and make that standardized documentation electronically accessible. The standard can be found at the following Internet website: (http://www.fgdc.gov/standards/standards/html).

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This action has been determined to be not significant for purposes of E.O. 12866.

This notice contains collection of information requirements subject to the Paperwork Reduction Act. Standard Forms 424, 424A, and 424B have been approved under control numbers 0348–0043, 0348–0044, and 0348–0040. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Dated: May 15, 2001.

Louisa Koch,

Chair, NOAA Minority Serving Institutions Council.

[FR Doc. 01–12607 Filed 5–17–01; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Federal Voting Assistance Program (FVAP), DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Washington Headquarters Services announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 17, 2001.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Department of Defense, Washington Headquarters Services, Federal Voting Assistance Program, 1155 Defense Pentagon, Washington, DC 20301–1155, ATTN: Ms. Elaine Perna.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call the Federal Voting Assistance Program at (703) 588–1584 or 1–(800) 438–8683.

Title and OMB Number: Post-election Voting Survey of Overseas Citizens and Post-election Voting Survey of Local Election Officials; OMB Number 0704–0125.

Needs and Uses: The information collection requirement is necessary to meet a requirement of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) of 1986 (42 U.S.C. 1973ff). UOCAVA requires a report to the President and Congress on the effectiveness of assistance under the Act, a statistical analysis of voter participation, and a description of State-Federal cooperation.

Affected Public: Individuals or Households: State or Local Government.

Annual Burden Hours: 401.

Number of Respondents: 2,403.

Responses Per Respondent: 1.

Average Burden Per Response: 10 minutes.

Frequency: Quadrennially.

SUPPLEMENTARY INFORMATION:

Summary of Information

UOCAVA requires the states to allow Uniformed Services personnel, their family members, and overseas citizens to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal offices. The Act covers members of the Uniformed Services and the merchant marine to include the commissioned corps of the National Oceanic and Atmospheric Administration and Public Health Service, and their eligible dependents, Federal civilian employees overseas, and overseas U.S. citizens not affiliated with the Federal Government. FVAP conducts the post-election survey on a statistically random basis to determine participation rates that are representative of all citizens covered by the Act, measure State-Federal cooperation, and evaluate the effectiveness of the overall absentee voting program. The information collected is used for overall program evaluation, management and improvement, and to compile the congressionally mandated reported to the President and Congress.

Dated: May 10, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–12559 Filed 5–17–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: 31 May 2001 (830 am to 1600 pm).

ADDRESSES: The Defense Intelligence Agency, 200 MacDill Blvd, Washington, DC 20340.

FOR FURTHER INFORMATION CONTACT: Victoria J. Prescott, Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(I), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: May 14, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–12560 Filed 5–17–01; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Public Hearing for the Draft Environmental Impact Statement/Draft Environmental Impact Report (DEIS/DEIR) for the Disposal and Reuse of Fleet and Industrial Supply Center Naval Fuel Depot (NFD) Point Molate, CA

AGENCY: Department of the Navy, DOD.

ACTION: Announcement of public hearing.

SUMMARY: The Department of the Navy (Navy) has prepared and filed with the U.S. Environmental Protection Agency (EPA) a DEIS/DEIR for disposal and reuse of NFD Point Molate, California. A public hearing will be held for the purpose of receiving oral and written comments on the DEIS/DEIR. Federal, local and state of California agencies, and interested individuals are invited to be present at the hearing.

DATES: One public hearing will be held on Wednesday, June 20, 2001, at 6:00 p.m.

ADDRESSES: City of Richmond Council Chambers, 2600 Barrett Avenue, Richmond, CA, 94804.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Montana (06CM.RM), Southwest Division, Naval Facilities Engineering Command, 1220 Pacific Highway, San Diego, CA, 92132–5190, telephone (619) 532–0942, facsimile (619) 532–0940.

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 has prepared and filed with the EPA a DEIS/DEIR for Disposal and Reuse of NFD Point Molate, CA.

A Notice of Intent (NOI) to prepare the DEIS/DEIR was published in the **Federal Register** on September 15, 1997 (62 FR 178). A public scoping meeting announcement was published on September 27 and 28, 1997, in both the West Contra Costa Times and the Oakland Tribune, and on September 24 and 28, 1997, in the Richmond Post. One public scoping meeting was held on October 1, 1997, at the City of Richmond Council Chambers, Richmond, CA.

The proposed action is the disposal of surplus Navy property for subsequent reuse and redevelopment, in accordance with the 1990 Defense Base Closure and Realignment Act, and the 1995 Base Closure and Realignment Commission recommendations. A parcel totaling 413 acres (167 hectares) has been declared surplus and is the focus of this DEIS/DEIR. NFD Point Molate was operationally closed on September 30, 1998.

The DEIS/DEIR evaluates three reuse alternatives, each emphasizing various types of development, e.g., residential, commercial, industrial, open space, recreation, etc. A fourth alternative, no action, assumes no disposal of property and retention of the depot by the Navy in caretaker status. Under the No Action alternative, the site would not be reused or redeveloped. Environmental cleanup would continue and be completed.

The base reuse plan recommended by the Blue Ribbon Advisory Committee, a committee appointed by the Local Redevelopment Authority (LRA), was approved by the Richmond City Council acting as the LRA. It includes the preferred reuse alternative of the City of Richmond and the Navy. This plan, Alternative 2, consists of the following major elements: Commercial uses including retail shops, bed and breakfast establishments, small hotels, conference centers, and office space; industrial uses including manufacturing, sales and distribution businesses, wholesale services, warehousing, data processing, telecommunications, and research and development. No decision on the proposed action will be made until the NEPA process has been completed.

Potential impacts evaluated in the DEIS/DEIR include, but are not limited to land use compatibility; geology and soils, traffic, utilities, air quality, and public services. With one exception, all potentially significant impacts under all of the reuse alternatives can be mitigated to non-significant levels. Potentially significant but mitigable impacts include: Future odor emissions from necessary sewage treatment plants, future requirements for developments to be implemented in conformance with existing guidelines for seismic hazards, possible future impacts due to increased traffic demand on the existing road network, and an increase in emissions which may exceed local air quality standards. The one exception is a land use compatibility impact; no mitigation is available except to revise the land use plan.

The DEIS/DEIR has been distributed to affected federal, local and state of California agencies and other interested parties. In addition, copies of the DEIS/DEIR are available for review at the following public libraries:

—Richmond Public Library, 325 Civic Center Plaza, Richmond, CA.
—West Side Branch Library, 135 Washington Avenue, Pt. Richmond, CA.

A public hearing will be held to inform the public of the DEIS/DEIR findings and to solicit and receive oral and written comments. The hearing will be held at 6:00 p.m. on Wednesday, June 20, 2001, at city of Richmond Council Chambers, 2600 Barrett Avenue, Richmond, CA 94804. Government agencies and interested parties are invited to be present at the hearing. Oral comments will be heard and transcribed by a court recorder; written comments are also requested to ensure accuracy of the record. All comments, both oral and written, will become part of the official record. In the interest of available time, each speaker will be asked to limit oral comments to three minutes. Those who intend to speak will be asked to submit a speaker card (available at the door). Longer comments should be summarized at the public hearing and submitted in writing either at the hearing or mailed to Mr. Robert A. Montana at the address given above. Written comments are requested not later than July 2, 2001.

Dated: May 8, 2001.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 01–12568 Filed 5–17–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Agency Information Collection Under Review By The Office of Management and Budget

AGENCY: Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Department of Energy (DOE), pursuant to section 3507(g) of the Paperwork Reduction Act of 1995, intends to extend for three years, an information collection package with the Office of Management and Budget (OMB). The Department's Office of Environment, Safety and Health information collection package, OMB No. 1910–5105, allows the Department and its contractors to provide management control and oversight over health and safety programs concerning worker exposure to ionizing radiation.

DATES: Written comments and recommendations for the proposed collections of information must be mailed to the OMB Desk Officer, on or before June 18, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 395–7318. In addition, please notify the DOE contact listed in this notice.

ADDRESSES: Address comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503. Persons submitting comments to OMB are requested to send a copy to Dr. Judith D. Foulke, U.S. Department of Energy, Office of Worker Protection Policy and Programs (EH–52), Office of Environment, Safety and Health, 19901 Germantown Road, Germantown, MD 20874–1290.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the Department's Paperwork Reduction Act Submission and other information should be directed to Ms. Susan L. Frey, U.S. Department of Energy, Director, Records Management Division, Office of Records and Business Management (SO–312), Office of the Chief Information Officer, Germantown, MD 20874–1290. Ms. Frey can be contacted by telephone at (301) 903–3666 or e-mail at Susan.Frey@hq.doe.gov.

SUPPLEMENTARY INFORMATION: This package contains: (1) *Current OMB No.* 1910–5105; (2) *Package Title:* Occupational Radiation Protection; (3) *Summary:* Request for a three-year extension without change, which covers mandatory responses; (4) *Purpose:* The recordkeeping and reporting requirements that comprise this information collection will permit DOE and its contractors to provide management control and oversight over health and safety programs concerning worker exposure to ionizing radiation; (5) *Type of Respondents:* 50 DOE management and operating contractors; (6) *Estimated Number of Burden Hours:* 50,000.

Statutory Authority: Sections 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) (44 U.S.C. 3501 et seq.).

Issued in Washington, DC on May 10, 2001.

Susan L. Frey,

Director, Records Management Division, Office of Records and Business Management, Office of the Chief Information Officer.

[FR Doc. 01–12540 Filed 5–17–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; Office of Science Financial Assistance Program Notice 01–26: Program for Ecosystem Research (PER)

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for research grants in the Program for Ecosystem Research (PER). Applications should describe research projects that address the scientific aims of PER. Applications for research on carbon sequestration in terrestrial ecosystems were solicited under an earlier announcement (Carbon Sequestration Research Program; Notice 00–09), and applications for research on terrestrial ecosystem carbon cycle and carbon balance were solicited under another earlier announcement (Terrestrial Carbon Processes (TCP) Notice 00–12). Applications for research on those topics will not be considered by PER.

DATES: Potential applicants are strongly encouraged (but not required) to submit a preapplication for programmatic review. The deadline for preapplications is July 2, 2001. A response to the preapplications will be communicated to the principal investigators by July 9, 2001.

The deadline for receipt of formal applications is 4:30 p.m., EST, August 13, 2001, to be accepted for merit review and to permit timely consideration for award in early Fiscal Year 2002. An original and seven copies of the application must be submitted. Applicants are requested not to submit multiple applications using more than one delivery or mail service.

ADDRESSES: If submitting a preapplication, it should be sent as ASCII text attached to an e-mail to *Karen.Carlson@science.doe.gov*, using an e-mail subject line of ''PER preapplication.''

Formal applications, referencing Program Notice 01–26, should be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 01–26. This address must also be used when submitting applications by U.S. Postal Service Express Mail or any other commercial overnight delivery service, or when hand-carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey S. Amthor, Environmental Sciences Division, SC–74, Office of Biological and Environmental Research, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–2507, e-mail: *Jeff.Amthor@science.doe.gov*, fax: (301) 903–8519. The full text of Program Notice 01–26, is available via the Internet at the following URL: *http://www.sc.doe.gov/production/grants/grants.html*.

SUPPLEMENTARY INFORMATION: DOE has responsibility for developing energy resources, technologies, and policies to provide for the nation's energy needs in a manner that will maintain, protect, and enhance environmental quality. Complementary to this commitment, and as part of the U.S. Global Change Research Program, DOE also addresses the question of how ecosystems respond and adjust to global and regional changes in atmospheric composition and related climate changes associated with energy production and use.

The mission of PER is to improve the scientific basis for predicting or detecting effects of simultaneous changes in climate and atmospheric composition on terrestrial ecosystems and their component organisms and processes. Ecosystem processes and components of importance to humanity are of special concern. Climatic and atmospheric changes of key interest include (but need not be limited to): Warming (and changes in diurnal, seasonal, and interannual temperature cycles), changes in precipitation and evapotranspiration (*e.g.*, intensification of the hydrologic cycle), changes in frequency and/or magnitude of extreme weather events and patterns, and rising atmospheric carbon dioxide and ozone concentrations. (Hereafter, these climate and atmospheric changes are referred to as ''environmental changes''). Effects of factors such as human land use and introduction and spread of invasive species on ecosystem structure and function are of programmatic interest only to the extent that they interact with (modify impacts of) environmental changes on terrestrial ecosystems, not as stand-alone factors influencing ecosystems and their component

processes. Study of coastal ecosystems is presently outside the purview of PER.

Program objectives are to improve scientific understanding of how and why (or if):

(1) Terrestrial ecosystems and their component organisms are affected by and respond to multiple environmental changes; and

(2) Underlying biological and/or ecological processes in terrestrial ecosystems are controlled or modified by multiple environmental changes.

PER is interested in both experimental research (in the laboratory or field as appropriate to the research objectives) and modeling that considers both (either) direct and indirect effects of environmental changes on terrestrial ecosystems, their components, their processes, and their structures. Experimental research based on underlying theory, and modeling that considers ecological hierarchies (*i.e.*, multi-level or mechanistic modeling), are most relevant, as are considerations of multiple environmental changes. Ecosystem responses to environmental changes of special interest include: (1) Adjustments at the ecosystem scale, such as changes in the organized hierarchy of ecosystem processes, structures, biological diversity, and/or succession, and (2) adjustments at the organismal scale that are manifested at the ecosystem scale, including physiological, biochemical, and/or genetic changes that may facilitate (or hinder) ecosystem homeostasis.

Goals of PER research are to (1) determine and quantify cause-and-effect relationships between environmental changes and the structure and functioning of terrestrial ecosystems, including adjustments at the ecosystem level and the biological/ecological controls on the cause-and-effect relationships, and (2) develop and test methods of integrating biotic responses to environmental changes up to levels of organization as high as whole ecosystems. Mathematical modeling can play an important role in attaining these goals, but such modeling must involve new empirically based science. Modeling projects must either introduce new theories into existing models, and/or critically evaluate and improve existing models with independent experimental data. PER modeling must go beyond simply making predictions of ecosystem responses to environmental change scenarios; it must develop and/or test hypotheses concerning cause-and-effect relationships between environmental changes and terrestrial ecosystem structure and functioning. The main theme defining PER goals is the mechanistic understanding and quantification of ecosystem-scale responses to ongoing and potential future environmental changes, with an emphasis on multiple changes.

Applications should succinctly articulate the choice of environmental factors to be studied and the magnitude of changes considered. Those choices might be related to physically based models of the future climate system and/or models and projections of the chemical characteristics of the future atmosphere. Time scales of decades to a century are appropriate.

When appropriate, use of existing DOE facilities and sites for ecosystem research is encouraged. Such facilities/sites include the National Environmental Research Parks (NERPs) located at DOE facilities throughout the country (see *http://www.pnl.gov/nerp/nerpmap.gif*), free-air CO_2 enrichment (FACE) sites (see *http://cdiac.esd.ornl.gov/programs/FACE/face.html*), and DOE's Atmospheric Radiation Measurement (ARM) Program site in Oklahoma (see *http://www.arm.gov/*).

Applications focusing primarily on ecosystem carbon exchange or carbon balance, or directed at carbon sequestration in terrestrial ecosystems, are not appropriate for PER. Such applications should be directed to the DOE OBER Terrestrial Carbon Processes (TCP) and the Carbon Sequestration Research programs, respectively.

Concise applications will aid the evaluation process. The technical portion of each application should clearly state links between proposed research and the PER mission, objectives, and goals. Background material (e.g., literature review) in the technical portion of each application should be only long enough to demonstrate familiarity with the subject and to critically define the need for the proposed research. The complete technical portion of each application should not exceed 20 double-spaced pages with at least 1-inch margins using a 10-point (or larger) font. Figures and tables are included in this page limit, though the font size in tables and figures may be smaller, as long as all material is fully legible. A one-page, single-spaced summary should precede the technical portion of the application. Applications exceeding these limits may be returned with a request for compliance to these standards, but the deadline will not be extended.

Applications submitted to continue existing PER-sponsored research should devote one to one and a half pages of the technical portion of the application to a succinct description of the earlier/ongoing research and results, including a statement of the project funding start date. An appendix must be included listing all refereed publications from the project, papers accepted for publication, and papers submitted for publication (not draft manuscripts). This appendix (which will not count against the 20-page limit) may take the form of an annotated bibliography, with a one or two sentence description of the significance of each paper listed after each citation. Similarly, applications for new research from principal investigators previously supported by PER (or by TECO through DOE) may devote one to one and a half pages of the technical portion of the application to a succinct description of the earlier research and results, including a statement of the project(s) funding start and end dates. An appendix (which will not count against the 20-page limit) listing all refereed publications (published, accepted for publication, and submitted for publication) from the earlier project(s) may be included.

The technical portion of each application should end with a brief, clear time line of proposed work and a concise listing of responsibilities of each investigator.

The technical portion of the application should be followed by a list of scientific references cited in the technical portion. The references-cited section will not count against the 20-page limit.

Applications must include a curriculum vita for each principal and co-principal investigator (two pages maximum per investigator). The vitae should specify previous research and publications (if any) related to the proposed research. The vitae are not part of the technical portion of the application.

Program Funding

It is anticipated that approximately $1.8 million will be available for multiple awards to be made in early FY 2002, contingent on availability of funds. Applications may request project support for up to three years, with out-year support contingent on availability of funds, progress of the research, and programmatic needs. Previous awards have been in the range from $80,000 to $250,000 per year, with some larger awards made in exceptional cases, including coordinated multi-institutional projects. DOE may encourage collaboration among prospective investigators to promote joint applications or joint research projects by using information obtained in the preapplications or other forms of communication.

Preapplication

A preapplication is strongly encouraged. The preapplication should contain a title, address, telephone, fax and e-mail address of the Principal Investigator, and consist of 500 words or less of narrative outlining the proposed research objectives and methods. Include a list of proposed principal investigators and their institutions at the end of the narrative. Responses to preapplications, encouraging or discouraging formal applications, will generally be communicated within 7 days of receipt. Notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Merit Review

Applications will be subjected to formal merit review (peer review) and will be evaluated against the following criteria which are listed in descending order of importance codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;
2. Appropriateness of the Proposed Method or Approach;
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources; and
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and the agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Submission Information

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR Part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

In addition, for this notice, the research description should not exceed 20 pages, exclusive of attachments, must include detailed budgets, form DOE F 4620.1, for each year of support requested, and must contain a one-page abstract or summary of the proposed research. On the SC grant face page, form DOE F 4650.2, in block 15, also provide the PI's phone number, fax number and e-mail address. Attachments should include curriculum vitae for all key personnel, a listing of all current and pending federal support, and letters of intent when collaborations are part of the proposed research. Curriculum vitae should be submitted in a form similar to that of NIH or NSF (two pages maximum), see for example: *http://www.nsf.gov:80/bfa/cpo/gpg/fkit.htm#forms-9.*

For researchers who do not have access to the World Wide Web, please contact Karen Carlson, Environmental Sciences Division, SC–74, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, phone: (301) 903–3338, fax: (301) 903–8519, e-mail: *karen.carlson@science.doe.gov;* for hard copies of background material mentioned in this solicitation.

(The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.)

Issued in Washington, DC May 9, 2001.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 01–12539 Filed 5–17–01; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

[FE Docket No. PP–197, DOE/EIS–0307]

Notice of Reopening Scoping Period and Schedule for Public Scoping Meetings; Public Service Company of New Mexico

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that it is reopening the scoping period and will hold additional public scoping meetings for the environmental impact statement (DOE/EIS–0307) that is being prepared in connection with an application for a Presidential permit field by Public Service Company of New Mexico (PNM). PNM has applied for a Presidential permit to construct electric transmission lines across the U.S.-Mexico border. DOE is preparing an EIS, with the U.S. Forest Service as a cooperating agency, because together they have determined that the issuance of a DOE Presidential permit and/or issuance of a Forest Service ''Special Use Permit'' would constitute major Federal actions that may have a significant impact upon the environment within the meaning of the National Environmental Policy Act of 1969 (NEPA). The purpose of this notice is to open a new scoping period to obtain comments on the five alternative corridors proposed to be analyzed in the EIS. These alternative corridors have been derived from the eight study corridors that were the subject of previous scoping periods.

DATES: DOE invites interested agencies, organizations, and members of the public to submit comments or suggestions to assist in identifying significant environmental issues not previously identified and in determining the appropriate scope of the EIS. This new scoping period starts with the publication of this notice in the **Federal Register** and will continue until June 22, 2001. Written and oral comments will be given equal weight and DOE will consider all comments received or postmarked by June 22, 2001, in defining the scope of the EIS. Comments received or postmarked after that date will be considered to the extent possible.

Dates, times and locations for the public scoping meetings are:

1. June 12, 2001, 4 p.m. to 7 p.m., Rio Rico Resort, 1069 Camino Caralampi, Rio Rico, Arizona.
2. June 13, 2001, 4 p.m. to 7 p.m., Marana High School, Marana, Arizona.

Requests to speak at a public scoping meeting(s) should be received by the NEPA Document Manager, Mrs. Ellen Russell, at the address indicated below on or before June 7, 2001. Requests to speak may also be made at the time of the scoping meeting(s). However, persons who submitted advance requests to speak will be given priority if time should be limited during the meeting.

ADDRESSES: Written comments or suggestions on the scope of the EIS and requests to speak at the scoping meeting(s) should be addressed to: Mrs. Ellem Russell, NEPA Document Manager, Office of Fossil Energy (FE–27), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington DC 20585–0350; phone 202–586–9624, facsimile: 202–287–5736, or by electronic mail at *Ellen.Russell@hq.doe.gov.* Comments that relate exclusively to activities on or impacts to lands under the control of the U.S. Forest Service may also be transmitted directly to Jerry Conner, Coronado National Forest, 300 W.

Congress Street, Tucson, Arizona 85701; phone 520–670–4527 or via electronic mail at *jconner@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: For information on the proposed project or to receive a copy of the Draft EIS when it is issued, contact Mrs. Russell at the address listed in the **ADDRESSES** section of this notice.

For general information on the DOE NEPA review process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119; Phone: 202–586–4600 or leave a message at 800–472–2756; Facsimile: 202–586–7031.

SUPPLEMENTARY INFORMATION:

Background and Need for Agency Action

Executive Order 10485, as amended by Executive Order 12038, requires that a Presidential permit be issued by DOE before electric transmission facilities may be constructed, maintained, operated or connected at the U.S. international border. The Executive Order provides that a Presidential permit may be issued after a finding that the proposed project is consistent with the public interest. In determining consistency with the public interest, DOE considers the impacts of the project on the reliability of the U.S. electric power system and on the environment. The regulations implementing the Executive Order have been codified at 10 205.320–205.329. Issuance of a Presidential permit does not mandate that the project be completed; in fact, prior to construction, the recipient must obtain approval from all other Federal, state and local authorities with jurisdiction over the project.

On December 28, 1998, PNM filed an application for a Presidential permit with the Office of Fossil Energy of DOE. PNM proposed to construct up to two transmission lines on a single right-of-way extending approximately 210 to 250 miles from the electric switchyard near the Palo Verde Nuclear Generating Station (PVNGS), located approximately 30 miles west of Phoenix, Arizona, to the U.S.-Mexico border. South of the border, PNM would extend the line(s) approximately 60 miles to the Santa Ana Substation, located in the City of Santa Ana, Sonora, Mexico, and owned by the Commission Federal de Electricdad (CFE), the national electric utility of Mexico.

In its December 28, 1998, Presidential permit application, PNM identified three alternative corridors for construction of the two cross-border transmission lines. These corridors were the subject of public scoping meetings conducted in Nogales, Tucson, Patagonia, Sells, Ajo, Gila Bend, and Casa Grande, Arizona, in March 1999. The initial scoping period extended from February 12 to March 15, 1999 (64 FR 7173, February 12, 1999), and was later extended to April 14, 1999 (64 FR 13553, March 19, 1999). Later, three additional alternative corridors were developed and were the subject of public scoping meetings conducted in Green Valley, Tubac, Sasabe, Three Points (Robles Junction), and Tucson in June 1999, during a second scoping period that extended from June 10 to July 14, 1999 (64 FR 31204, June 10, 1999). A third scoping period was opened on July 20, 2000 (65 FR 45042, July 20, 2000), and, by an August 20, 2000, information letter to the public, continued until October 2, 2000, to receive public comment on two additional alternative corridors, one identified as the PNM ''Preferred Alternative.'' Public scoping meetings on these two additional alternative corridors were scheduled for Rio Rico and Tucson during August but were later canceled when DOE became aware from comments by the public that the quality of maps distributed and posted on the project web site was not adequate. Also, the public pointed out to DOE that during the month of August many residents of southern Arizona vacation outside of the State and either would not be available for the meeting or would not have received information on the proceeding.

When the third scoping period was opened on July 20, 2000, PNM had identified a total of eight corridors, modified the path of several from what had originally been presented to the public by DOE, and eliminated the proposal to use direct current (DC) technology. Since the close of the third scoping period, PNM has continued to identify, eliminate and/or modify its proposed alternative corridors. For example, initially, for each of its proposal corridors, PNM had assumed a two-mile-wide study corridor. As its proposal has evolved, PNM has more narrowly defined each alternative study corridor, reducing the width of most to approximately one mile. PNM also has continued to define corridor alternatives and consider multiple options to many segments of these corridors.

Earlier this year DOE informed PNM that this proceeding and the number of variations to proposed corridors had become too cumbersome for DOE to adequately describe and analyze or for the public to decipher. DOE requested PNM to identify the set of alternatives that DOE would propose to analyze in the EIS. DOE then mapped PNM's set of alternatives to provide the public with information to identify potential impacts to their property and to their community during this scoping period. In addition, DOE decided that it would not consider corridors PNM had earlier proposed through the Tohono O'odham Nation in light of the Nation's sovereignty and in response to its request that DOE terminate the NEPA and Presidential permit processes as they pertain to the Nation.

Each of the five corridors that DOE proposed to analyze in the EIS has been named after distinguishing characteristics in the southern part of the corridor within the United States: the East Valley Corridor, the Sasabe Corridor, the Pipeline Corridor, the Cross-Over Corridor (designated the PNM preferred corridor), and the Tucson Corridor. The first four of these corridors have an optional routing in the area near Picacho and Marana. A map and description of each of the alternatives (and options) is being mailed to stakeholders who have previously expressed an interest in this proposal. In addition, maps are available on the project web site maintained for DOE by Battelle Memorial Institute at *http://projects.battelle.org/pnmeis/* or may be received by mail by leaving a message at 1–888–806–3421. In addition, from this web site interested persons can download other project-related information.

The EIS is being prepared to satisfy the environmental review requirements of any Federal agency having jurisdiction over the proposed project or any segment of it. The U.S. Forest Service (Coronado National Forest) has notified DOE that it will participate as a cooperating agency in the preparation of this EIS; several of the PNM-proposed corridors cross land under control of the Coronado National Forest. PNM must obtain a ''Special Use Permit'' from the U.S. Forest Service before a transmission line can be constructed on these lands.

Scoping Process

Interested parties are invited to participate in the scoping process. Public scoping meetings will be held at the locations, dates, and times indicated above under **DATES** and **ADDRESSES** sections. These scoping meetings will be informal but a transcript will be taken and made available on the project web site. The DOE presiding officer will establish only those procedures needed

to ensure that everyone who wishes to speak has a chance to do so and that DOE understands all issues and comments. At this time DOE expects to provide speakers with approximately 5 minutes for their oral statements. Allotted time may change based on the number of speakers who register. Persons who have not submitted a request to speak in advance may register to speak at each scoping meeting, but advance requests are encouraged. Should any speaker desire to provide for the record further information that cannot be presented within the designated time, such additional information may be submitted in writing by the date listed in the **DATES** section. Both oral and written comments will be considered and given equal weight by DOE. Oral and written comments previously submitted in this proceeding have been entered in the official record of this proceeding and need not be resubmitted.

Issued in Washington, DC on May 15, 2001.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power System, Office of Fossil Energy.

[FR Doc. 01–12538 Filed 5–17–01; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–61–001]

PacifiCorp; Notice of Filing

May 14, 2001.

Take notice that on May 4, 2001, PacifiCorp tendered for filing with the Federal Energy Regulatory Commission (Commission) in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Long-Term Firm Transmission Service Agreement with Idaho Power Company (Idaho) under PacifiCorp's FERC Electric Tariff, Second Revised Volume No. 11 (Tariff).

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

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 May 25, 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 also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(m)(iii) and the instructions on the Commission's web site at *http://www.ferc.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 01–12504 Filed 5–17–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–360–000]

Tennessee Gas Pipeline Company; Notice of Application

May 14, 2001.

Take notice that on May 7, 2001, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana, Houston, Texas 77002, filed in Docket No. CP01–360–000, an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA), and the Regulations of the Federal Energy Regulatory Commission's requesting authorization for its proposed Dracut Expansion Project. In the proposal for the Dracut Expansion Project, Tennessee seeks to abandon approximately 11.92 miles of 16-inch pipeline, and requests a certificate of public convenience and necessity to construct, install and operate approximately 11.50 miles of 24-inch diameter replacement pipeline and 0.42 miles of 16-inch diameter replacement pipeline, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* [call (202) 208–2222 for assistance].

Tennessee states that the Project will increase Tennessee's capacity and flexibility on its system in the New England region, so that it can help meet the significant growth in the demand for natural gas services projected in this area of the country. Tennessee's current capacity from Dracut is 200 MMcfd on a firm year-round basis. Tennessee states that the proposed replacement and upgrade of facilities will increase its capacity from Dracut to 500 MMcfd on a firm year-round basis, with minimal environmental disruption and relatively modest facility construction.

The estimated cost for installations and removal of the Dracut Project facilities is approximately $36.4 million. Tennessee proposes to place the Dracut Expansion facilities in service by November 1, 2002. Tennessee requests that the Commission grant the requested authority by December 31, 2001. Tennessee states that it will charge transportation rates as currently set forth in its tariff for any service which utilizes the proposed facilities; that no new or rate schedules are being proposed; and that capacity created by the Dracut Expansion Project will be awarded in accordance with Tennessee's existing Gas Tariff.

Any questions regarding this application should be directed to Susan T. Halbach, Senior Counsel, P.O. Box 2511, Houston, Texas 77252 (713) 420–5751.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before May 4, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing

comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicants may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 01–12505 Filed 5–17–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG01–45–000, et al.]

Constellation Power Source Generation, Inc., et al.; Electric Rate and Corporate Regulation Filings

May 11, 2001.

Take notice that the following filings have been made with the Commission:

1. Constellation Power Source Generation, Inc.

[Docket No. EG01–45–000]

Take notice that on May 8, 2001, Constellation Power Source Generation, Inc. (Applicant), having its principal place of business at 111 Market Place, Suite 500, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission (FERC or the Commission) a second amended and restated application for redetermination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's regulations. This application amends and restates an application for EWG status originally filed by the Applicant with the Commission on December 5, 2000, as amended on January 19, 2001 in the above-captioned proceeding.

The Applicant is a Maryland corporation and is engaged, directly or indirectly through an affiliate as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935 (PUHCA), exclusively in owning or operating, or owning and operating, eligible facilities and participating in project development activities incidental to such eligible electric facilities as authorized under PUHCA. The Applicant owns and operates eligible facilities located in Maryland and Pennsylvania.

Comment date: May 23, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that address the adequacy or accuracy of the amended application.

2. Gray County Wind Energy, LLC

[Docket No. EG01–206–000]

Take notice that on May 8, 2001, Gray County Wind Energy, LLC (the Applicant), with its principal office at 700 Universe Boulevard, Juno Beach, Florida 33408, filed with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant states that it is a Delaware limited liability company engaged directly and exclusively in the business of developing and operating an approximately 110 MW wind-powered generating facility located in Gray County, Kansas. Electric energy produced by the facility will be sold at wholesale or at retail exclusively to foreign consumers.

Comment date: June 1, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that address the adequacy or accuracy of the application.

3. Timber Energy Resources, Inc.

[Docket No. EG01–207–000]

Take notice that on May 8, 2001, Timber Energy Resources, Inc. (Applicant) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant, a Texas corporation and currently an indirect wholly owned subsidiary of Casella Waste Systems, Inc., owns and operates a 14 MW eligible facility near Telogia, Florida. The facilities will consist of one steam turbine generator driven by a boiler fired by waste wood products from chip production, waste from logging operations and unrecyclable waster paper, and interconnecting transmission facilities necessary to effect sales of electric energy at wholesale. Applicant also owns and operates a chip mill located near Cairo, Georgia, which is one of the primary sources of the wood waste utilized as fuel for the TERI facility. Applicant, as more fully explained in the application, asserts that it is and will be engaged either directly or indirectly and exclusively in the business of owning and operating the subject facility and selling electric energy at wholesale.

Comment date: June 1, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that address the adequacy or accuracy of the application.

4. Itiquira Energética S.A.

[Docket No. EG01–208–000]

Take notice that on May 8, 2001, Itiquira Energética S.A., Rua Isaac Povoas 901, Cidade de Cuiabá, MT, Brazil (Itiquira), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Itiquira is a Sociedade anônima formed under the laws of the Federative Republic of Brazil that is developing a hydroelectric generation facility located in the City of Itiquira, State of Mato Grosso, Brazil (the Itiquira Facility or the Facility). Itiquira will build and own a hydroelectric generation facility (the Itiquira Facility) in the City of Itiquira, State of Mato Grasso, Brazil. The Itiquira Facility will consist of two hydroelectric generating units, one of which will have an installed capacity of 60.8 MW and the other of which will have an installed capacity of 95.2 MW. The Itiquira Facility will have an aggregate installed capacity of approximately 156 MW. None of the electric energy produced by the Itiquira Facility will be sold into the United States either at retail or otherwise.

Itiquira has served a copy of the filing on the Securities and Exchange Commission and any affected state commissions.

Comment date: June 1, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that address the adequacy or accuracy of the application.

5. Indian River Power LLC

[Docket No. EG01–209–000]

Take notice that on May 9, 2001, Indian River Power LLC filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a limited liability company organized under the laws of the State of Delaware that is acquiring the Indian River Station in Millsboro, Delaware (Facilities) and selling electric energy at wholesale. The total capacity of the Facilities is 784 MW. Determinations pursuant to section 32(c) of PUHCA have been received from the State commissions of Delaware, Maryland, and Virginia, and a determination is pending from the State commission of New Jersey.

Comment date: June 1, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that address the adequacy or accuracy of the application.

6. Vienna Power LLC

[Docket No. EG01–210–000]

Take notice that on May 9, 2001, Vienna Power LLC filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA).

The applicant is a limited liability company organized under the laws of the State of Delaware that is acquiring a 153 MW oil-fired steam unit and a 17 MW oil-fired combustion turbine unit at the Vienna Station in Vienna, Maryland. Determinations pursuant to section 32(c) of PUHCA have been received from the State commissions of Delaware, Maryland, and Virginia, and a determination is pending from the State commission of New Jersey.

Comment date: June 1, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that address the adequacy or accuracy of the application.

7. AES Huntington Beach, L.L.C.

[Docket No. ER98–2184–006]

Take notice that on May 7, 2001, AES Huntington Beach, L.L.C. (AES Huntington Beach) tendered for filing an updated market power analysis as required by the Commission's April 30, 1998 order in Docket No. ER98–2184–000 granting AES Huntington Beach market-based rate authority. This filing is a triennial update of the 1998 analysis submitted to the Commission in connection with the initial request for market-based rates by AES Huntington Beach.

AES Huntington Beach also filed a revision to its Rate Schedule FERC No. 1 and a Supplemental Code of Conduct thereto.

Comment date: May 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. AES Alamitos, L.L.C.

[Docket No. ER98–2185–006]

Take notice that on May 7, 2001, AES Alamitos, L.L.C. (AES Alamitos) tendered for filing an updated market power analysis as required by the Commission's April 30, 1998 order in Docket No. ER98–2185–000 granting AES Alamitos market-based rate authority. This filing is a triennial update of the 1998 analysis submitted to the Commission in connection with the initial request for market-based rates by AES Alamitos.

AES Alamitos also filed a revision to its Rate Schedule FERC No. 1 and a Supplemental Code of Conduct thereto.

Comment date: May 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. AES Redondo Beach, L.L.C.

[Docket No. ER98–2186–006]

Take notice that on May 7, 2001, AES Redondo Beach, L.L.C. (AES Redondo Beach) tendered for filing an updated market power analysis as required by the Commission's April 30, 1998 order in Docket No. ER98–2186–000 granting AES Redondo Beach market-based rate authority. This filing is a triennial update of the 1998 analysis submitted to the Commission in connection with the initial request for market-based rates by AES Redondo Beach.

AES Redondo Beach also filed a revision to its Rate Schedule FERC No. 1 and a Supplemental Code of Conduct thereto.

Comment date: May 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Arizona Public Service Company

[Docket No. ER99–3288–002]

Take notice that on May 8, 2001, Arizona Public Service Company (APS) tendered for filing Quarterly Refund payments to eligible wholesale customers under the Company's Fuel Cost Adjustment Clause (FAC).

A copy of this filing has been served upon the affected parties, the California Public Utilities Commission, and the Arizona Corporation Commission.

Customer name rate schedule	APS–FPC/FERC
Electrical District No. 3	12
Tohono O'odham Utility Authority [1]	52
Arizona Electric Power Cooperative	57
Wellton-Mohawk Irrigation and Drainage District	58
Arizona Power Authority	59
Colorado River Indian Irrigation Project	[2] 65
Electrical District No. 1	68
Arizona Power Pooling	70
Town of Wickenburg	74
Southern California Edison Company	120
Electrical District No. 6	126
Electrical District No. 7	128
City of Page	134
Electrical District No. 8	140
Aguila Irrigation District	141
McMullen Valley Water Conservation and Drainage District	142
Tonopah Irrigation District	143
Citizens Utilities Company	[2] 207
Harquahala Valley Power District	153
Buckeye Water Conservation and Drainage District	155
Roosevelt Irrigation District	158
Maricopa County Municipal Water Conservation District	168
City of Williams	192

Customer name rate schedule	APS–FPC/ FERC
San Carlos Indian Irrigation Project	201
Maricopa County Municipal Water Conservation District at Lake Pleasant	209

[1] Formerly Papago Utility Tribal Authority.
[2] APS–FPC/FERC Rate Schedule in effect during the refund period.

Comment date: May 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. New York Independent System Operator, Inc.; New York Independent System Operator, Inc.; New York State Electric & Gas Corp. v. New York Independent System Operator, Inc.

[Docket Nos. ER00–3591–007, ER00–1969–008, ER00–3038–008 and EL00–70–005]

Take notice that on May 7, 2001, the New York Independent System Operator, Inc. (NYISO) tendered for filing revisions to its Open Access Transmission Tariff and Market Administration and Control Area Services Tariff in order to implement its hybrid fixed block pricing rule, pursuant to the Commission's order issued on April 26, 2001 in the above-captioned dockets. The NYISO has requested an effective date of May 1, 2001 for the filing.

The NYISO has served a copy of this filing upon parties on the official service lists maintained by the Commission for the above-captioned dockets.

Comment date: May 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Sithe Fore River Development LLC; Sithe Mystic Development LLC

[Docket Nos. ER01–41–001 and ER01–42–001]

Take notice that on May 4, 2001, Sithe Fore River Development, LLC (SFRD) and Sithe Mystic Development, LLC (SMD) tendered for filing to grant them a waiver of the Commission's inter-affiliate power sales pricing limitation and code of conduct requirements consistent with the waivers granted the Sithe Jurisdictional Affiliates in Sithe Edgar, LLC, *et al.,* 94 FERC ¶ 61,051 (2001) in FERC Docket No. ER01–513–000. In addition, SFRD and SMD included in their May 4 filing their Original FERC Electric Rate Schedules Nos. 1 and 2, which were accepted by the Commission in a letter order on November 29, 2000 in FERC Docket Nos. ER01–41–000 and ER01–42–000, with the appropriate Order No. 614 designations.

Comment date: May 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. PacifiCorp

[Docket No. ER01–798–002]

Take notice that on May 7, 2001, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations and in compliance with the Commission Order dated April 27, 2001 under FERC Docket No. ER01–798–000, Commission ordered revisions to Schedules 4, 7 and 8 and a new Attachment J to its open access transmission tariff, PacifiCorp's FERC Electric Tariff, Second Revised Volume No. 11 (Tariff). The revisions modify the procedures used in the handling of energy imbalances and transmission losses under the Tariff.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission.

Comment date: May 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Green Mountain Power Corporation

[Docket No. ER01–989–001]

Take notice that on May 4, 2001, Green Mountain Power Corporation (GMP) tendered for filing a generation market power study that supports acceptance of its proposed FERC Electric Tariff, Original Volume No. 4, which is a wholesale market-based rate power sales tariff.

Comment date: May 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. New England Power Pool

[Docket Nos. ER01–1401–002]

Take notice that on May 4, 2001, the New England Power Pool (NEPOOL) Participants Committee tendered for filing a report of compliance in response to requirements of the Commission's April 26, 2001 order in Docket No. ER01–1401–000. New England Power Pool, 95 FERC ¶ 61,123 (2001).

The NEPOOL Participants Committee states that copies of these materials were sent to all persons identified on the service lists in the captioned proceedings, the NEPOOL Participants and the six New England state governors and regulatory commissions.

Comment date: May 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Virginia Electric and Power Company

[Docket No. ER01–1647–002]

Take notice that on May 8, 2001, Virginia Electric and Power Company, doing business as Dominion North Carolina Power (the Company) tendered for filing an amendment in the above-captioned proceeding in order to include Schedule TS–NCEMC in the North Carolina Electric Membership Corporation Agreement for the Purchase of Electricity for Resale from Virginia Electric and Power Company, Rate Schedule FERC No. 105. The Company inadvertently excluded Schedule TS–NCEMC from its original filing in the above-captioned proceeding.

Copies of the filing were served upon NCEMC, North Carolina Utilities Commission and the Virginia State Corporation Commission.

Comment date: May 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Ameren Services Company

[Docket No. ER01–1786–001]

Take notice that on May 8, 2001, Ameren Services Company, as agent for Union Electric Company (d/b/a AmerenUE) and Central Illinois Public Service Company (d/b/a AmerenCIPS), tendered for filing with the Federal Energy Regulatory Commission (Commission) notice that copies of the April 12, 2001 tariff filing in Docket No. ER01–1786–000 (April 12th Filing) were being served on all transmission customers under the Ameren Operating Companies' Open Access Transmission Tariff (Ameren OATT). The April 12th Filing proposed changes to the Ameren OATT. Ameren Services requested a shortened period for any additional motions to intervene and protests and requested an effective date for the April 12th Filing of July 1, 2001.

Copies of May 8, 2001 filing were served on all transmission customers and affected state commissions.

Comment date: May 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. California Independent System Operator Corporation

[Docket No. ER01–1990–000]

Take notice that on May 8, 2001, the California Independent System Operator Corporation, tendered for filing a Participating Generator Agreement between the ISO and Sunrise Power Company for acceptance by the Commission.

The ISO states that this filing has been served on Sunrise Power Company and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective May 3, 2001.

Comment date: May 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. California Independent System Operator Corporation

[Docket No. ER01–1991–000]

Take notice that on May 8, 2001, the California Independent System Operator Corporation, tendered for filing a Meter Service Agreement for ISO Metered Entities between the ISO and Sunrise Power Company for acceptance by the Commission.

The ISO states that this filing has been served on Sunrise Power Company and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be made effective May 3, 2001.

Comment date: May 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. Idaho Power Company

[Docket No. ER01–1992–000]

Take notice that on May 8, 2001, Idaho Power Company tendered for filing a long-term service agreement under its open access transmission tariff in the above-captioned proceeding.

Comment date: May 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. Timber Energy Resources, Inc.

[Docket No. ER01–1993–000]

Take notice that on May 8, 2001, Timber Energy Resources, Inc. (TERI) tendered for filing an initial rate schedule and request for certain waivers and authorizations pursuant to Section 35.12 of the regulations of the Federal Energy Regulatory Commission (the Commission). The initial rate schedule provides for market-based sales to wholesale purchasers of the output of a 14 MW electric power generation facility located near Telogia, Florida.

TERI requests that the Commission set an effective date for the rate schedule on the date the Commission issues an order accepting the rate schedule.

A copy of the filing was served upon the Florida Public Service Commission.

Comment date: May 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

22. Snapping Shoals Electric Membership Corp.

[Docket No. ER01–1994–000]

Take notice that on May 8, 2001, Snapping Shoals Electric Membership Corp. (Snapping Shoals), a non-profit electric distribution cooperative located in Marietta, Georgia, tendered for filing a petition for authority to sell power at market-based rates, acceptance of its proposed rate schedule and certain waivers. Snapping Shoals requests an effective date for its proposed rate schedule that would be 60 days from the date of the filing of its petition or the date of the order accepting Snapping Shoals' rate schedule for filing, whichever is earlier.

Comment date: May 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

23. California Independent System Operator Corporation

[Docket No. ER01–1995–000]

Take notice that on May 8, 2001, the California Independent System Operator Corporation (ISO) tendered for filing an amendment (Amendment No. 1) to the Interconnected Control Area Operating Agreement (ICAOA) between the ISO and Nevada Power Company (NEVP). The primary purpose of Amendment No. 1 to the ICAOA is to implement the change in Control Area boundary related to the new Merchant Intertie between the ISO and NEVP. The ISO requests that the Commission allow the filing to be effective as of January 17, 2001.

The ISO states that this filing has been served upon all parties that received service in Docket No. ER00–2292–000.

Comment date: May 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

24. Entergy Services, Inc.

[Docket No. ER01–1996–000]

Take notice that on May 8, 2001, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc., tendered for filing an Interconnection and Operating Agreement with Borden Chemicals and Plastics Operating Limited Partnership, Debtor-in-Possession (Borden), and a Generator Imbalance Agreement with Borden.

Comment date: May 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

25. California Independent System Operator Corporation

[Docket No. ER01–1997–000]

Take notice that on May 8, 2001, the California Independent System Operator Corporation, on May 3, 2001, tendered for filing a Meter Service Agreement for ISO Metered Entities between the ISO and POSDEF Power Company, L.P. for acceptance by the Commission.

The ISO states that this filing has been served on POSDEF Power Company, L.P. and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be made effective April 25, 2001.

Comment date: May 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

26. California Independent System Operator Corporation

[Docket No. ER01–1998–000]

Take notice that on May 8, 2001, the California Independent System Operator Corporation, tendered for filing a Participating Generator Agreement between the ISO and Los Medanos Energy Center, LLC for acceptance by the Commission.

The ISO states that this filing has been served on Los Medanos Energy Center, LLC and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective May 3, 2001.

Comment date: May 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

27. Monroe Power Company

[Docket No. ER01–1999–000]

Take notice that on May 8, 2001, Monroe Power Company (MPC) tendered for filing an executed Service Agreement with Dynegy Power Marketing, Inc. under the provisions of MPC's Market-Based Rates Tariff, FERC Electric Tariff No. 1. MPC is requesting an effective date of June 1, 2001 for this agreement.

Copies of the filing were served upon the North Carolina Utilities Commission, the South Carolina Public Service Commission and the Georgia Public Service Commission.

Comment date: May 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, 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). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 01–12503 Filed 5–17–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6980–1]

Agency Information Collection Activities; Submission of EPA ICR No. 1365.06 to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Asbestos-Containing Materials in Schools Rule and Revised Asbestos Model Accreditation Plan Rule (EPA ICR No. 1365.06; OMB Control No. 2070–0091). The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden. The Federal Register document required under 5 CFR 1320.8(d), soliciting comments on this collection of information, was published on October 20, 2000 (65 FR 63071). EPA received no comments on this ICR during the comment period.

DATES: Additional comments may be submitted on or before June 18, 2001.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone on (202) 260–2740, by e-mail: ''farmer.sandy@epamail.epa.gov,'' or download off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 1365.06 and/or OMB Control No. 2070–0091.

ADDRESSES: Send comments, referencing EPA ICR No. 1365.06 and OMB Control No. 2070–0091, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code: 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Title: Asbestos-Containing Materials in Schools Rule and Revised Asbestos Model Accreditation Plan Rule (OMB Control No. 2070–0091; EPA ICR No. 1365.06). This is a request for extension of an existing approved collection that is currently scheduled to expire on May 31, 2001. Under 5 CFR 1320.10(e)(2), the Agency may continue to conduct or sponsor the collection of information while the submission is pending at OMB.

Abstract: The Asbestos Hazard Emergency Response Act (AHERA) requires local education agencies (LEAs) to conduct inspections, develop management plans, and design or conduct response actions with respect to the presence of asbestos-containing materials in school buildings. AHERA also requires states to develop model accreditation plans for persons who perform asbestos inspections, develop management control plans, and design or conduct response actions. This information collection addresses the burden associated with recordkeeping requirements imposed on LEAs by the asbestos in schools rule, and reporting and recordkeeping requirements imposed on states and training providers related to the model accreditation plan rule.

Responses to the collection of information are mandatory (see 40 CFR part 763, subpart E). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Burden Statement: The annual public reporting burden for this collection of information is estimated to range between 5.5 hours and 140 hours per response, depending upon the category of respondent. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Local education agencies (e.g., elementary or secondary school districts); asbestos training providers to schools and educational systems; state education departments or commissions; or public health programs.

Frequency of Collection: On occasion.

Estimated No. of Respondents: 107,759.

Estimated Total Annual Burden on Respondents: 2,212,151 hours.

Estimated Total Annual Costs: $58,860,737.

Changes in Burden Estimates: The total burden associated with this ICR has decreased from 2,367,293 hours in the previous ICR to 2,212,151 hours for this ICR. This adjustment in burden reflects decreases in the estimated number of school buildings containing friable asbestos, offset slightly by an increase in the burden that applies to training providers.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: May 3, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01–12577 Filed 5–17–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 6980–2]

Agency Information Collection Activities; Proposed Collection; Submission for OMB Review; Comment Request; 2001 Emergency Planning and Community Right-To-Know Act (EPCRA) and Risk Management Program (RMP) Implementation Status Questionnaire for Tribal Emergency Response Commissions (TERCs) and Their Duly Appointed Local Emergency Planning Committee(s) (LEPCs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: 2001 Emergency Planning and Community Right-to-Know Act (EPCRA) and Risk Management Program (RMP) Implementation Status Questionnaire for Tribal Emergency Response Commissions (TERCs) and Their Duly Appointed Local Emergency Planning Committee(s) (LEPCs), EPA ICR No. 2004.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 18, 2001.

ADDRESSES: Send comments, referencing EPA ICR No. 2004.01 to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-mail at Farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 2004.01. For technical questions about the ICR contact Sam Agpawa on 415–744–2342.

SUPPLEMENTARY INFORMATION:

Title: 2001 Emergency Planning and Community Right-to-Know Act (EPCRA) and Risk Management Program (RMP) Implementation Status Questionnaire for Tribal Emergency Response Commissions (TERCs) and Their Duly Appointed Local Emergency Planning Committee(s) (LEPCs), EPA ICR No. 2004.01. This is a new collection.

Abstract: The Environmental Protection Agency, Region IX, Superfund Division, proposes to conduct a Regional survey of the Tribal Emergency Response Commissions (TERCs). The information collected in this survey will be used to assess the progress, status, needs, resources and activity level of TERCs. The information will be used by EPA Region IX staff to gain a better understanding of EPA Region IX tribes' actual implementation of EPCRA and RMP. The Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), also known as SARA Title III, and the Risk Management Program (RMP) under the Clean Air Act, 1990, section 112(r) and 40 CFR part 68, June 20, 1996, introduced fundamental changes in the regulation of chemical facilities and the prevention of and preparedness for chemical accidents. These laws and rules seek to improve emergency preparedness and reduce the risk of chemical accidents by providing information to citizens about the chemicals in their community. EPCRA, in conjunction with the RMP requirements, sought to create partnerships between all levels of government, tribal governments, and the regulated tribal community to identify, prevent, plan, prepare and respond to hazardous material risks in our communities, including tribal lands, reservations, rancherias and colonies. The purpose of this survey is to obtain input from the tribal organizations to improve Region IX's EPCRA and RMP programs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on January 10, 2001 (66 FR 1975); no comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 2 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: TERCs and Tribal LEPCs.

Estimated Number of Respondents: 145.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 290 Hours.

Estimated Total Annualized Capital, Operating/Maintenance Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 2004.01 in any correspondence.

Dated: May 3, 2001.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 01–12578 Filed 5–17–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6618–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or www.epa.gov/oeca/ofa.

Weekly receipt of Environmental Impact Statements

Filed May 07, 2001 Through May 11, 2001

Pursuant to 40 CFR 1506.9.

EIS No. 010164, Draft EIS, AFS, MT, Little Bear-Wilson Timber Sale and Road Decommission Project, Implementation, Gallatin Range, Gallatin National Forest, Bozeman Ranger District, Gallatin County, MT, Comment Period Ends: July 02, 2001, Contact: Tim Hancock (406) 522–2554.

EIS No. 010165, Draft EIS, AFS, UT, Flat Canyon Federal Coal Lease Tract

(UTU–77114), Application for Learning, Manti-La Sal National Forest, Ferron-Price Ranges District, Sanpete and Emery Counties, UT, Comment Period Ends: July 02, 2001, Contact: Stan Perks (801) 539–4038. The US Department of Agriculture Forest Service and US Department of Interior Bureau of Land Management are Joint Lead Agencies for this project.

EIS No. 010166, Draft EIS, NPS, VA, Green Spring Colonial National Historical Park Management Plan, Implementation, James City County, VA, Comment Period Ends: July 11, 2001, Contact: Alec Gould (757) 898–3400.

EIS No. 010167, Draft EIS, AFS, UT, WY, Wasatch-Cache National Forest Revised Land and Resource Management Plan, Implementation, several counties, UT and Uinta County, WY, Comment Period Ends: September 04, 2001, Contact: Jack Blackwell (801) 524–3908.

EIS No. 010168, Final EIS, AFS, MT, Knox-Brooks Timber Sales and Road Rehabilitation, Implementation, Lola National Forest, Super Ranger District, Mineral County, MT, Wait Period Ends: June 18, 2001, Contact: Bruce Erickson (406) 822–3957.

EIS No. 010169, Draft EIS, FTA, NC, Phase I Regional Rail System Improvements, Durham to Raleigh to North Raleigh, Implementation, Durham and Wake Counties, NC, Comment Period Ends: July 20, 2001, Contact: Alex McNeil (404) 562–3511.

EIS No. 010170, Final EIS, FHW, CA, San Francisco—Oakland Bay Bridge, East Span Seismic Safety Project, Connection between I–80 Yerba Buena Island and Oakland, US Coast Guard Permit and COE Section 404 Permit, San Francisco and Alameda Counties, CA, Wait Period Ends: June 18, 2001, Contact: C. Glenn Clinton (916) 498–5020.

EIS No. 010171, Draft EIS, FTA, CA, San Fernando Valley East-West Transit Corridor Project, Bus Rapid Transit (BRT) on former Burbank/ Chandler Southern Pacific Rail Right-of-Way, Development and Implementation, Los Angeles County. CA , Comment Period Ends : July 03, 2001, Contact: Ervin Poka (213) 202–3950.

EIS No. 010172, Draft EIS, FHW, MD, MD–210 (Indian Head Highway) Multi-Modal Study, MD–210 Improvements between I–95/I–495 (Capitol Beltway) and MD–228 Funding and US COE Section 404 Permit Issuance, Prince George's County, MD , Comment Period Ends: September 23, 2001, Contact: Nelson Castellanos (410) 962–4342.

EIS No. 010173, Draft EIS, USN, CA, Point Molate Property Naval Fuel Depot (NFD) for the Disposal and Reuse, Implementation, Fleet and Industrial Supply Center, City of Richmond, Contra Costa County, CA , Comment Period Ends: July 02, 2001, Contact: Roberta Montana (619) 532–0942.

Amended Notices

EIS No. 010088, Draft EIS, FHW, NB, Lincoln South and East Beltways Project, To Complete a Circumferential Transportation System linking I–80 on the north and U.S.77 on the west, Funding, COE 404 Permit, Lancaster County, NB, Comment Period Ends: June 15, 2001, Contact: Edward Kosola (402) 437–5973. Revision of FR Notice Published on 03/23/2001: CEQ Review Period Ending 05/07/2001 has been Extended to 06/15/2001.

EIS No. 010159, Draft Supplement, DOE, NV, Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste, Construction, Operation, Monitoring and Eventually Closing a Geologic Repository at Yucca Mountain, Updated and Additional Information, Nye County, NV , Comment Period Ends: June 25, 2001, Contact: Jane R. Summerson (702) 794–1493. Revision of FR notice published on 05/11/2001: Correction to Title.

Dated: May 15, 2001.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 01–12570 Filed 5–17–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6618–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

Summary of Rating Definitions Environmental Impact of the Action Lo—Lack of Objections

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC—Environmental Concerns

The EPA review has identified environmental impacts the should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

EO—Environmental Objections

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU—Environmentally Unsatisfactory

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

Adequacy of the Impact Statement

Category 1—Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2—Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information,

data, analyses, or discussion should be included in the final EIS.

Category 3—Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

Draft EISs

ERP No. D–BLM–J65331–00 Rating E02, Williams, Questar, Kern River Pipeline Project, To Approve a Petroleum Products Pipeline, and one or two Natural Gas Pipelines and to Amend Forest Plan, UT, NM and CO.

Summary: EPA expressed environmental objections with the narrow range of alternatives, new construction activity in the Uinta NF roadless area, potential air impacts to Arches National Park and the lack of information disclosed on potentially connected actions. EPA supports efforts to reduce environmental impacts by locating pipelines in existing ROW corridors, avoid landslide areas and headwaters for sources of drinking water, slightly modify the ROW to project roadless areas and use directional drilling methods which may reduce impacts to wetlands and aquatic life.

ERP No. D–FAA–E51049–KY Rating EC2, Cincinnati/Northern Kentucky International Airport, Construction and Operation of a New 8,000-foot Runway 17/35 (Future 18R/36L); 2,000-foot Extension of Runway 9/27, Funding and Airport Layout Plan, (ALP) Boone County, KY.

Summary: EPA expressed concern about proposed noise mitigation, air quality analysis, and wetland/stream mitigation. use of adaptive management regarding the monitoring of noise contours is recommended to ensure accurate footprints once prospective operations are initiated and when substantive changes affecting airport noise occur.

ERP No. D–USA–D11031–MD Rating EC2, Fort George G. Meade Future Development and Operations of a New Administrative and Support Buildings, Anne Arundel and Howard Counties, MD.

Summary: EPA expressed concern regarding potential impacts due to increased base traffic. EPA encouraged Fort Meade to make a committed effort to institute traffic mitigation alternatives such as flextime, flexiplace and car pooling programs.

ERP No. DS–FAA–J51009–UT Rating EC2, Cal Black Memorial Airport Project, New and Updated Information for the Replacing of Halls Crossing Airport, within the boundary of Glen Canyon National Recreation, Halls Crossing, San Juan Counties, UT.

Summary: EPA has environmental concerns with the ongoing noise impacts especially when combined with enroute jet aircraft noise, and that additional information is needed in the final Supplemental EIS that establishes a threshold of significance for these cumulative noise impacts. In addition, EPA suggests that the connected action of the proposed BLM land transfer be analyzed in a revised supplemental EIS to provide analysis of BLM's proposed action for this same airport.

Final EISs

ERP No. F–AFS–J65321–MT Mill-Key-Wey Project, Proposed Timber Harvesting, Ecosystem Burning, Road Construction and Reconstruction, Implementation, Lolo National Forest, Superior Ranger District, Mineral County, MT.

Summary: While the FEIS was largely responsive to EPA's comments on the DEIS, EPA continue to express concerns about timber harvests on erosive soils, wetland impacts, use of weed control chemicals, and the level of monitoring proposed to identify actual project impacts.

ERP No. F–NOA–A91066–00 Tilefish Fishery Management Plan (FMP), (Lopholatilus chamaeleonticeps), To Prevent Overfishing and to Rebuild the Resource of Tilefish, Located along the Atlantic Ocean.

Summary: EPA had environmental concerns about the proposed regulations and the sufficiency of the information in the document. EPA's concern included the adequacy of the mitigation measures and the impacts of trawling on Tilefish EFH.

ERP No. FS–AFS–L60104–WA Huckleberry Land Exchange Consolidate Ownership and Enhance Future Conservation and Management, Updated Information, Proposal to Exchange Land and Mineral Estates, Federal Land and Non-Federal Land, Mt. Baker-Snoqualmie National Forest, Skagit, Snohomish, King, Pierce, Kittitas, and Lewis Counties, WA.

Summary: No formal comment letter was sent to the preparing agency.

Dated: May 15, 2001.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 01–12569 Filed 5–17–01; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6978–7]

Allocation of Drinking Water State Revolving Fund Monies

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The 1996 Safe Drinking Water Act (SDWA) Amendments established a Drinking Water State Revolving Fund (DWSRF) program and authorized $9.6 billion to be appropriated for the program through fiscal year 2003. Congress directed that allotments for fiscal year 1998 and subsequent years be distributed among States based on the results of the most recent Drinking Water Infrastructure Needs Survey.

In this notice, the Environmental Protection Agency (EPA) is releasing a revised allocation for DWSRF monies among States in accordance with the results from the most recent Drinking Water Infrastructure Needs Survey (i.e., the 1999 Drinking Water Infrastructure Survey) which was released on February 28, 2001. This revised allocation affects DWSRF program appropriations for fiscal years 2002 through 2005.

Beginning in fiscal year 1998, EPA established a formula which allocates funds to the States based directly on each State's proportional share of the total State need, provided that each State receives a minimum share of one percent of the funds available to the States, as required by the SDWA. EPA has made the determination that it will continue to use this method for allocating DWSRF funds. The findings from the 1999 Needs Survey will change

the percentage of the DWSRF monies received by some States relative to their current allotments. This change reflects an increase or decrease in these States' share of the total State need.

DATES: This notice is effective May 18, 2001.

FOR FURTHER INFORMATION CONTACT: For technical inquiries, contact Veronica Blette, Drinking Water Protection Division, Office of Ground Water and Drinking Water (4606), 1200 Pennsylvania Avenue NW., Washington, DC 20460. The telephone number is (202) 260–3980 and email address is blette.veronica@epa.gov. Copies of this document and information on the Drinking Water Needs Survey and the DWSRF program can be found on EPA's Office of Ground Water and Drinking Water website at http://www.epa.gov/safewater.

SUPPLEMENTARY INFORMATION:

Background

The 1996 Safe Drinking Water Act (SDWA) Amendments established a Drinking Water State Revolving Fund (DWSRF) program and authorized to be appropriated $9.6 billion for the program through fiscal year 2003. Since 1996, Congress has appropriated $4.4 billion for the DWSRF program. Congress directed that allotments for fiscal year 1998 and subsequent years be distributed among States based on the results of the most recent Drinking Water Infrastructure Needs Survey (SDWA section 1452(a)(1)(D)(ii)), which must be conducted every four years. The first survey, which reflected 1995 data, was released in February 1997.

The 1999 Drinking Water Infrastructure Needs Survey was conducted over the last two years with the cooperation of the States. States participated in the development of the survey methods, documentation requirements, and the Report to Congress, which was released on February 28, 2001 (EPA 816–R–01–004). The survey examined the needs of approximately 4,300 water systems and used these data to extrapolate needs to each State. The survey included all of the nation's 1,111 largest systems (those serving over 40,000 people) and a statistical sample of systems serving fewer than 40,000 people. EPA conducted site visits to approximately 600 small community water systems and 100 not-for-profit noncommunity water systems. The sample design produces a statistically valid State-by-State estimate of need.

The 1999 Needs Survey presents State-by-State needs in several ways. For each State, the Needs Survey provides a bottom-line estimate of the total need, which reflects the capital costs for all drinking water infrastructure projects allowed for inclusion in the Survey. The Needs Survey also presents capital needs for each State by system size, by category of need (i.e., treatment, distribution and transmission, storage, source, and ''other''), by existing SDWA regulation, and by current and future need. A current need is a project needed now to protect public health, while a future need is a project that will be needed over the next 20 years.

The 1999 Needs Survey found that the total national need is $150.9 billion (Table 1). This estimate represents the needs of the approximately 55,000 community water systems (CWS) and 21,400 not-for-profit non-community water systems (NCWS) that are eligible to receive DWSRF assistance. These systems are found in all 50 States, the District of Columbia, Puerto Rico, on American Indian lands and in Alaska Native Villages, and the Virgin Island and Pacific Island territories.

TABLE 1.—1999 DRINKING WATER INFRASTRUCTURE NEEDS SURVEY 20-YEAR NEEDS

Type of need	Need (billions)
States	$139.0
Territories	0.4
American Indian and Alaska Native Villages	2.2
Costs for Proposed and Recent Regulations	9.3
Total National Need	150.9

The total national need also includes $9.3 billion in capital needs associated with recently promulgated and future regulations, as identified in EPA Economic Analyses accompanying the rules. Although these needs are included in the total national need, they were not apportioned to the States based upon the unanimous recommendation of the State representatives who participated in the survey design. The States expressed concern that the methods available for allocating the costs of these regulations would not represent the true costs of compliance on a State level.

The total State need, which is the figure that EPA will use to calculate the allotment formula, includes only the needs of the 50 States, the District of Columbia, and Puerto Rico. The 1999 Needs Survey estimates that the total State need is $139.0 billion.

Allocation Method

On October 31, 1996, EPA solicited public comment on six options for using the results of the first Drinking Water Infrastructure Needs Survey to allocate DWSRF monies to the States (61 FR 56231). On March 18, 1997, EPA announced its decision to allocate DWSRF monies for fiscal years 1998 through 2001 appropriations based on each State's proportional share of the total eligible needs for the States as derived from the 1995 Needs Survey (62 FR 12900). EPA has made the determination that it will continue to use this method for allocating DWSRF funds for fiscal years 2002 through 2005 appropriations utilizing the results of the 1999 Needs Survey.

The funds available to the States will be the level of funds appropriated by Congress, less the national set-asides, which includes an allocation for American Indian and Alaska Native Village water systems. Of the funds available to States, the SDWA includes specific allocations for the Pacific Islands, the Virgin Islands, and the District of Columbia.

Each State will receive an allotment of DWSRF funds based on each State's proportional share of the total State need ($139.0 billion), provided that each State receives a minimum allocation of one percent of the funds available to States, as required by the SDWA. The total need calculated for each State is the survey's bottom-line and the simplest way of allocating DWSRF grant funds among States.

The total State need includes all documented projects collected by the Needs Survey. In general, a project was included in the Needs Survey if project documentation demonstrated that meeting the need would address the public health objectives of the SDWA. The total State need includes projects needed now and over the next 20 years in four general categories: treatment, source, storage, and transmission and distribution. The total State need excludes capital projects that are ineligible for DWSRF assistance, such as projects solely for growth and dams, and the capital costs associated with recently promulgated and future regulations.

The formula based on the total need makes no distinction between the four categories—that is, it assigns an equal weight to all categories of need. Also, projects to correct imminent public health threats (e.g., replacing a deteriorated filter plant) are given the same weight as less critical needs (e.g., replacing a storage tank that is expected

to reach the end of its useful life in five years).

Consideration of Alternative Allocation Methods

The method that EPA uses to allocate funds to States is based on each State's share of the total State need. Several States have explicit restrictions against providing funding to privately-owned enterprises. Such restrictions may be the result of statutory or constitutional provisions at the State level or may be due to policy decisions made by the State program. The constitution or statutes of 17 States prohibit the provision of DWSRF monies to privately owned systems.

EPA had been asked by some stakeholders to consider changes to the allotment method to account for restrictions in some States that limit the provision of DWSRF assistance to publicly owned water systems. These stakeholders expressed the opinion that the allocation for these States should only consider the total need associated with publicly owned water systems that are eligible to receive DWSRF monies. They proposed that capital needs associated with privately owned water systems (determined thorough inventory information) be deducted from these States's total need estimates, although, as required by the SDWA, each State (even those States restricting privately-owned water systems from funding) would receive at least one percent of the funds available to States. Stakeholders felt that basing the allotment formula on whether States restrict DWSRF funding would ensure that States receive an allotment directly in proportion to their total needs eligible for assistance from the State.

EPA has reviewed the statutory language authorizing the program and determined that State DWSRF allotments should be based on the needs reported in the most recent needs survey which must assess ''capital improvement needs of all eligible public water systems''. The total State need collected through the survey represents the needs associated with publicly and privately-owned community water systems and non-profit noncommunity water systems, therefore these needs must be included in determining the allotment of funds.

It is important to note that in reviewing the issue, EPA found that some States with explicit restrictions are working to make changes to legislation or are working to identify alternative methods of assisting privately-owned systems. Some States are working to develop funding mechanisms which would enable them to provide DWSRF assistance to these water systems. Other States are using set-aside funds to provide technical assistance or are helping privately-owned systems obtain assistance from other State or Federal sources. EPA also found that some States that had the authority to provide assistance to privately-owned utilities had not done so. It is likely that any attempt to remedy inequities through the allotment method would itself be inequitable.

Although we are not making changes to the allotment formula, the Agency will continue to monitor States with respect to their decisions to fund privately-owned systems to ensure that the program maximizes benefits to public health. The Agency will also continue to work to assist States in working with privately-owned systems by providing financial management training on the mechanics of applicant credit evaluation and facilitating the dissemination of information between States.

Allocation of Monies

Table 2 contains each State's expected DWSRF allotment based on an appropriation of $823,185,000 and national set-aside assumptions. The appropriation amount is based on the President's budget request of $823,185,000 for fiscal year 2002. The national set-asides for fiscal year 2002 include funds for American Indian and Alaska Native Village water systems at the level of 1.5 percent of the total appropriation. (SDWA Section 1452(i)). This comes to $12,374,700 for Indian Tribes and Alaska Native Villages. Additional national set-asides for fiscal year 2002 include $2,000,000 for monitoring for unregulated contaminants and $30,000,000 for operator certification expense reimbursement grants. If funds are appropriated for the DWSRF at the level of $823,185,000 million and if the anticipated national set-asides do not change, the total funds available to the States, the District of Columbia and Territories would equal $778,837,300. Because the percentages are based on the total funds available for allotment to the States, they can be used for general planning purposes for future years. Once the appropriated amount and national set-asides are known, a State's allotment can be estimated by subtracting the national set-asides from the total funds available for allotment and then applying the appropriate percentage shown below. EPA will annually notify each State of their allotment from a specific fiscal year's appropriation after the final budget has been passed.

The findings from the 1999 Needs Survey will change the percentage of the DWSRF monies received by some States when compared to their current percentages. This change reflects an increase or decrease in these States' share of the total State need. The variation in these States' needs occurred principally as a result of the data submitted by individual water systems, but also in part due to refinements in the survey methods. With the collection of data from nearly 4,300 water systems and over 80,000 projects submitted, a change in some States' allotments represents an inevitable consequence of conducting a survey of this scale.

TABLE 2.—DISTRIBUTION OF DRINKING WATER STATE REVOLVING FUND ALLOTMENTS

State	Percent	Amount allotted
Alabama	1.00	$7,788,400
Alaska	1.00	7,788,400
Arizona	1.13	8,826,900
Arkansas	1.08	8,431,800
California	10.24	79,756,000
Colorado	1.65	12,886,000
Connecticut	1.00	7,788,400
Delaware	1.00	7,788,400
Florida	2.34	18,223,300
Georgia	1.58	12,331,600
Hawaii	1.00	7,788,400
Idaho	1.00	7,788,400
Illinois	3.73	29,064,700
Indiana	1.17	9,144,900
Iowa	1.84	14,299,600
Kansas	1.15	8,931,800
Kentucky	1.22	9,483,500
Louisiana	1.00	7,788,400
Maine	1.00	7,788,400
Maryland	1.16	9,044,200
Massachusetts	3.58	27,843,600
Michigan	4.10	31,920,400
Minnesota	1.98	15,429,600
Mississippi	1.00	7,788,400
Missouri	1.45	11,318,800
Montana	1.00	7,788,400
Nebraska	1.00	7,788,400
Nevada	1.00	7,788,400
New Hampshire	1.00	7,788,400
New Jersey	2.30	17,930,500
New Mexico	1.00	7,788,400
New York	7.75	60,382,900
North Carolina	1.76	13,676,100
North Dakota	1.00	7,788,400
Ohio	3.05	23,742,400
Oklahoma	1.55	12,038,200
Oregon	1.76	13,684,800
Pennsylvania	3.22	25,080,100
Puerto Rico	1.33	10,388,900
Rhode Island	1.00	7,788,400
South Carolina	1.00	7,788,400
South Dakota	1.00	7,788,400
Tennessee	1.01	7,877,800
Texas	7.70	59,989,300
Utah	1.00	7,788,400
Vermont	1.00	7,788,400
Virginia	1.38	10,762,600
Washington	2.47	19,220,200

TABLE 2.—DISTRIBUTION OF DRINKING WATER STATE REVOLVING FUND ALLOTMENTS—Continued

State	Percent	Amount allotted
West Virginia ..	1.00	7,788,400
Wisconsin	1.98	15,423,400
Wyoming	1.00	7,788,400
District of Columbia	1.00	7,788,400
Territories	0.33	2,570,200
Total	100.00	778,837,200

Dated: May 4, 2001.

Diane C. Regas,

Acting Assistant Administrator, Office of Water

[FR Doc. 01–12579 Filed 5–17–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51969; FRL–6782–3]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from March 24, 2001 to April 11, 2001, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. The ''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

DATES: Comments, identified by the docket control number OPPTS–51969 and the specific PMN number, must be received on or before June 18, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51969 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the 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 copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. 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/.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–51969. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, any test data submitted by the manufacturer/importer 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 TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51969 and the specific PMN number in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically*. You may submit your comments electronically by e-mail to: ''oppt.ncic@epa.gov,'' or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–51969 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with

procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from March 24, 2001 to April 11, 2001, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs and TMEs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available. The ''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

TABLE I. 70 PREMANUFACTURE NOTICES RECEIVED FROM: 03/24/01 TO 04/11/01

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–01–0456	03/26/01	06/24/01	CBC Corporation America	(S) Heat resistant filler for brake-pads	(G) Inorganic layer polymer
P–01–0457	03/27/01	06/25/01	CBI	(G) Paint additive	(G) Alkyl alkoxy silane
P–01–0458	03/28/01	06/26/01	CBI	(G) Ion exchange resin for water treatment	(G) Crosslinked copolymer of substituted polystyrene
P–01–0459	03/28/01	06/26/01	CBI	(S) Acid dye for the dyeing of leather	(G) Chromate, bis[[[substituted [[[hydroxynaphthalenyl) azo]phenyl] sulfonyl]amino] heterocycle]azo]-(hydroxynitrobenzene sulfonato)], -sodium salt
P–01–0460	03/28/01	06/26/01	CBI	(S) Acid dye for the dyeing of leather	(G) Chromate, bis[[[substituted [[[hydroxynaphthalenyl) azo]phenyl] sulfonyl]amino] heterocycle]azo]-(hydroxynitrobenzene sulfonato)], -mixed salts
P–01–0461	03/28/01	06/26/01	CBI	(S) Aroma chemical for use in fragrance mixtures, which are in turn used to perfume soaps, cleaners, etc.	(G) Carbobicycle alcohol
P–01–0462	03/29/01	06/27/01	Loctite Corporation	(S) A component of adhesive formulations	(S) Poly(oxy-1,4-butanediyl), alpha-hydro-omega-hydroxy-, polymer with 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane, 2-hydroxyethyl acrylate-blocked
P–01–0463	03/29/01	06/27/01	CBI	(S) Inks;coatings	(G) Polyester acrylate
P–01–0464	03/29/01	06/27/01	CBI	(G) Component of coating with open use	(G) Alkoxy alcohol
P–01–0465	03/29/01	06/27/01	CBI	(S) Raw material for use in fragrances for soaps, detergents, cleaners and other household products	(G) Cycloalkene-1-alkanal tetramethyl
P–01–0466	03/29/01	06/27/01	CBI	(G) Catalyst	(G) Organic transition metal complex

TABLE I. 70 PREMANUFACTURE NOTICES RECEIVED FROM: 03/24/01 TO 04/11/01—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–01–0467	03/29/01	06/27/01	CBI	(G) Catalyst	(G) Organic transition metal complex
P–01–0468	03/30/01	06/28/01	Degussa Corporation	(S) Hot melt for textile/clothes applications	(G) Aliphatic dicarboxylic acid, polymer with aliphatic diamine and cycloaliphatic amide
P–01–0469	03/30/01	06/28/01	International Specialty Products	(S) Component of coatings for digital printing paper	(S) 2-propenamide, *n*-[3-(dimethylamino)propyl]-2methyl-, polymer with 1-ethenyl-2-pyrrolidone, hydrochloride
P–01–0470	04/02/01	07/01/01	Piedmont Chemical Industries I, LLC	(S) Dispersant for carbon black;dispersant for organic pigments	(G) Ethoxylated alkylphenol sulfate, ammonium salt
P–01–0471	04/02/01	07/01/01	The DOW Chemical Company	(G) Modified epoxy resin for printed circuit boards epoxy resin adhesive coating	(G) Phosphorus modified epoxy resin
P–01–0472	04/02/01	07/01/01	CBI	(G) Open non-dispersive (resin)	(G) Modified polymeric diphenylmethane diisocyanate prepolymer
P–01–0473	04/03/01	07/02/01	Dystar L. P.	(S) Dyestuff part 1 for coloration of polyester;dyestuff part 2 for coloration of polyester	(G) Substituted cyano acetic acid butylester and butoxyethylester
P–01–0474	04/03/01	07/02/01	Dystar L. P.	(S) Dyestuff part 1 for coloration of polyester;dyestuff part 2 for coloration of polyester	(G) Substituted cyano acetic acid butylester and butoxyethylester
P–01–0475	04/02/01	07/01/01	DMC-2, L.P.	(G) Precious metal additive	(G) Inorganic palladium compound
P–01–0476	04/03/01	07/02/01	CBI	(S) Light stabilizer for plastic articles	(G) O-macroalkyl hydroxylamine
P–01–0477	04/04/01	07/03/01	CBI	(G) Open, non-dispersive use	(G) (monosubstituted naphthalene azo) tri substituted naphthalene sulfonic acid, salt
P–01–0478	04/04/01	07/03/01	CBI	(S) Dye intermediate	(G) Substituted naphthalenyl azo substituted hydroxynaphthalene disulfonic acid
P–01–0479	04/04/01	07/03/01	CBI	(G) Component of manufactured consumer article - contained use	(G) Dodecyl 4-methoxybenzene derivative
P–01–0480	04/04/01	07/03/01	Clayton Corporation	(S) Polyurethane foam sealant	(S) Propanol, [(1-methyl-1,2-ethanediyl)bis(oxy)bis-, polymer with 1,1,′-methylenebis[isocyanatobenzene], oxybis[propanol] and alpha, alpha′,alpha″-1,2, 3-propanetriyltris[omega-hydroxypoly[oxy (methyl-1,2-ethanediyl)]]
P–01–0481	04/04/01	07/03/01	CBI	(G) This material is a processing aid in the pest control industry	(G) Polyurethane polymer
P–01–0482	04/05/01	07/04/01	CBI	(G) Open,non-dispersive (resin)	(G) Modified polyurethane resin
P–01–0483	04/05/01	07/04/01	Solutia Inc.	(S) Wet strength agent for industrial paper	(G) Modified melamine formaldehyde resin
P–01–0484	04/06/01	07/05/01	CBI	(G) A destructive use as a chemical intermediate	(G) Polyester resin
P–01–0485	04/06/01	07/05/01	CBI	(G) Acrylic pressure sensitive adhesive	(G) Acrylic solution polymer
P–01–0486	04/06/01	07/05/01	CBI	(G) Reactive diluent	(G) Reactive hydroxy carbamate
P–01–0487	04/06/01	07/05/01	CBI	(G) Reactive intermediate	(G) Reactive carbonate intermediate
P–01–0488	04/06/01	07/05/01	CBI	(G) Component of an odorant composition for highly dispersive applications	(G) Alkyl substituted heterocycle
P–01–0489	04/09/01	07/08/01	CBI	(G) Component of coating with open use	(G) Hydroxy urethane
P–01–0490	04/09/01	07/08/01	CBI	(G) Component of coating with open use	(G) Hydroxy urethane
P–01–0491	04/09/01	07/08/01	CBI	(G) Component of coating with open use	(G) Hydroxy urethane
P–01–0492	04/09/01	07/08/01	CBI	(G) Component of coating with open use	(G) Hydroxy urethane
P–01–0493	04/09/01	07/08/01	CBI	(G) Component of coating with open use	(G) Hydroxy urethane
P–01–0494	04/09/01	07/08/01	CBI	(G) Component of coating with open use	(G) Hydroxy urethane
P–01–0495	04/09/01	07/08/01	CBI	(G) Printing ink additive	(S) Alkanes, C_{10-15}-iso-, cyclic and linear

TABLE I. 70 PREMANUFACTURE NOTICES RECEIVED FROM: 03/24/01 TO 04/11/01—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–01–0496	04/09/01	07/08/01	CBI	(G) Component of coatings, inks, and varnishes	(G) Acrylate ester
P–01–0497	04/10/01	07/09/01	CBI	(G) Chemical intermediate	(G) Polyester prepolymer
P–01–0498	04/11/01	07/10/01	CBI	(G) Open, non-dispersing use	(G) Quaternary salt of glycol succinate
P–01–0499	04/11/01	07/10/01	CBI	(G) Destructive use	(G) Mercaptoalkyl alcohol
P–01–0500	04/11/01	07/10/01	CBI	(S) Chemical intermediate	(G) Distillation residues from reaction product of alkyl alcohol with hydrogen sulfide
P–01–0501	04/11/01	07/10/01	CBI	(S) Inks;coatings	(G) Polyester acrylate
P–01–0502	04/09/01	07/08/01	CBI	(G) Open non-dispersive use	(G) Polyesterimide resin, based on theic
P–01–0503	04/11/01	07/10/01	CBI	(G) Raw material	(G) Bis substituted amino benzenesulfonic acid, amine salt
P–01–0504	04/11/01	07/10/01	CBI	(G) Multi-purpose adhesive;open, non-dispersive use;laminating adhesive; open, non-dispersive use	(G) Polyurethane prepolymer;polyurethane hot melt adhesive
P–01–0505	04/10/01	07/09/01	CBI	(G) Chemical intermediate	(G) Polyester prepolymer
P–01–0506	04/10/01	07/09/01	Dow Corning Corporation	(S) Siloxane cure catalyst	(G) Tetraalkyltitanate-alkyl alkanatoalkanoate complex
P–01–0507	04/11/01	07/10/01	CBI	(G) Lubricant additive	(G) Alkenyl dicarboxylic acid anhydride half amide
P–01–0508	04/11/01	07/10/01	CBI	(G) Lubricant additive	(G) Alkenyl dicarboxylic acid anhydride half amide, alkanolamine salt
P–01–0509	04/11/01	07/10/01	CBI	(G) Lubricant additive	(G) Alkenyl dicarboxylic acid anhydride half amide, alkanolamine salt
P–01–0510	04/11/01	07/10/01	CBI	(G) Lubricant additive	(G) Alkenyl dicarboxylic anhydride half amide, alkanolamine salt
P–01–0511	04/11/01	07/10/01	CBI	(G) Lubricant additive	(G) Alkenyl dicarboxylic acid anhydride half amide, alkali metal salt
P–01–0512	04/11/01	07/10/01	CBI	(G) Lubricant additive	(G) Alkenyl dicarboxylic acid anhydride half amide, alkali metal salt
P–01–0513	04/11/01	07/10/01	CBI	(G) Lubricant additive	(G) Alkenyl dicarboxylic acid anhydride half ester
P–01–0514	04/11/01	07/10/01	CBI	(G) Lubricant additive	(G) Alkenyl dicarboxylic acid anhydride half ester, alkanolamine salt
P–01–0515	04/11/01	07/10/01	CBI	(G) Lubricant additive	(G) Alkenyl dicarboxylic acid anhydride half ester, alkanolamine salt
P–01–0516	04/11/01	07/10/01	CBI	(G) Lubricant additive	(G) Alkenyl dicarboxylic anhydride half ester, alkanolamine salt
P–01–0517	04/11/01	07/10/01	CBI	(G) Lubricant additive	(G) Alkenyl dicarboxylic acid anhydride half ester, alkali metal salt
P–01–0518	04/11/01	07/10/01	CBI	(G) Lubricant additive	(G) Alkenyl dicarboxylic acid anhydride half ester, alkali metal salt
P–01–0519	04/11/01	07/10/01	CBI	(G) Lubricant additive	(G) Alkenyl dicarboxylic acid anhydride half ester
P–01–0520	04/11/01	07/10/01	CBI	(G) Lubricant additive	(G) Alkenyl dicarboxylic acid anhydride half ester, alkanolamine salt
P–01–0521	04/11/01	07/10/01	CBI	(G) Lubricant additive	(G) Alkenyl dicarboxylic acid anhydride half ester, alkanolamine salt
P–01–0522	04/11/01	07/10/01	CBI	(G) Lubricant additive	(G) Alkenyl dicarboxylic anhydride half ester, alkanolamine salt
P–01–0523	04/11/01	07/10/01	CBI	(G) Lubricant additive	(G) Alkenyl dicarboxylic acid anhydride half ester, alkali metal salt
P–01–0524	04/11/01	07/10/01	CBI	(G) Lubricant additive	(G) Alkenyl dicarboxylic acid anhydride half ester, alkali metal salt
P–01–0525	04/11/01	07/10/01	CBI	(G) Industrial coating	(S) Poly[oxy(methyl-1,2-ethanediyl)], alpha-hydro-omega-hydroxy-, polymer with 1,6-diisocyanato-2,2,4-trimethylhexane and 1,6-diisocyanato-2,4,4-trimethylhexane, 2-oxepanone homopolymer 2-[(1-oxo-2-propenyl)oxy]ethyl ester-blocked

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

TABLE II. 1 TEST MARKETING EXEMPTION NOTICES RECEIVED FROM: 03/24/01 TO 04/11/01

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–01–0010	04/11/01	05/26/01	Westvaco corporation - chemical division	(S) Binding agent in paper coatings	(G) Butyl acrylate, polymer with styrene and methylamino chloride compounds

In table III, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

TABLE III. 34 NOTICES OF COMMENCEMENT FROM: 03/24/01 TO 04/11/01

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0012	04/09/01	04/03/01	(G) Amine functional epoxy curing agent
P–00–0311	04/02/01	03/09/01	(G) Alkylphenol, potassium salt
P–00–0326	03/26/01	02/28/01	(G) Aliphatic urethane
P–00–0327	04/05/01	03/08/01	(G) Amine salt
P–00–0443	04/02/01	03/09/01	(G) Alkaryl polyoxyalkylene derivative
P–00–0444	04/02/01	03/12/01	(G) Alkaryl polyoxyalkylene derivative
P–00–0509	04/03/01	03/09/01	(G) Polyether polyurethane
P–00–0667	04/09/01	03/22/01	(G) Substituted biaryl aralkyl phosphite
P–00–0857	04/04/01	03/16/01	(G) Polyester resin
P–00–0859	04/04/01	03/16/01	(G) Polyester resin
P–00–0904	03/27/01	02/26/01	(G) Hot melt polyurethane adhesive
P–00–1071	03/27/01	03/13/01	(S) 2,5-furandione, telomer with ethenylbenzene and (1-methylethyl)benzene, 3-(dimethylamino)propyl imide, acetates
P–00–1072	03/27/01	03/13/01	(S) 2,5-furandione, telomer with ethenylbenzene and (1-methylethyl)benzene, 3-(dimethylamino)propyl imide, sulfates
P–00–1073	03/27/01	03/13/01	(S) 2,5-furandione, telomer with ethenylbenzene and (1-methylethyl)benzene, 3-(dimethylamino)propyl imide, phosphates
P–00–1074	03/27/01	03/13/01	(S) 2,5-furandione, telomer with ethenylbenzene and (1-methylethyl)benzene, 3-(dimethylamino)propyl imide, methanesulfonates
P–00–1075	03/27/01	03/13/01	(S) 2,5-furandione, telomer with ethenylbenzene and (1-methylethyl)benzene, 3-(dimethylamino)propyl imide, hydrochlorides
P–00–1132	04/09/01	03/08/01	(G) Fluoro/amino silane mixture
P–00–1134	04/10/01	03/28/01	(G) Urethane prepolymer
P–00–1163	04/02/01	03/27/01	(S) Oxiranemethanamine, *n,n′*-(methylenedi-4,1-phenylene)bis[*n*-(oxiranylmethyl)-, polymer with 4,4′-methylenebis[2-methylcyclohexanamine]
P–00–1189	04/04/01	03/28/01	(G) Aromatic thiophene derivative
P–00–11	03/29/01	03/06/01	(G) Polyurethane polymer
P–01–0002	03/27/01	03/20/01	(G) Linear alkyl polyhydroxypolyester
P–01–0079	04/06/01	03/28/01	(G) Benzoic acid, 3,5-diamino-2-[(1,5-disulfo-2-naphthalenyl)azo]-4,6-bis[[4-(substituted)phenyl]azo]-, sodium salt
P–01–0086	03/26/01	02/24/01	(G) Alkanolamine
P–01–0092	04/05/01	02/07/01	(S) 2-propanol, reaction products with (3-chloropropyl)trimethoxysilane and diethylenetriamine-ethylenimine polymer
P–01–0139	03/28/01	03/21/01	(G) *N*-alkyl modified polyisocyanate, reaction products with diamine
P–01–0146	04/02/01	03/01/01	(G) Aliphatic amine salt of aromatic polyamic acid
P–01–0148	03/27/01	03/09/01	(G) Styrene maleic anhydride copolymer, partial alkyl ester
P–01–0157	04/09/01	03/26/01	(G) Aminoalkoxysilane
P–01–0169	04/02/01	03/20/01	(G) Aromatic polyester polyol
P–01–0179	04/05/01	03/19/01	(G) Acrylate polymer
P–01–0184	04/10/01	03/29/01	(G) Quaternary amine salt of a fatty acid polyester amide
P–95–1951	03/26/01	03/25/98	(G) Alkyl glucosides
P–99–1015	04/11/01	03/31/01	(G) Modified hydrocarbon resin

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated:May 3, 2001.

Deborah A. Williams,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 01–12580 Filed 5–17–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51970; FRL–6783–9]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from April 12, 2001 to April 27, 2001, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. The ''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

DATES: Comments, identified by the docket control numbers OPPTS 51970 and the specific PMN number, must be received on or before June 18, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51970 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the 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 copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. 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/.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–51970. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, any test data submitted by the manufacturer/importer 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 TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51970 and the specific PMN number in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically*. You may submit your comments electronically by e-mail to: ''oppt.ncic@epa.gov,'' or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–51970 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior

notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from April 12, 2001 to April 27, 2001, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs and TMEs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available. The ''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

TABLE I. 34 PREMANUFACTURE NOTICES RECEIVED FROM: 04/12/01 TO 04/27/01

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–01–0526	04/12/01	07/11/01	Pilot Chemical Company	(S) Demulsifier and corrosion inhibitor in hydraulic fluids	(G) Alkylarylsulfonic acid, zinc salts
P–01–0527	04/13/01	07/12/01	CBI	(G) Open non-dispersive (polyol)	(G) Polyester polyol
P–01–0528	04/13/01	07/12/01	Roma Color Inc.	(S) Chemical intermediate	(S) Benzenesulfonic acid, 2-amino-4,5-dichloro
P–01–0529	04/16/01	07/15/01	CBI	(G) Charge control agent in colour toners for electrophotography use	(G) Organo aluminium complex
P–01–0530	04/17/01	07/16/01	CBI	(G) Processing aid	(G) Alkoxylated alcohol
P–01–0531	04/17/01	07/16/01	CBI	(G) Lubricant additive	(G) Diisocyanatomethylbenzene- alkylamine reaction products
P–01–0532	04/18/01	07/17/01	CBI	(G) Open - non-dispersive uses	(G) Silyated polyurethane prepolymer
P–01–0533	04/18/01	07/17/01	CBI	(S) Raw material for use in fragrances for soaps, detergents, cleaners and other household products	(G) Cycloalkenone
P–01–0534	04/19/01	07/18/01	CBI	(G) Component of coating with open use	(G) Modified melamine
P–01–0535	04/19/01	07/18/01	UCB Chemicals Corporation	(S) Pressure sensitive adhesive	(G) Acrylic copolymer
P–01–0536	04/19/01	07/18/01	CBI	(G) Open non-dispersive (resin)	(G) Blocked polyisocyanate
P–01–0537	04/19/01	07/18/01	Electra Polymers' Chemicals LTD	(S) Protective coating for printed circuit boards	(G) Epoxy novolac acrylate carboxylate
P–01–0538	04/19/01	07/18/01	Electra Polymers' Chemicals LTD	(S) Protective coating for printed circuit boards	(G) Epoxy novolac acrylate
P–01–0539	04/19/01	07/18/01	Electra Polymers' Chemicals LTD	(S) Protective coating for printed circuit boards	(G) Epoxy novolac acrylate carboxylate

TABLE I. 34 PREMANUFACTURE NOTICES RECEIVED FROM: 04/12/01 TO 04/27/01—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–01–0540	04/19/01	07/18/01	Cognis Corporation	(G) Textile antistat	(S) Poly(oxy-1,2-ethanediyl), alph-hydro-omega-hydroxy-, mono-c11-14-isoalkyl ethers, c13-rich, phosphates, potassium salts
P–01–0541	04/19/01	07/18/01	Cognis Corporation	(G) Textile antistat	(S) Ethanol, 2,2',2''-nitrilotris-, compds. with polyethylene glycol mono(c13-rich c11-14-isoalkyl) ethers phosphates
P–01–0542	04/19/01	07/18/01	CBI	(G) Destructive use	(G) Substituted carbopolycycle heteropolycycle substituted sulfo heteropolycycle
P–01–0543	04/19/01	07/18/01	CBI	(G) Destructive use	(G) Substituted carbopolycycle heteropolycycle substituted sulfo heteropolycycle
P–01–0544	04/23/01	07/22/01	CBI	(G) Open, non-dispersive use in a coating application	(G) Aqueous polyurethane dispersion
P–01–0545	04/23/01	07/22/01	CBI	(G) A raw material for making urethane prepolymer adhesives for open, non-disperse use	(G) Isocyanate urethane prepolymer
P–01–0546	04/18/01	07/17/01	Bystronic Inc.	(S) Gloss varnish for enhancing printed products (a liquid) (print finishing varnish)	(G) Acrylate
P–01–0547	04/18/01	07/17/01	Bystronic Inc.	(S) Gloss varnish for enhancing printed products (a liquid) (print finishing varnish)	(G) Acrylate
P–01–0548	04/18/01	07/17/01	Bystronic Inc.	(S) Gloss varnish for enhancing printed products (a liquid) (print finishing varnish)	(G) Acrylate
P–01–0549	04/24/01	07/23/01	CBI	(G) Detergent additive	(G) Acrylic polymer
P–01–0550	04/23/01	07/22/01	CBI	(G) Binder	(G) Polycarbonate-polyurethane resin
P–01–0551	04/23/01	07/22/01	CBI	(G) Industrial coating	(S) 2-propenoic acid, 2-methyl-, methyl ester, polymer with 2-ethylhexyl 2-propenoate and 2-hydroxyethyl 2-propenoate, tert-bu 2-ethylhexaneperoxoate-initiated
P–01–0552	04/23/01	07/22/01	BASF Corporation	(G) Surfactant	(G) Polyalkylene oxide modified silicone
P–01–0553	04/23/01	07/22/01	CBI	(S) Coating on pet film and paper	(G) Aromatic/aliphatic copolyester
P–01–0554	04/23/01	07/22/01	CBI	(S) Paper coating	(G) Copolyester
P–01–0555	04/23/01	07/22/01	CBI	(S) Industrial coatings for plastics, in automotive use and for construction elements (e.g. window frames)	(G) Hexanedioic acid, polymer with 1,4-butanediol, 2,2-dimethyl-1,3-propanediol, 1,6-hexanediol, oxyalkylpropanoic acid and 5-isocyanato-1-(isocyanatomethyl)-alkylcyclohexane, compd. with triethylamine
P–01–0556	04/23/01	07/22/01	CBI	(G) Industrial coating	(S) 2-propenoic acid, 2-methyl-, methyl ester, polymer with 2-ethylhexyl 2-propenoate and 2-hydroxyethyl 2-propenoate, [3,3,5-trimethyl-5-[[[[2-[(1-oxo-2-propenyl)oxy]ethoxy]carbonyl]amino]methyl]cyclohexyl] carbamate, tert=bu 2-ethylhexaneperoxoate-initiated
P–01–0557	04/26/01	07/25/01	CBI	(S) Selective base for chemical synthesis	(S) Lithium, hexyl-
P–01–0558	04/26/01	07/25/01	CBI	(G) Plastic additive	(G) Phosphoramidate
P–01–0559	04/26/01	07/25/01	Reichhold, Inc.	(G) Surfactant	(S) Benzene, 1,1'-oxybis-, tetrapropylene derivs., sulfonated, ammonium salts

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

TABLE II. 1 TEST MARKETING EXEMPTION NOTICES RECEIVED FROM: 04/12/01 TO 04/27/01

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–01–0011	04/19/01	06/03/01	CBI	(G) Component of coating with open use	(G) Modified melamine

In table III, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

TABLE III. 17 NOTICES OF COMMENCEMENT FROM: 04/12/01 TO 04/27/01

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0826	04/13/01	03/22/01	(G) Polyacrylate, partially neutralized
P–00–1016	04/13/01	03/26/01	(S) 2-propenoic acid, 2-methyl-, methyl ester, polymer with 2-methylpropyl 2-methyl-2-propenoate and 1,2-propanediol mono-2-propenoate
P–00–1041	04/23/01	04/11/01	(G) Polyester acrylate
P–00–1090	04/18/01	03/20/01	(G) Modified cationic acrylamide polymer
P–00–1143	04/18/01	03/29/01	(G) Polyester acrylate
P–00–1205	04/24/01	03/26/01	(G) 6-methoxy-1h-benz[de]isoquinoline-2[3h]-dione derivative
P–01–0006	04/23/01	04/09/01	(G) Ethoxylated glycol ether phosphate salt
P–01–0071	04/24/01	03/30/01	(G) Substituted triazine
P–01–0087	04/23/01	03/29/01	(G) Polyether poly-t-butyl peroxycarbonate
P–01–0096	04/26/01	03/27/01	(G) Modified acrylate polymer
P–01–0133	04/25/01	04/03/01	(G) Alkoxylaated amine
P–01–0151	04/16/01	04/05/01	(G) Cobaltate(5-), bis[4-[[6-[(substituted-1,3,5-triazin-2-yl)amino]-1-hydroxy-3-sulfo-2-naphthalenyl]azo]-3-hydroxy-7-substituted-1-naphthalenesulfonato(4-)]-, pentasodium
P–01–0177	04/23/01	03/27/01	(G) Aromatic substituted diurea
P–94–1065	04/18/01	03/15/01	(G) Hydroxy acrylic polymer
P–97–0329	04/27/01	03/29/01	(S) Silixanes and silicones, 3-(4-carboxy-2-oxo-1-pyrrolidinyl)propyl me, di-me
P–99–0219	04/16/01	03/15/01	(G) Hydroxy acrylic polymer
P–99–1077	04/13/01	04/05/01	(G) [1,1'biphenyl]-2,2'disulfonic acid, 4,4'-bis[[substituted[-4-[[2-(sulfooxy)ethyl]sulfonyl]phenyl]-substituted]azo]-salt

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: May 8, 2001.

Deborah A. Williams,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 01–12581 Filed 5–17–01;8:45am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

May 14, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 17, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0188.

Title: Call Sign Reservation and Authorization System.

Form No.: FCC 380.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit, Not-for-profit institutions, State, local or tribal government.

Number of Respondents: 1,600.

Estimated Hours Per Response: 0.166–0.5 hours.

Frequency of Response: On occasion.

Cost to Respondents: $130,000.

Estimated Total Annual Burden Hours: 333.

Needs and Uses: Section 73.3550 provides that all requests for new or modified call signs be made via the on-line call sign reservation and authorization. The Commission uses an on-line system (FCC 380) for the electronic preparation and submission of requests for the reservation and authorization of new and modified call signs. Access to the call sign reservation and authorization system is made by broadcast licensees and permittees, or by persons acting on their behalf, via the Internet's World Wide Web. This on-line, electronic call sign system enables users to determine the availability and licensing status of call signs; to request an initial, or change an existing, call sign; and to determine and submit more easily the appropriate fee, if any. Section 74.783 also permits any low power television (LPTV) station to request a four-letter call sign after receiving its construction permit. All initial LPTV construction permits will continue to be issued with a five-character alpha-numeric LPTV call sign. LPTV licensees/permittees are also required to use the on-line call sign reservation and authorization system. The call sign reservation and authorization system is used by permittees, licensees or persons acting on their behalf to determine the availability of a call sign and to request an initial call sign or change an existing call sign.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–12610 Filed 5–17–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control, Special Emphasis Panel (SEP): RFA OH–01–004: Centers for Agricultural Disease and Injury Research, Education and Prevention

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): RFA OH–01–004: Centers for Agricultural Disease and Injury Research, Education and Prevention.

Times and Dates:

6 p.m.–7 p.m., June 24, 2001. (Open)
7:15 p.m.–9 p.m., June 24, 2001. (Closed)
8 a.m.–5 p.m., June 25, 2001. (Closed)
8 a.m.–5 p.m., June 26, 2001. (Closed)
6 p.m.–7 p.m., June 27, 2001. (Open)
7:15 p.m.–9 p.m., June 27, 2001. (Closed)
8 a.m.–5 p.m., June 28, 2001. (Closed)
8 a.m.–5 p.m., June 29, 2001. (Closed)
8 a.m.–5 p.m., August 6, 2001. (Closed)
8 a.m.–5 p.m., August 7, 2001. (Closed)

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, Maryland 20852.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Deputy Director for Program Management, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement: RFA OH–01–004.

Contact Person for More Information: Price Connor, Ph.D., National Institute for Occupational Safety and Health, CDC, 1600 Clifton Rd, NE, M/S D30, Atlanta, Georgia 30333, telephone 404–639–2383.

The Director, Management Analysis and Services Office has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 26, 2001.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–12521 Filed 5–17–01; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: TANF High Performance Bonus Report, Assessment of Medicaid and SCHIP Enrollment.

OMB No.: New Collection.

Description: Public Law 104–93 (PRWORA) established the Temporary Assistance for Needy Families (TANF) Program. It also included provisions for rewarding States that attain the highest levels of success in achieving the legislative goals of that program. The purpose of this collection is to obtain data upon which to base the computation for measuring State performance in meeting those goals by providing Medicaid and SCHIP work supports. DHHS will use the information to allocate the Medicaid/SCHIP portion of the bonus grant funds appropriated under the law and implemented by 45 CFR Part 270 published on August 30, 2000. States will not be required to submit this information unless they elect to compete in a Medicaid/SCHIP measure for the TANF High Performance Bonus awards in Federal fiscal years 2002 or 2003, or any subsequent Federal fiscal year for which Congress authorizes and appropriates bonus funds.

Respondents: Respondents may include any of the 50 States, the District of Columbia, and the U.S. Territories of Guam, Puerto Rico, and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
TANF High Performance Bonus Report, Assessment of Medicaid and SCHIP Enrollment Among Individuals After leaving TANF Assistance	54	4	20	4,320

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Estimated Total Annual Burden Hours				4,320

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: May 14, 2001.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 01–12495 Filed 5–17–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACF/ACYF/HS–2001–11]

Fiscal Year 2001 Discretionary Announcement for a Center on the Social and Emotional Foundations for Early Learning; Availability of Funds and Request for Applications

AGENCY: Administration on Children, Youth and Families (ACYF), ACF, DHHS.

ACTION: Announcement of the availability of funds and request for applications for a Center on the Social and Emotional Foundations for Early Learning.

SUMMARY: The Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF) announces the availability of funds for a Center on the Social and Emotional Foundations for Early Learning. This Center will improve the capacity of Head Start and Child Care programs to promote the social and emotional development of the preschool age children they serve.

Statutory Authority

The Child Care and Development Block Grant Act as amended, 42 U.S.C. 9858 *et seq.*

CFDA 93.647

The Head Start Act, as amended, 42 U.S.C. 9801 *et seq.*

CFDA: 93.600

DATES: The closing time and date for receipt of applications is 5 p.m. (Eastern Time Zone) July 13, 2001. Applications received after 5 p.m. on the deadline date will be classified as late.

Note: The full announcement, including all the necessary forms can be downloaded from the Head Start Web Site at *http://www.acf.dhhs.gov/programs/hsb,* and/or the Child Care Bureau Web Site at *http://www.acf.dhhs.gov/programs/ccb.*

ADDRESSES: Mail applications to: ACYF Operations Center, 1815 N. Fort Myer Drive, Suite 300, Arlington, Virginia 22209.

Hand Delivered, Courier or Overnight Delivery applications are accepted during the normal working hours of 8 a.m. to 5 p.m., Monday through Friday, on or prior to the established closing date.

All packages should be clearly labeled as follows:

Application for Center on the Social and Emotional Foundations for Early Learning.

FOR FURTHER INFORMATION CONTACT: The ACYF Operations Center at 1–800–351–2293 (ACYF) is available to answer questions concerning application requirements and to refer you to the appropriate contact person in ACYF for programmatic questions. You may also e-mail your questions tot he ACYF Operations Center at: ehs@lcgnet.com

In order to determine the number of expert reviewers that will be necessary, if you are going to submit an application, you must send a post card or e-mail with the following information: the name, address, telephone and fax number, e-mail address of the project director, and the name of the university or non-profit institution at least four weeks prior to the submission deadline date to: ACYF Operations Center, 1815 N. Fort Myer Drive,Suite 300, Arlington, Virginia 22209, (1–800) 351–2293, E-mail: ehs@lcgnet.com.

SUPPLEMENTARY INFORMATION: A: *Eligible Applicants:* Universities and non-profit organizations with a recognized record of national leadership and service and current capabilities in this area of expertise. To adequately address the scope of topics and experiences this project requires, an application may be comprised of a consortium of organizations.

B. *Project Duration:* The announcement is soliciting applications for a project period of up to five years. Awards, on a competitive basis, will be for the first one-year budget period. Applications for continuation of cooperative agreements funded under these awards beyond the one-year period, but within the established project period, will be entertained in subsequent years on a non-competitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

C. *Federal Share of Project Cost:* The Federal share of project costs shall not exceed $1,000,000 per year. $600,000 of this amount will be from Head Start funds and $400,000 will be from Child Care and Development Block Grant funds.

D. *Matching Requirement:* There is no matching requirement.

E. *Anticipated Number of Projects to be Funded:* It is anticipated that one project will be funded.

Criteria

Reviewers will consider the following factors when assigning points.

1. Results or Benefits Expected (Maximum of 10 Points)

The extent to which the applicant:

- clearly states the objectives and their relation to the expected benefits of the project.
- explains why chosen objectives are appropriate for Head Start and Child Care program efforts to improve social and emotional outcomes for young children, given current knowledge on effective practices.

• explains how the results and benefits expected are reasonable given the resources available for this project.

2. Approach (maximum of 50 Points)

The extent to which the applicant's approach:

• adequately describes and responds to key issues outlined in the background section above;

• represents a cost effective strategy to improve Head Start and Child Care program practices to promote positive social and emotional outcomes for children;

• demonstrates a thorough knowledge and understanding of the Head Start Program Performance Standards and quality child care program practices;

• demonstrates thorough knowledge of evidence-based approaches to improving social and emotional outcomes and address mental health and behavioral concerns for preschool-age children:

• demonstrates appropriate strategies for communication and ongoing coordination with the Head Start and Child Care training and technical assistance providers; and,

• describes specific strategies for how the project will promote local program's adopting and implementing practices.

3. Staff and Position Date (Maximum of 30 Points)

The extent to which the key staff and the organization possess the experience and expertise necessary to plan and implement a project of this type and scope, including:

• planning and disseminating training and technical assistance resources addressing issues of early childhood social and emotional development and mental health services;

• working with programs serving diverse cultures, languages and ethnicity and with programs serving low income families with young children;

• analyzing and preparing information for national dissemination to early childhood programs on issues of social and emotional development and mental health;

• designing, developing, and delivering coordinated technical assistance as part of a national network;

• experience with early childhood service settings, collaborating with mental health, child care and school system partners, and working with Head Start program staff and parents;

• key staff will devote adequate time to ensure a high level of professional input and attention;

• staff have experience designing and delivering information and T/TA for audiences of diverse cultures, languages and ethnicity and experience working with programs serving low income families with young children;

• staff have the skills and experiences needed to implement an approach covering the broad scope of issues required by the comprehensiveness of the Head Start model; and

• staff have experience and skills in reviewing and adapting information on social and emotional development and mental health to communicate effectively with this project's intended audiences.

Budget and Budget Justification (Maximum of 10 Points)

The extent to which the applicant's proposed costs are reasonable in view of the planning and activities to be carried out and the anticipated outcomes.

Required Notification of the State Single Point of Contact

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR Part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these jurisdictions need not take action regarding Executive Order 12372.

Applications for projects to be administered by Federally recognized Indian Tribes are also exempt from the requirements of Executive Order 12372. Otherwise, applicants should contact their SPOC as soon as possible to alert them to the prospective application and to receive any necessary instructions. Applicants must submit any required material to the SPOC as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to the ACF, they should be addressed to: William Wilson, Head Start Bureau, Grants Officer, 330 C Street SW., Room 2220, Washington, DC 20447. Attn: Center on the Social and Emotional Foundations for Early Learning.

A list of the Single Points of Contact for each State and Territory can be found on the following web site: http://*http://www.whitehouse.gov/omb/grants/spoc.html.*

(Catalog of Federal Domestic Program Number 93.600, Project Head Start and Number 93.647, Child Care and Development Block Grant)

Dated: May 14, 2001.

James A. Harrell,

Acting Commissioner, Administration on Children, Youth and Families.

[FR Doc. 01–12498 Filed 5–17–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–3069–N]

Medicare Program; Meeting of the Executive Committee of the Medicare Coverage Advisory Committee—June 14, 2001

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting of the Executive Committee (the Committee) of the Medicare Coverage Advisory Committee (MCAC). The Committee will do the following:

• Act on the February 21, 2001 recommendations of the Medical Devices and Prosthetics Panel regarding Ambulatory Blood Pressure Monitoring.

• Discuss the ''Interim Guidelines—Recommendations for Evaluating Effectiveness,'' prepared by the Executive Committee to assist panels in

consistently judging the scientific evidence of a particular topic (also available on the HCFA website at www.hcfa.gov/coverage).

• Discuss the future role of the Committee, in light of the provisions of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 that removes the requirement that the Committee ratify all medical specialty panel recommendations.

• Discuss the contents of, and framing the questions for, a future presentation of ''neuroimaging for dementia'' to be presented to the Diagnostic Imaging Panel later this year.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)).

DATES: *The Meeting:* June 14, 2001, from 8 a.m. until 4 p.m., E.D.T.

Deadline for Presentations and Comments: June 1, 2001, 5 p.m., E.D.T.

Special Accommodations: Persons attending the meeting who are hearing impaired and require sign language interpretation, or have a condition that requires other special assistance or accommodations, are asked to notify the Executive Secretary by June 1, 2001.

ADDRESSES: *The Meeting:* The meeting will be held at the Baltimore Convention Center, Room 339, One West Pratt Street, Baltimore, Maryland 21201.

Presentations and Comments: Submit formal presentations and written comments to Constance A. Conrad, Executive Secretary; Office of Clinical Standards and Quality; Health Care Financing Administration; 7500 Security Boulevard; Mail Stop S3–02–01; Baltimore, MD 21244.

Website: You may access up-to-date information on this meeting at www.hcfa.gov/coverage.

Hotline: You may access up-to-date information on this meeting on the HCFA Advisory Committee Information Hotline, 1–877–449–5659 (toll free) or in the Baltimore area (410) 786–9379.

FOR FURTHER INFORMATION CONTACT: Constance A. Conrad, Executive Secretary, 410–786–4631.

SUPPLEMENTARY INFORMATION: On August 13, 1999, we published a notice (64 FR 44231) announcing a meeting of the Drugs, Biologics, and Therapeutics Panel and also describing the Medicare Coverage Advisory Committee (MCAC), which provides advice and recommendations to us about clinical issues. This notice announces the June 14, 2001 public meeting of Executive Committee (the Committee) of the MCAC.

Current Committee Members

Harold C. Sox, MD (Chairperson); Thomas V. Holohan, MD (FACP); Leslie P. Francis, JD, PhD; John H. Ferguson, MD; Robert L. Murray, PhD; Alan M. Garber, MD, PhD; Michael D. Maves, MD, MBA; Frank J. Papatheofanis, MD, PhD; Barbara J. McNeil, MD; Ronald M. Davis, MD; Daisy Alford-Smith, PhD; Joe W. Johnson, DC; Robert H. Brook, MD, ScD; Linda A. Bergthold, PhD; Randel E. Richner, MPH.

Meeting Topic

The Committee of the MCAC will do the following:

• Act on the February 21, 2001 recommendations of the Medical Devices and Prosthetics Panel regarding Ambulatory Blood Pressure Monitoring.

• Discuss the ''Interim Guidelines—Recommendations for Evaluating Effectiveness,'' prepared by the Executive Committee to assist panels in consistently judging the scientific evidence of a particular topic (also available at www.hcfa.gov/coverage).

• Discuss the future role of the Committee, in light of the provisions of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 that removes the requirement that the Committee ratify all medical specialty panel recommendations.

• Discuss the contents of, and framing the questions for, a future presentation of ''neuroimaging for dementia'' to be presented to the Diagnostic Imaging Panel later this year.

Procedure and Agenda

This meeting is open to the public. The Committee will hear oral presentations from the public for approximately 1 hour. The Committee may limit the number and duration of oral presentations to the time available. If you wish to make formal presentations, you must notify Executive Secretary Constance A. Conrad, in the **FOR FURTHER INFORMATION CONTACT** section of this notice, and submit the following by the Deadline for Presentations and Comments date listed in the **DATES** section of this notice: A brief statement of the general nature of the evidence or arguments you wish to present and the names and addresses of proposed participants. A written copy of your presentation must be provided to the Executive Secretary before the meeting. We will request that you declare at the meeting whether or not you have any financial involvement with manufacturers of any items or services being discussed (or with their competitors).

After the public presentations, we will make a presentation to the Committee. Then, the Committee will deliberate openly. Interested persons may observe the deliberations, but the Committee will not hear further comments during this time except at the request of the chairperson. The Committee will allow an approximately 30-minute open public session for any attendee to address issues specific to the topic. After that open session, the members will vote, and the Committee will make its recommendation.

Authority: 5 U.S.C. App. 2, section 10(a)(1) and (a)(2).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 8, 2001.

Jeffrey L. Kang,

Director, Office of Clinical Standards and Quality, Health Care Financing Administration.

[FR Doc. 01–12582 Filed 5–17–01; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Mental Health and Community Safety Initiative for American Indian/Alaska Native Children, Youth, and Families

AGENCY: Indian Health Service, HHS.

ACTION: Notice of funding availability for competitive grants for the Mental Health and Community Safety Initiative for American Indian/Alaska Native (AI/AN) Children, Youth, and Families.

SUMMARY: The Indian Health Service (IHS) announces the availability of competitive grants under the Mental Health and Community Safety Initiative for American Indian/Alaska Native (AI/AN) Children, Youth, and Families for fiscal year (FY) 2001. Grants under this Initiative will be administered by the following Federal Agencies:

(1) The Center for Substance Abuse Treatment (CSAT) and the Center for Mental Health Services (CMHS), Substance Abuse and Mental Health Services Administration (SAMHSA), United States Department of Health and Human Services (HHS);

(2) The Office of Community Oriented Policing Services (COPS) and the Office of Juvenile Justice and Delinquency Prevention (OJJDP), United States Department of Justice (DOJ); and

(3) The Office of Elementary and Secondary Education (OESE), United States Department of Education (ED).

The Initiative will provide tribes and tribal organizations with easy-to-access assistance in developing innovative strategies that focus on the mental health, behavioral, substance abuse, and community safety needs of AI/AN young people and their families through a coordinated Federal grant process. Total funding for the four grant programs involved in the Initiative is approximately $4.95 million.

The primary purpose of the Initiative is to promote AI/AN youth mental health, education, and substance abuse-related (alcohol as well as drug abuse) services, and to support juvenile delinquency prevention and intervention through the creation and implementation of culturally sensitive programs. Grant funds will be available for the Initiative beginning in FY 2001, and a coordinated grant program may continue subject to the availability of funds.

The Initiative will support tribes in providing a range of youth support services and programs to address the mental health and related needs of AI/AN young people and their families through various settings within the community, such as in the home, in the schools, in violence prevention education programs, in health care treatment programs, and in the juvenile justice system. Interagency programs are included in this effort based upon their combined potential to comprehensively address mental health, juvenile justice, and related issues. As part of this Initiative, tribes are encouraged to promote coordination and collaboration among the local programs that serve young people in their communities.

Tribes are strongly encouraged to apply for one or more of the grant programs included in the Initiative. In submitting an application(s), tribes should identify the complex community issues involved and demonstrate how the proposed application(s) will provide for a comprehensive approach to addressing and attempting to solve these issues.

Government Agencies Providing Grants Funding

A. The HHS agency providing grant funding for the Initiative is SAMHSA; two Centers, CSAT and CMHS, are providing separate funding.

1. CSAT

The CSAT has available approximately $1 million in FY 2001 for 1-year grant awards for the AI/AN Community Planning Program. The average award may range from $100,000 to $150,000 depending on the size of the identified service population of the applicant. The focus of the grant program is to support planning and consensus building, lending to the development of local substance abuse treatment plans, especially in those communities not previously successful in applying for service funding. The average award may range from $100,000 to $150,000 in total (direct and indirect) costs. Actual funding will depend on availability of funds to SAMHSA. Grants will be awarded for a period of 12 months.

This program will support the development of plans that describe how tribal governments and organizations providing services to urban Indian communities, and other indigenous community organizations, will work together to deliver integrated substance abuse treatment and related services, such as HIV/AIDS prevention, mental health services, primary care, and other public health services. The grants are made up of two types: (1) Development of a community planning process, and (2) Implementation of a services integration plan. The current announcement is for Phase I grants only. Subject to the availability of future funding and accomplishment of Phase I, CSAT may issue a Phase II announcement in the future.

This program is described in the Catalog of Federal Domestic Assistance under #93.230. The deadline for receipt of applications is July 10, 2001.

For information regarding this SAMHSA program contact Maria Burns, Program Management Officer, Division of Practice and Systems Development, Center for Substance Abuse Treatment, 5600 Fishers Lane, RWII, Suite 740, Rockville, MD 20857, (301) 443–7611, Fax: (301) 443–3543, e-mail:*mburns@samhsa.gov.*

2. CMHS

The CMHS has approximately $2.4 million available for 3-year grant awards to AI/AN tribal governments and urban organizations for the Circles of Care Initiative. The average award may range from $250,000 to $350,000 depending on the size of the identified service population. This Initiative supports planning, designing, and assessing the feasibility of implementing a culturally appropriate system of care for AI/AN children and their families who are experiencing or are at risk of serious emotional/behavioral disturbance. This is the second issuance of the grant program which seeks to provide tribal communities with tools and resources to design systems of care for their children that reflect the unique needs of their communities. This grant program will not fund actual services. An important focus will be to integrate traditional healing methods indigenous to the communities with conventional treatment methodologies.

This program is described in the Catalog of Federal Domestic Assistance under #93.230. The deadline for receipt of applications is May 10, 2001.

For information regarding this SAMHSA program, contact Jill Shepard Erickson, M.S.W., Public Health Advisor, or Gary De Carolis, M.Ed., Chief, Child, Adolescent and Family Branch, Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, Suite 11C–16, Parklawn Building, 5600 Fishers Ln., Rm. 6A–54, Rockville, MD 20857, (301) 443–1333, Fax: (301) 443–3693, e-mail: *jerickso@samhsa.gov.*

B. DOJ agencies providing grant funding for the Initiative are COPS and OJJDP.

1. COPS

The DOJ/COPS announces the availability of $550,000 for the Mental Health and Community Safety Initiative for AI/AN Children, Youth, and Families. Grants will be awarded for salaries and benefits for new police officers, as well as law enforcement training and equipment, including technology and vehicles, for new and existing police officers. Resources funded under this program (officer positions, equipment, and/or training) must be used to address the mental health, behavioral, and substance abuse needs of Native American youth and their families and provide a range of youth support services and programs both in the community and in the school arena. Sworn police officers must be deployed as Community Resource Officers or as School Resource Officers that engage in community policing activities. Salaries and benefits cover a 3-year period. A 25% local match requirement may be waived on the basis of demonstrated fiscal distress. All applicants must submit a written plan to retain their COPS-funded officer positions after Federal funding has ended.

Included in this $550,000 offering is $50,000 made available by the U.S. Department of Education, Safe and Drug-Free Schools and Communities, to support activities that combat alcohol, tobacco, and other drugs, as well as violence prevention education activities in school- or community-based settings. These activities will be implemented by police officers serving as School Resource or Community Resource Officers. Training in these topic areas will be provided as well as technical assistance to assess needs and to develop a community-wide collaborative implementation plan to address these needs. Once an

implementation plan is developed, Community and/or School Resource Officers will be expected to engage in activities—along with their law enforcement activities—as part of the plan to address those community and/or school issues. Examples of such activities might include:

Teach school-based drug or crime prevention programs;

Teach problem-solving courses and supervise tailored responses to problems;

Run after-school programs and recruit parents and other volunteers to assist;

Form task forces of students, parents, teachers, and others to identify concerns;

Implement crime prevention through environmental design projects in the community or school settings;

Refer youth/students to appropriate treatment programs; and

Focus on specific problems like truancy.

This program is described in the Catalog of Federal Domestic Assistance under #16.710. The deadline for receipt of applications is June 22, 2001.

For further information regarding this COPS program, please contact: Linda Rosen, Policy Analyst, Office of Community Oriented Policing Services (COPS), U.S. Department of Justice, 1100 Vermont Avenue, NW., 8th Floor, Washington, DC 20530, (202) 616–2879, Fax: (202) 514–9272, e-mail: *linda.rosen@usdoj.gov.*

2. OJJDP

The purpose of the Tribal Youth Program (TYP) Mental Health Initiative is to support and enhance tribal efforts for comprehensive delinquency prevention and control as well as improve juvenile justice systems for Native American youth. In FY 2001, $1 million of the total appropriation for the TYP has been set aside to provide mental health services to adjudicated youth in Tribal and/or State juvenile justice systems. The programs or projects to be funded must provide mental health services through one or more of the following activities:

(1) Reduce, control, and prevent crime and delinquency both by and against tribal youth;

(2) Provide interventions for court-involved tribal youth;

(3) Improve tribal juvenile justice systems; and

(4) Provide prevention programs focusing on alcohol and drugs.

This program is described in the Catalog of Federal Domestic Assistance under #16.731. The deadline for receipt of applications is July 6, 2001.

For more information, please contact: Laura Ansera, Program Manager, Tribal Youth Program, Office of Juvenile Justice and Delinquency Prevention (OJJDP), State Relations and Assistance Division, U.S Department of Justice, 810 Seventh Street, NW., Washington, DC 20531, (202) 307–5924, Fax: (202) 307–2819, e-mail: *anseral@ojp.usdoj.gov.*

Distribution of Grant Application Kits

The SAMHSA, COPS, and OJJDP are preparing a single, consolidated grant application package that will include the program announcement and application kit for each of the four grant programs described above. The consolidated application package will be distributed on or about May 1, 2001. A package will be sent directly to (1) the Tribal Chairman of every federally recognized tribe; (2) the Director of every tribal organization as defined by section 4(1) of Publication Law 93–638, Indian Self-Determination and Education Assistance Act, as amended; and (3) the Director of every tribal health department.

To request additional application packages, please contact: Office of Juvenile Justice and Delinquency Prevention, Juvenile Justice Clearing House, 2277 Research Boulevard, Rockville, Maryland 20850.

Reference: Mental Health and Community Safety Initiative for American Indian/Alaska Native Children, Youth, and Families (Solicitation #476), Telephone: 1–800–638–8736.

Dated: May 14, 2001.

Michel E. Lincoln,

Deputy Director, Indian Health Services.

[FR Doc. 01–12530 Filed 5–17–01; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Indians Into Medicine Programs

AGENCY: Indian Health Service, HHS.

ACTION: Notice of funds availability for competitive grant applications for the Indians Into Medicine Program.

SUMMARY: The Indian Health Service (IHS) announces that competitive grant applications are being accepted for the Indians Into Medicine (INMED) Program established by section 114 of the Indian Health Care Improvement Act of 1976 (25 U.S.C. 1612), as amended by Public Law 102–573. There will be only one funding cycle during fiscal year (FY) 2001. This program is described at 93.970 in the Catalog of Federal Domestic Assistance and is governed by regulations at 42 CFR 36.310 *et seq.* Costs will be determined in accordance with applicable OMB Circulars. Executive Order 12372 requiring intergovernmental review does not apply to this program.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2010*, a PHS-led activity for setting priority areas.

This program announcement is related to the priority area of Educational and Community-based programs. Potential applicants may obtain a copy of *Healthy People 2010*, summary report in print, Stock No. 017–001–00579–9, or via CD–ROM, Stock No. 107–001–00549–5, through the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7945, (202) 512–1800. You may access this information via the Internet at the following website: *www.health.gov/healthypeople/publication*

Smoke Free Workplace: The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

DATES: A. Application Receipt Date—An original and two (2) copies of the completed grant application must be submitted with all required documentation to the Grants Management Branch, Division of Acquisition and Grants Management, Twinbrook Building, Suite 100, 12300 Twinbrook Parkway, Rockville, Maryland 20852, by close of business June 1, 2001.

Applications shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline with hand-carried applications received by close of business 5 p.m.; or (2) postmarked on or before the deadline date and received in time to be reviewed along with all other timely applications. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Late applications not accepted for processing will be returned to the applicant and will *not* be considered for funding.

Additional Dates:

1. Application Review: July 13, 2001.

2. Applicants Notified of Results (approved, approved unfunded, or disapproved): August 1, 2001.

3. Anticipated Start Due: September 1, 2001.

FOR FURTHER INFORMATION CONTACT: For program information, contact Ms. Jacqueline Santiago, Chief, Loan Repayment Branch, Division of Health Professions Support, Indian Health Service, Twinbrook Building, 12300 Twinbrook Parkway, Suite 100A, Rockville, Maryland 20852, (301) 443–3396. For grants application and business management information, contact Crystal C. Furgusen, Grants Management Officer, Division of Acquisition and Grants Management, Indian Health Service, Twinbrook Building, 12300 Twinbrook Parkway, Suite 100 Rockville, Maryland 20852, (301) 443–5204. (The telephone numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This announcement provides information on the general program purpose, eligibility and priority, fields of health care considered for support, required affiliation, fund availability and period of support, and application procedure for FY 2001.

A. General Program Purpose

The purpose of the INMED program is to augment the number of Indian health professional serving Indians by encouraging Indians to enter the health professions and removing the multiple barriers to their entrance into the IHS and private practice among Indians.

B. Eligibility and Priority

Public and nonprofit private colleges and universities with medical and other allied health programs are eligible. Nursing programs are not eligible under this announcement since the IHS currently funds the Nursing Recruitment grant program. The existing INMED grant program at the University of North Dakota has as its target population Indian tribes primarily within the States of North Dakota, South Dakota, Nebraska, Wyoming and Montana. A college or university applying under this announcement must propose to conduct its program among Indian tribes in States not currently served by the University of North Dakota INMED program.

C. Program Objectives

Each proposal must address the following five objectives to be considered for funding:

1. Provides outreach and recruitment for health professions to Indian communities including elementary and secondary schools and community colleges located on Indian reservations which will be served by the program.

2. Incorporates a program advisory board comprised of representatives from the tribes and communities which will be served by the program.

3. Provides summer preparatory programs for Indian students, who need enrichment in the subjects of math and science in order to pursue training in the health professions.

4. Provides tutoring, counseling and support to students who are enrolled in a health career program of study at the respective college or university.

5. To the maximum extent feasible, employs qualified Indians into the program.

D. Fields of Health Care Considered for Support

The grant program must be developed to locate and recruit students with educational potential in a variety of health care fields. Primary recruitment efforts must be in the field of medicine with secondary efforts in other allied health fields such as pharmacy, dentistry, medical technology, x-ray technology, etc. The field of nursing is excluded since the IHS does fund the IHS Nursing Recruitment grant program.

E. Required Affiliations

The grant applicant must submit official documentation indicating a tribe's cooperation with and support of the program within the schools on its reservation and its willingness to have a tribal representative serving on the program advisory board. Documentation must be in the form prescribed by the tribes governing body, i.e., letter of support or tribal resolution. Documentation must be submitted from every tribe involved in the grant program.

F. Fund Availability and Period of Support

It is anticipated that approximately $400,000 will be available for one award. The anticipated start date of the grant will be September 1, 2001, in order to begin recruitment for the 2001–2002 academic year. Projects will be awarded for a budget term of 12 months, with a maximum project period of up to three (3) years. Grant funding levels include both direct and indirect costs. Funding of succeeding years will be based on the FY 2001 level, continuing need for the program, satisfactory performance, and the availability of appropriations in those years.

G. Application Process

An IHS Grant Application Kit, including the required PHS 5161–1 (Rev. 6/99) (OMB Approval No. 0920–0428) and the U.S. Government Standard forms (SF–424, SF–424A and SF–424B), may be obtained from the Grants Management Branch, Division of Acquisition and Grants Management, Indian Health Service, Twinbrook Parkway, Suite 100, Rockville, Maryland 20852, telephone (301) 443–5204. (This is not a toll-free number.)

H. Grant Application Requirements

All applications must be single-spaced, typewritten, and consecutively numbered pages using black type not smaller than 12 characters per one inch, with conventional one inch border margins, on only one side of standard size 8½ × 11 paper that can be photocopied. The application narrative (not including abstract, tribal resolutions or letters of support, standard forms, table of contents or the appendix) must not exceed 15 typed pages as described above. All applications must include the following in the order presented:

—Standard Form 424, Application for Federal Assistance
—Standard Form 424A, Budget Information-Non-Construction Programs. (pages 1 and 2)
—Standard Form 424B, Assurances—Non-Construction Programs (front and back)
—Certifications, PHS 5161–1 (pages 17–18)
—Checklist, PHS 5161–1 (pages 23–24)
—Project Abstract (one page)
—Table of Contents Program Narrative to include:
—Introduction and Potential Effectiveness of Project
—Project Administration
—Accessibility to Target Population
—Relationship of Objectives to Manpower Deficiencies
—Project Budget
—Appendix to include:
—Tribal Resolution(s) or Letters of Support
—Resumes (Curriculum Vitae) of Key Staff
—Position descriptions for Key Staff
—Organizational Chart
—Workplan Format
—Completed IHS Application Checklist
—Application Receipt Card, PHS 3038–1, Rev. 5–90

I. Application Instructions

The following instructions for preparing the application narrative also constitute the standards (criteria or basis for evaluation) for reviewing and scoring the application. Weights assigned each section are noted in parenthesis.

Abstract—An abstract may not exceed one typewritten page.

The abstract should clearly present the application in summary form, from a ''who-what-when-where-how-cost'' point of view so that reviewers see how the multiple parts of the application fit together to form a coherent whole.

Table of Contents—Provide a one page typewritten table of contents.

Narrative

1. *Introduction and Potential Effectiveness of Project* (30 pts.)

a. Describe your legal status and organization.

b. State specific objectives of the project, which are measurable in terms of being quantified, significant to the needs of Indian people, logical, complete and consistent with the purpose of sec. 114.

c. Describe briefly what the project intends to accomplish. Identify the expected results, benefits, and outcomes or products to be derived from each objective of the project.

d. Provide a project specific workplan (milestone chart) which lists each objective, the tasks to be conducted in order to reach the objective, and the timeframe needed to accomplish each task. Timeframes should be projected in a realistic manner to assure that the scope of work can be completed within each budget period. (A workplan format is provided.)

e. In the case of proposed projects for identification of Indians with a potential for education or training in the health professions, include a method for assessing the potential of interested Indians for undertaking necessary education or training in such health professions.

f. State clearly the criteria by which the project's progress will be evaluated and by which the success of the project will be determined.

g. Explain the methodology that will be used to determine if the needs, goals, and objectives identified and discussed in the application are being met and if the results and benefits identified are being achieved.

h. Identify who will perform the evaluation and when.

2. *Project Administration (20 pts.)*

a. Provide an organizational chart and describe the administrative, managerial and organizational arrangements and the facilities and resources to be utilized to conduct the proposed project (include in appendix).

b. Provide the name and qualifications of the project director of other individuals responsible for the conduct of the project; the qualifications of the principal staff carrying out the project; and a description of the manner in which the application's staff is or will be organized and supervised to carry out the proposed project. Include biographical sketches of key personnel (or job descriptions if the position is vacant) (include in appendix).

c. Describe any prior experience in administering similar projects.

d. Discuss the commitment of the organization, *i.e.*, although not required, the level of non-Federal support. List the intended financial participation, if any, of the applicant in the proposed project specifying the type of contributions such as cash or services, loans of full or part-time staff, equipment, space, materials or facilities or other contributions.

3. *Accessibility to Target Population (20 pts.)*

a. Describe the current and proposed participation of Indians (if any) in your organization.

b. Identify the target Indian population to be served by your proposed project and the relationship of your organization to that population.

c. Describe the methodology to be used to access the target population.

4. *Relationship of Objectives to Manpower Deficiencies (20 pts.)*

a. Provide data and supporting documentation to substantiate need for recruitment.

b. Indicate the number of potential Indian students to be contacted and recruited as well as potential cost per student recruited. Those projects that have the potential to serve a greater number of Indians will be given first consideration.

5. *Project Budget (10 pts.)*

a. Clearly define the budget. Provide a justification and detailed breakdown of the funding by category for the first year of the project. Information on the project director and project staff should include salaries and percentage of time assigned to the grant. List equipment purchases necessary for the conduct of the project.

b. The available funding level of $400,000 is inclusive of both direct and indirect costs. Because this project is for a training grant, the Department of Health and Human Services' policy limiting reimbursement of indirect cost to the lesser of the applicant's actual indirect costs or 8 percent of total direct costs (exclusive of tuition and related fees and expenditures for equipment) is applicable. This limitation applies to all institutions of higher education other than agencies of State and local government.

c. The applicant may include as a direct cost tuition and student support costs related only to the summer preparatory program. Tuition and stipends for regular sessions are not allowable costs of the grant; however, students recruited through the INMED program may apply for funding from the IHS Scholarship Programs.

d. Projects requiring a second and third year must include a program narrative and categorical budget and justification for each additional year of funding requested (this is not considered part of the 15-page narrative).

Appendix—to include:

a. Tribal Resolution(s) or Letters of Support
b. Resumes (Curriculum Vitae) of Key Staff
c. Position descriptions for key Staff
d. Organizational Chart
e. Workplan Format
f. Completed IHS Application Checklist
g. Application Receipt Card, PHS 3038–1, Rev. 5–90

J. Reporting

1. Progress Report—Program progress reports may be required quarterly or semi-annually. These reports will include a brief description of a comparison of actual accomplishments to the goals established for the period, reasons for slippage and other pertinent information as required. A final report is due 90 days after expiration of the budget/project period.

2. Financial Status Report—Quarterly or semiannually financial status reports will be submitted 30 days after the end of the quarter or half year. Final financial status reports are due 90 days after expiration of the budget/project period. Standard Form 269 (long form) will be sued for financial reporting.

K. Grant Administration Requirements

Grants are administered in accordance with the following documents:

1. 45 CFR 92, HHH, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments or 45 CFR part 74, Administration of Grants,

2. PHS Grants Policy Statement, and

3. OMB Circular A–21, Cost Principles for Educational Institutions.

L. Objective Review Process

Applications meeting eligibility requirements that are complete, responsive, and conform to this program announcement will be reviewed by an Objective Review Committee (ORC) in accordance with IHS objective review procedures. The objective review process ensures a nationwide competition for limited funding. The ORC will be comprised of IHS (405 or less) and other federal or non-federal individuals (60% or more) with

appropriate expertise. The ORC will review each application against established criteria. Based upon the evaluation criteria, the reviewer will assign a numerical score to each application, which will be used in making the final funding decision. Approved applications scoring less than 60 points will not be considered for funding.

M. Results of the Review

The results of the objective review are forwarded to the Director, Office of Management Support (OMS), for final review and approval. The Director, OMS, will also consider the recommendations form the Division of Health Professions Support and Grants Management Branch. Applicants are notified in writing on or about August 1, 2001. A Notice of Grant Award will be issued to successful applicants. Unsuccessful applicants are notified in writing of disapproval. A brief explanation of the reasons the application was not approved is provided along with the name of the IHS official to contact if more information is desired.

Dated: May 14, 2001.

Michel E. Lincoln,

Director, Indian Health Service.

[FR Doc. 01–12529 Filed 5–17–01; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4655–N–14]

Notice of Proposed Information Collection: Comment Request; Compliance Inspection Report and Mortgagee's Assurance of Completion

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 17, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title of Proposal: Compliance Inspection Report & Mortgagee's Assurance of Completion.

OMB Control Number, if applicable: 2502–0189.

Description of the need for the information and proposed use: This is a request for reinstatement, without change, of a previously approved collection for which approval has expired. Form HUD–92051, Compliance Inspection Report, is the document on which the property inspector or appraiser prepares his/her findings. The form provides categories for the inspector or appraiser to report the status of repair requirements on proposed construction cases. This report becomes a part of the case file and a copy is provided to the lender. Form HUD–92300, Mortgagee's Assurance of Completion, is completed by the mortgagee and assures HUD that the items set forth in the inspection report will be completed by the required date stated.

Agency form numbers, if applicable: HUD–92051 and HUD–92300.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents for the HUD–92051 is 14,500 which will generate 3,625,000 responses; frequency of response is approximately 250 times each, the estimated time per response is 0.25 hours and the total annual burden requested is 906,250 hours. The estimated number of respondents for the HUD–92300 is 14,500 which will generate 14,500 responses, frequency of response is one time; the estimated time per response is 0.25 hours and the total annual burden is 3,625.

Status of the proposed information collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: May 10, 2001.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commission.

[FR Doc. 01–12494 Filed 5–17–01; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4644–N–20]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were

reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Air Force:* Ms. Barbara Jenkins, Air Force Real Estate Agency, Area–MI, Bolling Air Force Base, 112 Luke Avenue, Suite 104, Building 5683, Washington, DC 20332–8020; (202) 767–4184; *Army:* Mr. Jeff Holste, Military Programs, U.S. Army Corps of Engineers, Installation Support Center, Planning Branch, Attn: CEMP–IP, 441 G Street, NW., Washington, DC 20314–1000; (202) 761–5737; *Energy:* Mr. Tom Knox, Department of Energy, Office of Contract & Resource Management, MA–53, Washington, DC 20585; (202) 586–8715; *GSA:* Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0052; *Navy:* Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: May 10, 2001.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 5/18/01

Suitable/Available Properties

Buildings (by State)

Maryland

Bldg. 117
Naval Surface Warfare Center
Carderock Division
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200120102
Status: Unutilized
Comment: 400 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. 124
Naval Surface Warfare Center
Carderock Division
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200120103
Status: Unutilized
Comment: 480 sq. ft., needs rehab., most recent use—warehouse, off-site use only.

Bldg. 130
Naval Surface Warfare Center
Carderock Division
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200120104
Status: Unutilized
Comment: 2225 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage/recycling, off-site use only.

Bldg. 181
Naval Surface Warfare Center
Carderock Division
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200120105
Status: Unutilized
Comment: 491 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—equip. maint., off-site use only.

Bldg. 196
Naval Surface Warfare Center
Carderock Division
West Bethesda Co: Montgomery MD 20817–5700
Landholding Agency: Navy
Property Number: 77200120106
Status: Unutilized
Comment: 456 sq. ft., needs rehab, most recent use—destructor bldg., off-site use only.

Nevada

Fed Bldg./Post Office
301 East Steward Ave.
Las Vegas Co: NV 89101–
Landholding Agency: GSA
Property Number: 54200120007
Status: Excess
Comment: 36,758 sq. ft., 3 floors + basement, needs repair totaling approx. $7 million, presence of asbestos, listed on the Natl Register of Historic Places.
GSA Number 9–G–NV–517

Unsuitable Properties

Buildings (by State)

Alabama

Bldg. 3491
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 21200120001
Status: Unutilized
Reasons: Secured Area; Extensive deterioration.

Bldg. 3525
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000

Landholding Agency: Army
Property Number: 21200120002
Status: Unutilized
Reasons: Secured Area; Extensive deterioration.

Bldg. 3710
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 21200120003
Status: Unutilized
Reasons: Secured Area; Extensive deterioration.

Bldg. 7368
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 21200120004
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 7356
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 21200120005
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 7360A
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 21200120006
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 7364
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 21200120007
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 7366
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 21200120008
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 7367
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 21200120009
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 7372
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 21200120010
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 7384
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 21200120011
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 7521
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 21200120012
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 7522
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 21200120013
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 7601
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 21200120014
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 7610
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 21200120015
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 7635
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 21200120016
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 7639
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 21200120017
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 7660
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 21200120018
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 7670
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 21200120019
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 7688
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 21200120020
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 7689
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 21200120021
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 7722
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 21200120022
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 7724
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 21200120023
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 7727
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 21200120024
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 8721
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 21200120025
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. 8987
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 21200120026
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Alaska

Bldg. 10549

Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200120001
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 11634
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200120002
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration.

Bldg. 14545
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200120003
Status: Unutilized
Reason: Secured Area.

Bldg. 16504
Elmendorf AFB
Elmendorf AFB Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200120004
Status: Unutilized
Reasons: Within airport runway clear zone, Secured Area.

Arizona

Bldg. S–2003
Yuma Proving Ground
Yuma Co: La Paz AZ 85365–9104
Landholding Agency: Army
Property Number: 21200120027
Status: Excess
Reason: Extensive deterioration.

Bldg. S–2093
Yuma Proving Ground
Yuma Co: La Paz AZ 85365–9104
Landholding Agency: Army
Property Number: 21200120028
Status: Excess
Reason: Extensive deterioration.

Former Courthouse
Scott Ave. & Congress St.
Law Enforcement Site
Tucson Co: AZ
Landholding Agency: GSA
Property Number: 54200120006
Status: Excess
Reason: Extensive deterioration, GSA Number: 9–G–AZ–820.

California

Bldg. 10600
Vandenberg AFB
Santa Barbara Co: CA 93437–
Landholding Agency: Air Force
Property Number 18200120005
Status: Unutilized
Reason: Secured Area.

Bldg. 10605
Vandenberg AFB
Santa Barbara Co: CA 93437–
Landholding Agency: Air Force
Property Number 18200120006
Status: Unutilized
Reason: Secured Area.

Bldg. 16109
Vandenberg AFB
Santa Barbara Co: CA 93437–
Landholding Agency: Air Force
Property Number 18200120007
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. S–1
Sharpe Site
Lathrop Co: San Joaquin CA 95231–
Landholding Agency: Army
Property Number 21200120029
Status: Unutilized
Reason: Secured Area.

Bldg. S–2
Sharpe Site
Lathrop Co: San Joaquin CA 95231–
Landholding Agency: Army
Property Number 21200120030
Status: Unutilized
Reason: Secured Area.

Bldg. P–32
Sharpe Site
Lathrop Co: San Joaquin CA 95231–
Landholding Agency: Army
Property Number 21200120031
Status: Unutilized
Reason: Secured Area.

Bldg. S–42
Sharpe Site
Lathrop Co: San Joaquin CA 95231–
Landholding Agency: Army
Property Number: 21200120032
Status: Unutilized
Reason: Secured Area.

Bldg. S–44
Sharpe Site
Lathrop Co: San Joaquin CA 95231–
Landholding Agency: Army
Property Number: 21200120033
Status: Unutilized
Reason: Secured Area.

Bldg. S–213
Sharpe Site
Lathrop Co: San Joaquin CA 95231–
Landholding Agency: Army
Property Number: 21200120034
Status: Unutilized
Reason: Secured Area.

Bldg. P–217
Sharpe Site
Lathrop Co: San Joaquin CA 95231–
Landholding Agency: Army
Property Number: 21200120035
Status: Unutilized
Reason: Secured Area.

Bldg. S–218
Sharpe Site
Lathrop Co: San Joaquin CA 95231–
Landholding Agency: Army
Property Number: 21200120036
Status: Unutilized
Reason: Secured Area.

Bldg. S–288
Sharpe Site
Lathrop Co: San Joaquin CA 95231–
Landholding Agency: Army
Property Number: 21200120037
Status: Unutilized
Reason: Secured Area.

Bldg. P–403
Sharpe Site
Lathrop Co: San Joaquin CA 95231–
Landholding Agency: Army
Property Number: 21200120038
Status: Unutilized
Reason: Secured Area.

Bldg. P–405
Sharpe Site
Lathrop Co: San Joaquin CA 95231–
Landholding Agency: Army
Property Number: 21200120039
Status: Unutilized
Reason: Secured Area.

Bldg. P–508
Sharpe Site
Lathrop Co: San Joaquin CA 95231–
Landholding Agency: Army
Property Number: 21200120040
Status: Unutilized
Reason: Secured Area.

Bldg. 53320
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200120096
Status: Excess
Reason: Extensive deterioration.

Bldg. 53321
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200120097
Status: Excess
Reason: Extensive deterioration.

Bldg. 53335
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200120098
Status: Excess
Reason: Extensive deterioration.

Bldg. 53336
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200120099
Status: Excess
Reason: Extensive deterioration.

Colorado

Bldg. 8412
Air Force Academy
El Paso Co: CO 80840–2400
Landholding Agency: Air Force
Property Number: 18200120008
Status: Unutilized
Reason: Within airport runway clear zone.

Bldg. 762
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200120003
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 762A
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200120004
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 792
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200120005
Status: Excess

Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 792A
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200120006
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Georgia

Bldg. 00509
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21200120041
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–704
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200120042
Status: Excess
Reason: Extensive deterioration.

Hawaii

Bldg. T–643
Schofield Barracks
Wahiawa Co: HI 96786–
Landholding Agency: Army
Property Number: 21200120043
Status: Unutilized
Reason: Extensive deterioration.

Bldg. P–1
Dillingham Military
Reservation
Wahiawa Co: HI 96857–
Landholding Agency: Army
Property Number: 21200120044
Status: Unutilized
Reason: Extensive deterioration.

Bldg. P–13
Dillingham Military
Reservation
Wahiawa Co: HI 96857–
Landholding Agency: Army
Property Number: 21200120045
Status: Unutilized
Reason: Extensive deterioration.

Bldg. P–21
Dillingham Military
Reservation
Wahiawa Co: HI 96857–
Landholding Agency: Army
Property Number: 21200120046
Status: Unutilized
Reason: Extensive deterioration.

Bldg. P–24
Dillingham Military
Reservation
Wahiawa Co: HI 96857–
Landholding Agency: Army
Property Number: 21200120047
Status: Unutilized
Reason: Extensive deterioration.

Bldg. P–27
Dillingham Military
Reservation
Wahiawa Co: HI 96857–
Landholding Agency: Army
Property Number: 21200120048
Status: Unutilized
Reason: Extensive deterioration.

Bldg. P–893
Dillingham Military
Reservation
Wahiawa Co: HI 96857–
Landholding Agency: Army
Property Number: 21200120049
Status: Unutilized
Reason: Extensive deterioration.

24 Units
Peal City Peninsula
Navy Family Housing
Pearl City Co: HI 96782–
Location: #904, 906, 908, 920, 922, 924, 928, 930, 949, 951, 960
Landholding Agency: Navy
Property Number: 77200120100
Status: Unutilized
Reason: Extensive deterioration.

6 Bldgs.
Pearl City Peninsula
Navy Family Housing
Pearl City Co: HI 96792–
Location: #787, 788, 789, 790, 791, 797
Landholding Agency: Navy
Property Number: 77200120101
Status: Unutilized
Reason: Extensive deterioration.

Kentucky

Bldg. T02154
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 21200120050
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T02538
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 21200120051
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T02708
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 21200120052
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T03106
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 21200120053
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T05185
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 21200120054
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T06108
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 21200120055
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T06422
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 21200120056
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T07236
Fort Campbell
Ft. Campbell Co.: Christian KY 42223–
Landholding Agency: Army
Property Number: 21200120057
Status: Unutilized
Reason: Extensive deterioration.

Louisiana

Bldg. 5674
Fort Polk
Ft. Polk Co.: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21200120058
Status: Unutilized
Reason: Floodway.

Maryland

Bldg. 00310 (portion)
Aberdeen Proving Ground
Aberdeen Co.: Hartfort MD 21005–5001
Landholding Agency: Army
Property Number: 21200120059
Status: Unutilized
Reason: Extensive deterioration.

Bldg. E3871
Aberdeen Proving Ground
Aberdeen Co.: Hartfort MD 21005–5001
Landholding Agency: Army
Property Number: 21200120060
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 403
Adelphi Laboratory Center
Adelphi Co.: Montgomery MD 20783–
Landholding Agency: Army
Property Number: 21200120061
Status: Unutilized
Reasons: Within 2000 Ft. of flamable or explosive material; Secured Area.

Bldg. 404
Adelphi Laboratory Center
Adelphi Co.: Montgomery MD 20783–
Landholding Agency: Army
Property Number: 21200120062
Status: Unutilized
Reasons: Within 2000 Ft. of flamable or explosive material; Secured Area.

Missouri

Bldg. 5387
Fort Leonard Wood
Ft. Leonard Wood Co.: MD 65473–
Landholding Agency: Army
Property Number: 21200120063
Status: Unutilized
Reason: Extensive deterioration.

New Mexico

Bldg. 105. TA–3
Los Alamos Natl Lab
Los Alamos Co.: NM 87545–
Landholding Agency: Energy
Property Number: 41200120007
Status: Excess
Reason: Secured Area.

Bldg. 452. TA–3
Los Alamos Natl Lab
Los Alamos Co.: NM 87545–
Landholding Agency: Energy
Property Number: 41200120008
Status: Excess
Reason: Secured Area.

North Dakota

Bldg. 548
Grand Forks AFB
Grand Forks AFB Co.: ND 58205–
Landholding Agency: Air Force
Property Number: 18200120009
Status: Excess
Reasons: Within 2000 Ft. of flamable or explosive material; Secured, Extensive deterioration.

Ohio

Bldg. 54A
Fernald Env. Mgmt. Project
Fernald Co.: Hamilton OH 45013–9402
Landholding Agency: Energy
Property Number: 41200120009
Status: Excess
Reason: Secured Area.

Rhode Island

Bldg. 104
Army Aviation
North Kingstown Co.: Washington RI 02852–
Landholding Agency: Army
Property Number: 21200120064
Status: Unutilized
Reason: Extensive deterioration.

Utah

Bldg. 5234
Dugway Proving Ground
Dugway Co: Tooele UT 84022–
Landholding Agency: Army
Property Number: 21200120065
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, secured area.

Virginia

Bldg. TT0255
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200120066
Status: Unutilized
Reason: Extensive deterioration

Bldg. T–5210
Fort Lee
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 21200120067
Status: Unutilized
Reason: Extensive deterioration.

Washington

Bldg. 8288
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21200120068
Status: Exces
Reason: Extensive deterioration.

Bldg. U004A
Yakima Training Center
Yakima Co: Kittitas WA 98908–5000
Landholding Agency: Army
Property Number: 21200120069
Status: Unutilized
Reason: Extensive deterioration.

Bldg. U016B
Yakima Training Center
Yakima Co: Kittitas WA 98908–5000
Landholding Agency: Army
Property Number: 21200120070
Status: Unutilized
Reason: Extensive deterioration.

Bldg. U019B
Yakima Training Center
Yakima Co: Kittitas WA 98908–5000
Landholding Agency: Army
Property Number: 21200120071
Status: Unutilized
Reason: Extensive deterioration.

Bldg. U025A
Yakima Training Center
Yakima Co: Kittitas WA 98908–5000
Landholding Agency: Army
Property Number: 21200120072
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. U055A, U015H, U010G
Yakima Training Center
Yakima Co: Kittitas WA 98908–5000
Landholding Agency: Army
Property Number: 21200120073
Status: Unutilized
Reason: Extensive deterioration.

Bldg. U055C
Yakima Training Center
Yakima Co: Kittitas WA 98908–5000
Landholding Agency: Army
Property Number: 21200120074
Status: Unutilized
Reason: Extensive deterioration.

Bldg. U085A
Yakima Training Center
Yakima Co: Kittitas WA 98908–5000
Landholding Agency: Army
Property Number: 21200120075
Status: Unutilized
Reason: Exetnsive deterioration.

Bldg. U085B
Yakima Training Center
Yakima Co: Kittitas WA 98908–5000
Landholding Agency: Army
Property Number: 21200120076
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 02325
Yakima Training Center
Yakima Co: Kittitas WA 98908–5000
Landholding Agency: Army
Property Number: 21200120084
Status: Unutilized
Reason: Extensive deterioration.

Wisconsin

Bldg. 1655
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–5136
Landholding Agency: Army
Property Number: 21200120077
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1845
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–5136
Landholding Agency: Army
Property Number: 21200120078
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1849
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–5136
Landholding Agency: Army
Property Number: 21200120079
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2163
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–5136
Landholding Agency: Army
Property Number: 21200120080
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2167
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–5136
Landholding Agency: Army
Property Number: 21200120081
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2193
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–5136
Landholding Agency: Army
Property Number: 21200120082
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 8030
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–5136
Landholding Agency: Army
Property Number: 21200120083
Status: Unutilized
Reason: Extensive deterioration.

Wyoming

Bldg. 2110
F.E. Warren AFB
Cheyenne Co: Laramie WY 82005–5000
Landholding Agency: Air Force
Property Number: 18200120010
Status: Unutilized
Reason: Secured Area, Extensive deterioration.

Unsuitable Properties

Land (by State)

North Carolina

1.84 acres
Neuse Middle Marker Annex
Seymour Johnson AFB
Wayne Co: NC 27531–
Landholding Agency: Air Force
Property Number: 18200120011
Status: Unutilized
Reason: Floodway inaccessible.

[FR Doc. 01–12239 Filed 5–17–01; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Applications

AGENCY: Fish and Wildlife Service.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Permit No. TE–041668

Applicant: Eric R. Lichtwardt, Sebastopol, California.

The applicant requests a permit to take (harass by survey and nest monitor) the southwestern willow flycatcher (*Empidonax traillii extimus*) and take (nest monitor) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with surveys and population monitoring throughout the species' range in California for the purpose of enhancing their survival.

Permit No. TE–041673

Applicant: Dr. Rachel E. O'Malley, San Jose, California.

This applicant requests a permit to take (capture, handle, and release) the Zayante band-winged grasshopper (*Trimerotropis infantilis*) in conjunction with scientific research throughout the species' range in California for the purpose of enhancing its survival.

Permit No. TE–814222

Applicant: California Department of Parks and Recreation, San Diego, California.

This applicant requests a permit amendment to take (harass by survey, and locate and monitor nests) the coastal California gnatcatcher (*Polioptila californica californica*) and the southwestern willow flycatcher (*Empidonax traillii extimus*) and take (locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*) while conducting survey and population monitoring activities for these species on all California State Park System lands for the purpose of enhancing their survival.

Permit No. TE–844027

Applicant: Deborah House, Bishop, California.

This applicant requested a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) while conducting presence/absence surveys for this species in Inyo and Mono Counties for the purpose of enhancing its survival.

Permit No. TE–820301

Applicant: Stephen Eugene Leach, Walnut Creek, California.

The applicant requests a permit to take (harass by survey, collect and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), vernal pool tadpole shrimp (*Lepidurus packardi*), and Riverside fairy shrimp (*Streptocephalus wootoni*) throughout each species' range in conjunction with surveys for the purpose of enhancing their survival.

Permit No. TE–042211

Applicant: Steven Lysne, Boise, Idaho.

The applicant requests a permit to take (collect and sacrifice) the Utah valvata snail (*Valvata utahensis*) from Lake Walcott, Minidoka County, Idaho in conjunction with scientific research for the purpose of enhancing its survival.

Permit No. TE–042064

Applicant: Cecilia L. Meyer, San Diego, California.

The applicant requests a permit to take (survey by pursuit) Quino checkerspot butterfly (*Euphydryas editha quino*) throughout the species' range in conjunction with surveys for the purpose of enhancing its survival.

Permit No. TE–042065

Applicant: Joseph A. Desarro, Roberts, Montana.

The applicant requests a permit to purchase, in interstate commerce, four female and four male captive bred Hawaiian (=nene) geese (*Nesochen* [=*Branta*] *sandvicensis*) for the purpose of enhancing the species propagation and survival. This notification covers activities conducted by the applicant over the next 5 years.

DATES: Written comments on these permit applications must be received on or before June 18, 2001.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species, Ecological Services, Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: May 4, 2001.

Rowan W. Gould,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 01–12522 Filed 5–17–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–130–1610–DE]

Colorado Canyons National Conservation Area Advisory Council; Notice of Intent To Establish and Call for Nominations

AGENCY: Bureau of Land Management (BLM), Grand Junction Field Office, Grand Junction, CO

ACTION: Notice of intent to establish and call for nominations for the Colorado Canyons National Conservation Area Advisory Council under the Colorado Canyons National Conservation Area and Black Ridge Canyons Wilderness Act of 2000, 16 U.S.C. 460mmm, 4(h)(2000).

SUMMARY: BLM is publishing this notice under Section 9(a)(2) of the Federal Advisory Committee Act. Pursuant to the Colorado Canyons National Conservation Area and Black Ridge Canyons Wilderness Act of 2000, BLM gives notice that the Secretary of the Interior intends to establish the Colorado Canyons National Conservation Area Advisory Council (Council). The notice requests the public to submit nominations for membership on the Council. The Council is necessary to advise the Secretary and BLM on resource management issues associated with the Colorado Canyons National Conservation Area and Black Ridge Canyons Wilderness Act of 2000.

DATES: Submit a completed nomination form and nomination letters to the address listed below no later than June 18, 2001.

ADDRESSES: Send nominations to: Field Manager, Grand Junction Field Office, Bureau of Land Management, 2815 H Road, Grand Junction, CO 81506.

FOR FURTHER INFORMATION CONTACT: Catherine Robertson, Grand Junction Field Manager, (970) 244–3010, *catherine_robertson@co.blm.gov* or the following web site *http://conet.coso.co.blm.gov/gjra/ccnca/ccncahome.htm.*

SUPPLEMENTARY INFORMATION: Any individual or organization may nominate one or more persons to serve on the Colorado Canyons National Conservation Area Advisory Council.

Individuals may nominate themselves for Council membership. You may obtain nomination forms from the Grand Junction Field Office, Bureau of Land Management or download the application from the Internet site (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT,** above). To make a nomination, you must submit a completed nomination form, letters of reference from the represented interests or organizations, as well as any other information that speaks to the nominee's qualifications, to the Grand Junction Field Office. You may make nominations for the following categories of interest:

(1) A member of, or nominated by, the Mesa County Board of County Commissioners.

(2) A member of, or nominated by, the permittees holding grazing permits within the National Conservation Area or Wilderness.

(3) A member of, or nominated by, the Northwest Colorado Resource Advisory Council.

(4) Seven members residing in, or within reasonable proximity to, Mesa County, Colorado, with recognized backgrounds reflecting—

(A) The purposes for which the National Conservation Area or Wilderness was established; and

(B) The interests of the stakeholders that are affected by the planning and management of the National Conservation Area and Wilderness.

The specific category the nominee would like to represent should be identified in the letter of nomination and in the nomination form. The Grand Junction Field Office will collect the nomination forms and letters of reference and distribute them to the officials responsible for submitting nominations (commissioners of Mesa County, grazing permittees holding grazing allotments within the National Conservation Area or Wilderness, the Northwest Colorado Resource Advisory Council, and the Bureau of Land Management). The Bureau of Land Management will then forward recommended nominations to the Secretary of the Interior who has responsibility for making the appointments.

The purpose of the Colorado Canyons National Conservation Area Advisory Council is to advise the Bureau of Land Management on the management of the Colorado Canyons National Conservation Area and Black Ridge Canyons Wilderness. Each member will be a person who, as a result of training and experience, has knowledge or special expertise which qualifies him or her to provide advice from among the categories of interest listed above.

Members will serve without monetary compensation, but will be reimbursed for travel and per diem expenses at current rates for Government employees.

Dated: May 14, 2001.

Nina Rose Hatfield,

Acting Director, Bureau of Land Management.

[FR Doc. 01–12603 Filed 5–17–01; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(WY–050–2001–1060–JJ)

Notice of Intent To Remove Excess and Stray Wild Horses

SUMMARY: The Wild, Free Roaming Horse and Burro Act (Pub. L. 92–195) requires that , among other things, horses that exceed the Appropriate Management Levels (AMLs) established for them or stray from designated Herd Management Areas (HMAs) be removed. In order to accomplish that, the Lander Field Office of the Bureau of Land Management plans to remove 350 excess and stray horses from four contiguous herd areas within the Lander Field Office known as the Muskrat Basin HMA, Conant Creek HMA, Rock Creek Mountain HMA, Dishpan Butte HMA and an area north and east of the Muskrat Basin HMA into which horses have strayed outside of the HMA. The removal is scheduled for the summer/fall seasons of 2001. Specific dates depend on the weather and soil conditions, and other factors unforseen at this time. The Appropriate Management level for these four contiguous areas is 320 horses. An Environmental Analysis (EA), and Gather Plan for this removal will be available on June 15, 2001 for a thirty (30) day comment period. from: Jack Kelly, Field Manager, P.O. Box 589, Lander, Wyoming 82520; (307) 332–8400. These documents are also available for review on the Wyoming BLM homepage at *www.wy.blm.gov*

FOR FURTHER INFORMATION CONTACT: For further information please contact Roy Packer, Bureau of Land Management, Lander Field Office, 1335 Main Street, P.O. Box 589, Lander, Wyoming 82520, (307) 332–8400.

Dated: May 9, 2001.

Roy Packer,

Acting Field Manager.

[FR Doc. 01–12516 Filed 5–17–01; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[ID–075–1330–AC–241E]

North Rasmussen Ridge Mine, BLM Pocatello Field Office and Caribou-Targhee National Forest, Caribou County, ID

AGENCIES: Bureau of Land Management, USDI and Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM), Pocatello Field Office and the Department of Agriculture, Forest Service (USFS), Caribou-Targhee National Forest, will jointly prepare an Environmental Impact Statement (EIS) to document the analysis and disclose the environmental and human effects of the proposed North Rasmussen Ridge Mine and Reclamation Plan for future operations at the existing Rasmussen Ridge Mine, Caribou County, Idaho, located approximately 25 miles northeast of Soda Springs, Idaho. The proposed mining operations would utilize land administered by the U.S. Forest Service and Bureau of Land Management. Mining will take place on Federal Phosphate Leases I–04375, I–07619 within the Caribou-Targhee National Forest, and in State Lease I–7957 adjacent the Federal Phosphate Leases.

Nu-West Industries, Inc. (Agrium) must obtain federal and state permits prior to mining under the proposed mine plan. The existing mining operation was authorized by Decision Records (DR) associated with two environmental analyses prepared—the DR first issued in 1990 for the South Rasmussen Ridge Mine and the second DR in1997 for Central Rasmussen Ridge Mine. The conditional permits granted by the BLM and USFS at the beginning of the Rasmussen Ridge mining operations required that subsequent site-specific mine plans for the individual mine panels be submitted to the agencies for their review and that appropriate mitigation measures be developed using further environmental analysis.

The environmental effects from the South and Central Rasmussen Ridge mining panels were assessed in the 1990 and 1997 EAs, however this EIS would evaluate the effects of the proposed North Rasmussen Ridge Mine and

Reclamation Plan in light of additional information on selenium and other potential contaminants collected since 1997. Based on the EIS analysis, the BLM would make decisions regarding the North Rasmussen Ridge Mine and Reclamation Plan and additional land use authorizations for the proposed mining activities, including lease modifications by the BLM. In addition, a Section 404, Clean Water Act permit may be required by the U.S. Army Corps of Engineers (Corps) for the proposed operations.

Agency Decisions: The BLM Pocatello Field Office Manager, who is the responsible official for the EIS and administers mineral development activities on Federal leases, will consider approval of a mine and reclamation plan. The Caribou-Targhee National Forest Supervisor, who is the responsible official for Caribou-Targhee National Forest lands not on-lease, would make a related recommendation of appropriate land use authorizations regarding this proposal. The recommendation and decision will include consideration of scoping comments and responses; anticipated environmental consequences discussed in the EIS; and applicable laws, regulations, and policies. Decisions may include approval of site-specific Mine and Reclamation Plans; issuance of phosphate lease modifications by the BLM; and possible modification of existing special use permits for roads, ponds, and ditches by the USFS. A Section 404 Clean Water Act Permit may also be required by the Corps. They would render a decision related to that permit and how to mitigate the impacts to affected wetlands and Waters of the United States.

DATES: Written comments concerning the scope of the analysis described in this Notice should be received on or before June 18, 2001.

Scoping Procedure: The scoping procedure to be used for this EIS will involve the following: a broad mailing asking for comments, issues and concerns to interested and potentially affected individuals, groups, Federal, State and local government; news releases or legal notices; and public scoping meetings.

ADDRESSES: Send written comments to Jerry Koblitz, Greystone Environmental Consultants, Inc., 5231 Quebec Street, Greenwood Village, CO 80111. They may also be submitted by e-mail to *jkoblitz@greystone-consultants.com.*

FOR FURTHER INFORMATION CONTACT: Wendell Johnson, Bureau of Land Management, Pocatello Field Office, 1111 N. 8th Ave., Pocatello, Idaho 83201, phone (208) 478–6353; or Darrel VandeWeg, Caribou-Targhee National Forest, Soda Springs Ranger District, 421 W. Second South, Soda Springs, Idaho 83276, phone (208) 547–4356.

SUPPLEMENTARY INFORMATION: The proposed mining activities consist of the extension of open pit mining to the northern end of Lease I–04375, into State Lease I–7957, then into Federal Lease I–07619—known as North Rasmussen Ridge. In addition, a topsoil stockpile, haul road, and runoff/sediment control facilities would be constructed. Mining would include best management practices for control of releases of sediment and dissolved metals. The proposed open pits would be located along Rasmussen Ridge and would cross the upper west fork of an ephemeral stream known locally as No Name Creek. The creek would be temporarily diverted, then reestablished in it's original location after mining has been concluded. A haulroad would be constructed on the east side of the proposed open pit and would extend along the hillside adjacent to the upper west fork of Sheep Creek and into the upper reach of Reese Canyon. The existing Forest Service road that was built for timber access into upper Sheep Creek has been temporarily closed to the public. The road would remain closed until mining has been completed in Central and North Rasmussen Ridge. The public would be allowed access into the upper Sheep Creek using the existing USFS road DFR 192 from Lanes Creek to Midnight Springs.

Existing mine, haul roads, maintenance, and administrative facilities would be used during the mine period. Ore from the North Rasmussen Ridge Mine would be hauled by truck to Agrium's railroad loading facility located on private property in Wooley Valley. Ore is then transported to Agrium's Conda Plant located approximately seven miles north of Soda Springs, Idaho. Overburden from the mining activity would be used to backfill previously mined panels in Central and North Rasmussen Ridge.

Disturbed lands directly resulting from the proposed activities would total 329.1 acres. The new pits would include 254.6 acres and the rest of the disturbed acreage would be for roads, ponds, and growth media piles. Approximately 248.4 acres of the proposed disturbance would be reclaimed by backfilling most of the proposed open pit areas, regrading fill slopes, spreading topsoil, planting of appropriate vegetation, and installation and maintenance of runoff and sediment control facilities.

The BLM and USFS believe, at this early stage, it is important to give reviewers notice of several court rulings, related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519,553 (1978).* Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel, 803 F. 2d 1016, 1022 (9th Cir. 1986)* and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 60-day comment period for the draft EIS so that substantive comments and objections are made available to the BLM and USFS at a time when it can meaningfully consider them and respond to them in the final EIS.

Preliminary Issues

Initially identified issues include potential effects on: ground water and surface water quantity and quality, wildlife and their habitats, livestock grazing, wetlands and riparian habitat, socio-economics, and development of best management practices for mine operations.

Possible Alternatives

The EIS will analyze the Proposed Action and No Action Alternatives. Other alternatives may include alterations to portions of the proposed mining plan or sequence and design parameters to provide mitigation for resources of concern.

Tentative EIS Project Schedule

The tentative project schedule is as follows:

- Begin Public Comment Period—April, 2001
- Hold Public Scoping Meetings—May, 2001
- Estimated date for Draft EIS—May, 2002
- Public Comment Period on Draft EIS—60 days from when the Notice of Availability is published in the **Federal Register**
- Final EIS—September 2002
- Record of Decision—October 2002

Public Scoping Meetings

Two public scoping meetings will be held, each an open house, from 7:00 PM–9:00 PM. The open houses would

include displays explaining the project and a forum for commenting on the project. Scoping meetings will be held in the Soda Springs City Office Building, Soda Springs, Idaho, and in the BLM Field Office, Pocatello, Idaho. Dates for the two scoping meetings will be published in the Caribou County Sun and in the Idaho State Journal newspapers.

Public Input Requested

The BLM and USFS are seeking information and written comments from Federal, State and local agencies as well as individuals and organizations who may be interested in, or affected by, the proposed action. To assist the BLM and USFS in identifying and considering issues and concerns related to the proposed action, comments for scoping, and later for the Draft EIS, should be as specific as possible. Referring to specific pages or chapters of the EIS or the merits of the alternatives formulated and discussed in the EIS is most helpful. All scoping comments are due 30 days after publication in the Idaho State Journal.

Dated: April 18, 2001.

Jeff S. Steele,

BLM Pocatello Field Manager.

Jerry Reese,

Forest Supervisor, Caribou-Targhee National Forest.

[FR Doc. 01–12512 Filed 5–17–01; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–910–01–1020–PB]

New Mexico Resource Advisory Council Meeting

AGENCY: The Bureau of Land Management, Department of the Interior.

ACTION: Notice of council meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix 1, The Department of the Interior, Bureau of Land Management (BLM), announces a meeting of the New Mexico Resource Advisory Council (RAC). The meeting will be held on June 7 and 8, 2001, at the Holiday Inn Santa Fe, 4048 Cerrillos Road, Santa Fe, New Mexico, 87505.

There will be an optional all day field trip on Wednesday, June 6, 2001. Transportation will be provided for RAC members. The optional field trip will be organized by the Albuquerque and Taos Field Offices of the BLM. The field trip will leave from the Holiday Inn at 8:30 a.m.

The meeting on Thursday, June 7, 2001, will start at 8 a.m. and will end about 5 p.m. The draft agenda for the RAC meeting includes agreement on the meeting agenda, any RAC comments on the draft minutes of the last RAC Meeting which was held on April 4 through 6, 2001, in Carlsbad, New Mexico, and a check-in from the RAC members. The focus of the meeting will be on Off Highway Vehicle issues and Energy issues. Presentations will include discussion.

The three established RAC Subcommittees may have late afternoon or evening meetings on Wednesday, June 6, after the optional field trip, or on Thursday, June 7, after the meeting. The exact time and location of possible subcommittee meetings will be established by the Chairperson of each subcommittee and be available to the public following the field trip on Wednesday, June 6, and during the RAC meeting on Thursday, June 7, for that evening. That information will also be available at the desk of the Holiday Inn on those two days. On Friday, June 8, the meeting starts at 8 a.m. and will end about 3 p.m. The ending time of 3 p.m. may be changed depending on the work remaining for the RAC.

The meeting is open to the public, and starting at 2:45 p.m. on Thursday, June 6, 2001, there will be an additional 15 minute Public Comment Period for members of the public who are not able to be present for the regular Public Comment Period on Friday, June 8, to address the RAC.

The meeting on Friday, April 6, will start at 8 a.m. with a review of the agenda thus far. RAC Subcommittee Reports are scheduled from the Urban and Open Space Subcommittee, the Roads and Trails Subcommittee, and the Energy Subcommittee at various times throughout the two day meeting.

The regular Public Comment Period for the Public to address the RAC is on Friday, June 8, 2001, from 10 a.m. to 12 noon. The RAC may reduce or extend the end time of 12 noon depending on the number of people wishing to address the RAC. Anyone wishing to address the RAC should be present at the 10 a.m. starting time. The length of time available for each person to address the RAC will be established at the start of the public comment period and will depend on how many people wish to address the RAC, but usually not more than 15 minutes. At the completion of public comments, the RAC may continue discussion of its agenda items.

BLM State of the Field Office Reports, presented by the Field Office Managers, will be scheduled at various times during the 2 day meeting.

RAC discussions any any RAC recommendations are scheduled for 2:45 p.m. followed by a RAC assessment of the current meeting and development of draft agenda items and selection of a location for the next RAC meeting.

FOR FURTHER INFORMATION CONTACT: Mary White, New Mexico State Office, Office of External Affairs, Bureau of Land Management, 1474 Rodeo Road, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, telephone (505) 438–7404.

SUPPLEMENTARY INFORMATION: The purpose of the Resource Advisory Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of public lands. The Council's responsibilities include providing advice on long-range planning, establishing resource management priorities and assisting the BLM to identify State and regional standards for rangeland health and guidelines for grazing management.

Dated: April 24, 2001.

Richard Whitley,

Associate State Director.

[FR Doc. 01–12509 Filed 5–17–01; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–079–01–1020–AC]

Resource Advisory Council Meeting, Dillon, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Western Montana Resource Advisory Council will convene on May 31, 2001 at 12 Noon at the U.S. Forest Service Sheridan Work Center, 103 North Main, Sheridan, Montana., A field tour of the Garden Creek allotment will begin from there and end at Dillon, Montana. This area of the Ruby Mountains has recently been assessed for compliance with Standards for Rangeland Health. The tour is designed to look at areas that are not currently meeting the standards, and discussions on the planning process for making changes in the current grazing management to initiate progress in meeting the standard will be held on the

allotment. Some watershed restoration projects in the Stone Creek watershed will also be visited on the way to Dillon.

The meeting will continue at the Dillon Field Office, 1005 Selway Drive, Dillon, Montana at 8 a.m. on June 1, 2001. A briefing on the status of the Dillon Resource Management Plan will be given. Public comment will be accepted at 9 a.m.

Following the public comment session, a field trip to visit an area that has been assessed for compliance with the Standards for Rangeland Health and found to be meeting the standards will be held. This will allow the RAC members to see how the Standards for Rangeland Health are being assessed on the ground. The location for this tour will be determined later based on weather conditions.

The meeting is open to the public and written comments can be given to the Council. Oral comments may be presented to the Council on June 1 at 9:00 a.m. The time allotted for oral comment may be limited, depending on the number of persons wishing to be heard. Individuals who plan to attend and need further information about the meeting, or who need special assistance, such as sign language or other reasonable accommodations, should contact Jean Nelson-Dean, Resource Advisory Coordinator, at the Butte Field Office, 106 North Parkmont, Butte, Montana 59702–3388, telephone 406–533–7617.

FOR FURTHER INFORMATION CONTACT: Scott Powers, Dillon Field Manager, 406–683–8023 or Jean Nelson-Dean at the above address and telephone number.

Dated: April 27, 2001.

Dave Pacioretty,

Acting Field Manager.

[FR Doc. 01–12510 Filed 5–17–01; 8:45 am]

BILLING CODE 4310–$$–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–370–1020–PG]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Northeast California Resource Advisory Council, Cedarville, California, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and the Federal Land Policy and Management Act (Pub. L. 94–579), the U.S. Bureau of Land Management's Northeast California Resource Advisory Council will meet Thursday, May 31, and Friday, June 1, 2001, in Cedarville, CA

SUPPLEMENTARY INFORMATION: On Thursday, May 31, the RAC will convene at 7 p.m. at Jan's Country Hearth, 551 Main St., Cedarville, to hear public comments on issues affecting management of public lands administered by the BLM. On Friday, June 1, the council will convene at 8 a.m. at the BLM Surprise Field Office, 602 Cressler St., Cedarville, and depart for a field tour of public lands sites managed by the BLM. Discussion topics during the field tour will include BLM Native American consultation responsibilities, management considerations associated with threatened fish species, juniper management, and rangeland management after fires. Members of the public are welcome on the tour. They must provide their own transportation and lunch. The field tour will return to Cedarville by 4 p.m.

FOR FURTHER INFORMATION: Contact BLM Surprise Field Office Manager Susie Stokke at (530) 279–6101, or Public Affairs Officer Joseph J. Fontana, (530) 257–5381.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 01–12515 Filed 5–17–01; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–930–1310–EI]

Notice of Intent To Hold Oil and Gas Lease Sale 2002; National Petroleum Reserve—Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: National Petroleum Reserve-Alaska (NPR–A); Notice of Intent to Hold Oil and Gas Lease Sale 2002 in the NPR–A. This Notice of Intent is published as a matter of information to the public.

FOR FURTHER INFORMATION CONTACT: Bob Merrill or Gene Terland, BLM Alaska State Office, 907–271–3833.

SUPPLEMENTARY INFORMATION: The lands proposed for leasing in this sale will be limited to a reoffering of those lands which were made available but not leased in Sale 991 on May 5, 1999, so we are not issuing a new call for Nominations and Comments on tracts for this sale. The tracts will be renumbered. Some modifications may be made regarding tract potential and tract delineations. Therefore, the minimum bids, rentals, royalties, and tract sizes for those lands may be increased or decreased. Despite such changes, all of the unleased lands will be reoffered.

A Proposed Notice of Sale will be published in the **Federal Register** at least 60 days prior to the date of bid opening. That publication will also announce the availability of the Detailed Statement of Sale and where copies may be obtained. Compliance with all applicable environmental laws and regulations will be ensured before the sale is held. The Secretary of the Interior will also provide the State of Alaska and the North Slope Borough the opportunity to review the 2002 Detailed Statement of Sale in regard to, among other things, Coastal Zone Management review.

The Final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is tentatively scheduled for June 2002.

Francis R. Cherry, Jr.,

State Director, Alaska.

[FR Doc. 01–12513 Filed 5–17–01; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MTM–050–1330–ES, MTM–89572]

Notice of Realty Action: Recreation and Public Purposes (R&PP) Act Classification, Madison County, MT

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice.

SUMMARY: The following public lands in Madison County, Montana, have been examined and found suitable for classification for conveyance to the State of Montana through the Montana Heritage Commission under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Montana Heritage Commission proposes to use the lands for historic monument purposes to preserve the historic mining features on the property for interpretation purposes. A narrow gage railroad, built in the 1940s, runs between Nevada City and Virginia City, Montana providing the public with an interpretive tour of the historic mining period and technologies used in the area. The parcel will provide an integral link between the historic

towns of Nevada City and Virginia City. The revenues received from the train operation will be used for the operation and maintenance of buildings and artifacts owned by the State of Montana in Virginia City and Nevada City.

Principal Meridian Montana

T. 6S., R. 3W.,
Sec. 21, lot 8; sec. 22, lot 14
Containing 160 acres more or less.

The lands are not needed for Federal purposes. Conveyance of these lands is consistent with current Bureau of Land Management (BLM) land use planning and would be in the public interest. A patent will be issued for these lands. The patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.
2. A right-of-way for ditches and canals constructed by the authority of the United States (Act of August 30, 1890).
3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the Bureau of Land Management's Dillon Field Office, 1005 Selway Drive, Dillon, Montana 59725–9431.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws and the mineral leasing laws, except for conveyance under the Recreation and Public Purposes Act. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the classificaiton of the lands or the proposed conveyance to the Field Manager at the address listed above.

Classification Comments: Interested parties may submit comments involving the suitability of the land for historic monument purposes. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for historic monument purposes.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Mark J. Goeden,
Acting Dillon Field Manager.
[FR Doc. 01–12407 Filed 5–17–01; 8:45 am]
BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–EU; N–66786]

Notice of Realty Action; Nevada; Direct Sale of Public Lands in Nye County

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Direct Sale of Public Lands in Nye County, Nevada.

SUMMARY: The following described land near Beatty, Nye County, Nevada, has been examined and found suitable for disposal by direct sale, at the appraised fair market value, to James Key, resident of Beatty, Nevada. The sale is authorized under Section 203 and Section 209 of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (43 U.S.C. 1713 and 1719):

Mount Diablo Meridian, Nevada

T. 12 S., R. 47 E.,
Section 8, NW¼SW¼NW¼SW¼;
comprising 2.5 acres, more or less.

The land will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Charles Wright, Realty Specialist, Bureau of Land Management, Tonopah Field Station, P.O. Box 911, 1553 South Main Street, Tonopah, NV, 89049.

SUPPLEMENTARY INFORMATION: The land has been identified as suitable for disposal within the Tonopah Resource Management Plan. The land is not needed for any resource program and is not suitable for management by the Bureau or another Federal department or agency. An environmental assessment which analyzes potential impacts from this action has been prepared and is available for review at the address shown above.

The mineral estate, has been determined to have no known value. Therefore, the mineral estate will be conveyed simultaneously with the surface estate in accordance with Section 209(b)(1) of Federal Land Policy and Management Act of 1976. Acceptance of the sale offer will constitute application for conveyance of the mineral interests. The sale proponent will be required to submit a $50.00 non-refundable filing fee for conveyance of the mineral interests with the purchase price for the land. Failure to submit the non-refundable fee for the mineral estate within the time frame specified by the authorized officer will result in cancellation of the sale.

Upon publication of this Notice of Realty Action in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or disposals pursuant to Sections 203 and 209 of FLPMA. The segregation shall terminate upon issuance of a patent or other document of conveyance, upon publication in the **Federal Register** of a termination of segregation, or 270 days from date of this publication, which ever occurs first.

Patent, if issued, will be subject to the following third party rights:

Excepting and Reserving to the United States:

A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1980 (43 U.S.C. 945).

Subject to:

All valid existing rights.

For a period of 45 days from the date of publication in the **Federal Register**, interested parties may submit comments to the Assistant Field Manager, Tonopah Field Station, P.O. Box 911, Tonopah, NV 89049. Any adverse comments will be evaluated by the State Director, who may sustain, vacate or modify this realty action and issue a final determination. In the absence of timely filed objections, this realty action will become a final determination of the Department of the Interior.

Dated: May 4, 2001.

W. Craig MacKinnon,
Assistant Field Manager.
[FR Doc. 01–12511 Filed 5–17–01; 8:45 am]
BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–330–1220–AF]

King Range National Conservation Area, California

AGENCY: Bureu of Land Management, Interior.

ACTION: Establishment of supplementary rules.

SUMMARY: The Arcata Field Office is establishing the following Supplementary Rules for the King Range National Conservation Area as provided for under the recreation regulations of the Bureau of Land Management (BLM). The supplementary rules on camping limits are necessary to reduce resource damage and fire danger in the riparian area, dunes, and other undeveloped lands. The supplementary rules on camping fees are needed to cover a portion of maintenance and visitor service costs. The supplementary rule on nighttime parking is necessary to allow visitors to Black Sands Beach and other parts of the King Range backcountry to park if they arrive at night, while prohibiting nighttime activities that would disturb neighbors.

EFFECTIVE DATES: April 1, 2001.

ADDRESSES: You may send inquiries or suggestions to Field Office Manager, Bureau of Land Management, Arcata Field Office, 1695 Heindon Rd., Arcata, CA 95521.

FOR FURTHER INFORMATION CONTACT: Lynda J. Roush, (707) 825–2300.

SUPPLEMENTARY INFORMATION:

I. Background

The proposed Supplementary Rules were published in the **Federal Register** on May 25, 2000, with a 30-day comment period ending on June 26, 2000. BLM received 30 comments during this comment period.

Supplementary rules are authorized by 43 CFR 8365.1–6. The implementation of fees is authorized under the Land and Water Conservation Fund Act of 1965 as Amended, and the Omnibus Consolidated Rescissions Act of 1996 as Amended (Public Law 104–134).

II. Response to Public Comments

Based on the public comments and other information we received, BLM makes the following changes in the supplementary rules:

- We removed the proposed overnight parking fees for the Mattole and Black Sands Beach Recreation Sites. We will consider the need for parking fees at a later date.
- We clarified the description of the Black Sands Beach Recreation Site. The nighttime use requirements apply only to the immediate area within the developed site, not to the beach itself.
- We changed the nighttime camping fee periods for Honeydew Creek and Mattole Campground. Under the final Supplementary Rules you must pay a fee at Honeydew Creek for the period from sunset until 8 a.m. We made this change in order to be consistent with all other campgrounds in the King Range. We changed the nighttime fee period for Mattole Campground to one hour after sunset until one hour before sunrise. Note that these changes do not affect free public access to Honeydew Creek or Mattole Beach, but only pertain to overnight use of the developed campground.

III. Discussion of the Final Supplementary Rules

A. Camping at Mattole Campground

Currently visitors camp in areas between sites or in undeveloped areas immediately adjacent to the Mattole Campground. BLM intends the restriction of camping to developed campsites and the imposition of site capacity limits to reduce resource damage and fire danger the riparian area, dunes, and other undeveloped lands surrounding the Mattole Campground. This supplementary rule is also intended to provide a high quality experience to campground visitors by ensuring that the site is used for its intended purpose and capacity.

B. Camping Fees and Occupancy Limits

We have established camping fees at Honeydew Creek and Mattole Campgrounds to cover a portion of the maintenance and visitor service costs. BLM manages both sites under the Federal Fee Demonstration Program. This program requires that all fees be used for on-the-ground maintenance and services at the sites where they are collected. We have set the fees at a level commensurate with fees charged at other public and private camping areas in the region, adjusted for the level of amenities and on-site facilities we provide.

BLM has established occupancy limits to help provide a quality experience to campground visitors by ensuring that the sites are used for their intended purpose and capacity by families and small groups.

C. Nighttime Use of Black Sands Beach Recreation Site

Winter storms washed away the original Black Sands Beach Recreation Site, and BLM closed it in 1998. We closed this site to overnight use and camping beginning May 20, 1997 (FR Volume 62, Number 100, page 28495–28496), because coastal erosion made the site too small to accommodate camping and parking. This original site was separated from adjoining residences by a 75-foot coastal bluff that blocked both visual and sound impacts. A new site (planned for completion in autumn 2000) is under construction on top of the bluffs and immediately adjacent to private residences. BLM has designed the site to accommodate 2 types of use while protecting the privacy of adjoining residents. First, the site will serve as a day-use facility/beach access point, offering on-site amenities such as parking, a restroom, scenic overlooks, and interpretive signs. The opportunities we provide here will complement other BLM-managed coastal sites such as Abalone Point and Seal Rock, which are also adjacent to residences. All of these sites are open to day-use only, to minimize impacts on adjoining residents. In addition, the Black Sands Beach Recreation Sites serves as a major staging area for visitors heading onto the beach for overnight camping, backpacking, surfing, and other longer-term activities. Many of these visitors travel from long distances and may arrive or depart during the nighttime period. This rule allows nighttime access to the parking lot for visitors who are heading onto Black Sands Beach and other parts of the King Range backcountry, while prohibiting use of the site itself for nighttime activities.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These supplementary rules are not a significant regulatory action and are not subject to review by Office of Management and Budget under Executive Order 12866. These supplementary rules will not have an effect of $100 million or more on the economy. They will not affect commercial activity, but contain rules of conduct for public use of certain recreational areas. They will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The supplementary rules do not alter the budgetary effects of entitlements, grants,

user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues.

Clarity of the Supplementary Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these supplementary rules easier to understand, including answers to questions such as the following:

(1) Are the requirements in the supplementary rules clearly stated?

(2) Do the supplementary rules contain technical language or jargon that interferes with their clarity?

(3) Does the format of the supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

(4) Would the supplementary rules be easier to understand if they were divided into more (but shorter) sections?

(5) Is the description of the supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the supplementary rules? How could this description be more helpful in making the supplementary rules easier to understand?

Please send any comments you have on the clarity of the supplementary rules to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

BLM has prepared an environmental assessment (EA) and has found that the supplementary rules do not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The supplementary rules merely contain rules of conduct for certain recreational lands in California. These rules are designed to protect the environment and the public health and safety. A detailed statement under NEPA is not required. BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section. BLM invites the public to review these documents.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The supplementary rules do not pertain specifically to commercial or government entities of any size, but to public recreational use of specific public lands. Therefore, BLM has determined under the RFA that these supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These supplementary rules do not constitute a ''major rule'' as defined at 5 U.S.C. 804(2). Again, the supplementary rules merely contain rules of conduct for recreational use of certain public lands. The supplementary rules have no effect on business—commercial or industrial—use of the public lands.

Unfunded Mandates Reform Act

These supplementary rules do not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year; nor do these supplementary rules have a significant or unique effect on State, local, or tribal governments or the private sector. The supplementary rules do not require anything of State, local, or tribal governments. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. The supplementary rules do not address property rights in any form, and do not cause the impairment of anyone's property rights. In part, the rules are intended to protect the property rights of neighboring landowners by restricting the nighttime use of the Black Sands Beach Parking Area/Recreation Site. Therefore, the Department of the Interior has determined that the supplementary rules will not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The supplementary rules will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The supplementary rules affect land in only one State, California, and do not address jurisdictional issues involving the State government. Therefore, in accordance with Executive Order 13132, BLM has determined that these supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, BLM has determined that these supplementary rules would not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

These supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Author

The principal author of these supplementary rules is Robert Wick, Outdoor Recreation Planner, of the Arcata Field Office, Bureau of Land Management, Department of the Interior.

For the reasons stated in the Preamble, and under the authority of 43 CFR chapter II, part 8360, section 8365.1–6, the Arcata Field Office Manager establishes supplemental rules to read as follows:

Supplementary Rules for the King Range National Conservation Area

Section 1 Camping Limits at Mattole Campground

BLM-administered public lands within 500 feet of the perimeter of the Mattole Campground are closed to camping (overnight occupancy) other than at developed campsites. For the purposes of this supplementary rule, a developed campsite contains both a picnic table and a permanent fire ring/grill.

Section 2 Overnight Camping Fees and Occupancy Limits for Mattole and Honeydew Creek Campgrounds

a. You must pay a campground use fee of $5.00 per campsite per night at the Mattole and Honeydew Creek Campgrounds. Fees are only for use of the developed campgrounds. There is no fee for use of the adjacent parking lot/beach access at the Mattole Campground.

1. Fees for campground use at Mattole Campground are in effect from one hour after sunset to one hour before sunrise.

2. Fees for campground use at the Honeydew Creek Campground are in effect from sunset to 8 a.m.

b. You may occupy a campsite with no more than 2 vehicles and 8 persons per site.

Section 3 Nighttime Use of Black Sands Beach Parking Area/Recreation Site

a. The Black Sands Beach Parking Area/Recreation Site is closed to all overnight camping. The developed parking area/recreation site is intended for day use and vehicle parking for beach access. This developed recreation site includes approximately 5 acres of public lands and easements on the bluffs above the wave slope north of Humboldt Creek and south of Telegraph Creek. This supplementary rule affects the developed site only and does not pertain to nighttime use of the beach.

b. Nighttime use is limited to vehicle parking and unloading for off-site public land visits. You may use the parking area/recreation site for no more than 30 minutes for unloading/loading purposes during the nighttime period. This supplementary rule does not affect day use.

c. For the purpose of this supplementary rule, the nighttime period is defined as 1 hour after sunset to 1 hour before sunrise.

Section 4 Prohibited Acts

You must not—

a. Camp overnight at the Mattole Campground or within 500 feet of the campground perimeter other than at developed campsites;

b. Fail to pay the campground use fee of $5.00 per campsite per night at the Mattole and Honeydew Creek Campgrounds;

c. Occupy a campsite at the Mattole and Honeydew Creek Campgrounds with more than 2 vehicles or 8 persons per site; or

d. Camp or engage in activities other than parking and unloading or loading at the Black Sands Beach Parking Area/Recreation Site during the nighttime hours.

Section 5 Penalties

Under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), is you knowingly and willfully violate or fail to comply with any of the supplementary rules provided in this notice, you may be subject to a fine under 18 U.S.C. 3571 or other penalties in accordance with 43 U.S.C. 1733.

Michael Pool,

California State Director.

[FR Doc. 01–12514 Filed 5–17–01; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management/National Park Service

[NM–930–01–1050–DS–005G]

Notice of Intent To Prepare a Comprehensive Management Plan, Including Possible Resource Management Plan Amendments for the El Camino Real de Tierra Adentro National Historic Trail; New Mexico and Texas

AGENCY: Bureau of Land Management, National Park Service, Interior.

ACTION: Notice of intent to prepare a Comprehensive Management Plan, including possible Resource Management Plan Amendments and an invitation to the public to participate in the planning process.

SUMMARY: Pursuant to the National Trails System Act, as amended (Pub. L. 90–543), the National Park Service (NPS) and the Bureau of Land Management (BLM) are initiating preparation of a Comprehensive Management Plan (CMP) for the El Camino Real de Tierra Adentro National Historic Trail in New Mexico and Texas. The trail passes through four BLM Field Office administrative areas with five existing Resource Management Plans (RMPs) and there may be a need to amend one or more of these Plans. The RMPs that have the possibility of being amended are: (1) Taos RMP, (2) Rio Puerco RMP, (3) Socorro RMP, (4) White Sands RMP, and (5) Mimbres RMP.

The public is invited to participate in each stage of the planning process, and public meetings will be held. The initial scoping meetings will occur at 6:30 p.m. at the following locations: Alcalde, New Mexico (Oñate Visitor Center, State Road 68,)—June 25, 2001; Santa Fe, New Mexico (Genoveva Chavez Community Center, 3221 Rodeo Road)—June 28, 2001; Albuquerque, New Mexico (National Hispanic Cultural Center of New Mexico, 1701 Fourth Street, N.W.)—June 22, 2001; Socorro, New Mexico (Holiday Inn Express, 1100 California Avenue)—June 19, 2001; Truth or Consequences, New Mexico (T or C Civic Center, 505 Sims Street)—June 18, 2001; Las Cruces, New Mexico (Farm and Ranch Heritage Museum, Dripping Springs Road)—June 13, 2001; El Paso, Texas (Chamizal National Memorial, 800 S. San Marcial)—June 14, 2001.

DATES: Written comments relating to the planning process will be accepted on or before July 16, 2001, and should be addressed to Harry Myers at the address below.

FOR FURTHER INFORMATION CONTACT: Harry Myers, National Park Service, P.O. Box 728, Santa Fe, NM 87504–0728, phone (505) 988–6717, fax (505) 986–5214 or Terry Humphrey, Bureau of Land Management, 226 Cruz Alta Road, Taos, NM 87571; phone (505) 758–8851, fax (505) 758–1620.

SUPPLEMENTARY INFORMATION: The National Park Service Long Distance Trails Group Office—Santa Fe and the Bureau of Land Management, New Mexico State Office, are the lead offices for preparation of the plan, and both are responsible for administering the trail as per agency agreement. They will coordinate with the public, various Federal agencies, tribal governments, and local and state governments in the plan's development. Consultation will be an important factor to the process and should be an integral part of the planning team's efforts. Once an advisory council has been formed as required by section 5(d) of the National Trails System Act, the study team will work closely with that body.

The purpose of the Comprehensive Management Plan will be to establish the administrative objectives, policies, processes, and management actions needed to fulfill the preservation and public use goals of the El Camino Real de Tierra Adentro National Historic Trial. It will be comprehensive in nature, and will resolve or address issues along the El Camino Real de Tierra Adentro National Historic Trail which are identified through agency, interagency, and public scoping efforts.

The purpose of a National Historic Trail is the identification and protection of the historic route and its historic remnants and artifacts for public use and enjoyment. National Historic Trails are extended trails that follow as closely as possible and practicable original routes of travel that are historically significant. The designation of such trails or routes is to be continuous, but the established or developed trails are not necessarily continuous land areas; they may include portions or sections of land areas, land and water segments, or other specific sites.

Existing trail segments already in Federal ownership will become the initial components of the National Trail. Other trail segments could be developed

and protected through various means such as cooperative and certification agreements, easements, and actions by private organizations. Generally, there would be little if any acquisition of private lands, and then only with the landowner's consent.

The plan will explain or identify the desired future conditions to be maintained or achieved, administrative and management actions necessary to achieve objectives, and a schedule and a cost estimate for implementing the actions for achieving those goals. Through these actions, the El Camino Real de Tierra Adentro Historic Trail will be administered and managed according to the intent of Congress, as expressed in the establishing legislation and the National Trails System Act.

The joint BLM/NPS administration of the El Camino Real de Tierra Adentro National Historic Trail must rely on the cooperative management efforts and support of state, local, and private interests, including landowners, to ensure the protection of trail-related resources, to provide outdoor recreational opportunities, and to accomplish the objectives of the interpretive programs.

Consistent with the National Trails System Act, the NPS/BLM administrative role will be to set goals, stimulate public support and partnerships, provide technical and limited financial assistance and other incentives, manage trail marker use, and otherwise coordinate, facilitate, and monitor management and use of the trail. Therefore, public agencies and private interests at the grassroots will be encouraged to mark the trail route, seek certification, secure necessary interests in lands, provide for the preservation of the trail's resources, ensure the upkeep and accessibility of sites and segments for public educational and recreational benefits, and perform the day-to-day management of their own sites and areas.

Within this partnership both agencies will work to ensure that the trail is managed as a single, integrated resource, with the Comprehensive Management Plan providing overall guidance for trail management. The Comprehensive Management Plan will identify the various tasks of administration and the means of carrying out those tasks. It will define the relationships between administration and the day-to-day management of the trail and outline effective strategies for achieving plan implementation.

The Comprehensive Management Plan will identify objectives to guide the establishment of a cooperative management system for the El Camino Real de Tierra Adentro National Historic Trail. It will also describe a certification process for non-Federal trail sites/segments and identify the role that existing Federal land management agencies along the trail will play in the plan implementation.

The plan will define the criteria that will be used to select sites suitable for interpretation, preservation, recreational retracement, and potential development support. It will tell how to define priorities for marking, protection, and potential public use and it will describe what strategies are most appropriate for resource protection. The issue of potential liability and impacts upon landowners will be addressed. The promotion and coordination of the tourism potential of the trail will also be addressed.

The establishment law authorizes cooperation with United States and Mexican public and nongovernmental organizations, academic institutions, and, in consultation with the Secretary of State, the government of Mexico and its political subdivisions, for the purpose of exchanging trail information and research, fostering trail preservation and educational programs, providing technical assistance, and working to establish an international historic trail with complementary preservation and education programs in each nation.

The legislation also stated that: (1) The El Camino Real de Tierra Adentro (the Royal Road to the Interior Lands), served as the primary route between the colonial Spanish capital of Mexico City and the Spanish provincial capitals at San Juan de Los Caballeros (1598–1600), San Gabriel (1600–1609) and then Santa Fe (1610–1821); (2) The portion of the El Camino Real de Tierra Adentro that resided in what is now the United States extended between El Paso, Texas, and present San Juan Pueblo, New Mexico, a distance of 404 miles; (3) The El Camino Real is a symbol of the cultural interaction between nations and ethnic groups and of the commercial exchange that made possible the development and growth of the borderland; (4) American Indian groups, especially the Pueblo Indians of the Rio Grande, developed trails for trade long before Europeans arrived; (5) In 1598, Juan de Onãte led a Spanish military expedition along those trails to establish the northern portion of the El Camino Real; (6) During the Mexican National Period and part of the U.S. Territorial Period, the El Camino Real de Tierra Adentro facilitated the emigration of people to New Mexico and other areas that would become the United States; (7) The exploration, conquest, colonization, settlement, religious conversion, and military occupation of a large area of the borderlands was made possible by this route, whose historical period extended from 1598 to 1882; (8) American Indians, European emigrants, miners, ranchers, soldiers, and missionaries used the El Camino Real during the historic development of the borderlands. These travelers promoted cultural interaction among Spaniards, other Europeans, American Indians, Mexicans, and Americans; (9) The El Camino Real fostered the spread of Catholicism, mining, an extensive network of commerce, and ethnic and cultural traditions including music, folklore, medicine, foods, architecture, language, place names, irrigation systems, and Spanish law.

The following preliminary criteria were developed internally and will be reviewed by the public before used in the Comprehensive Management Plan/RMP Amendment/Environmental Impact Statement process. After public input analysis, they become proposed criteria, and can be added to or changed as the issues are addressed or new information is presented: (1) The plan should be completed in compliance with Sec. 5(a) of the National Trails System Act and all other applicable laws. It will meet the requirements of P.L. 106–307 to protect the trail's natural and historic resources and recreation opportunities; (2) The planning team should work cooperatively with the State of New Mexico, tribal governments, county and municipal governments, other Federal agencies, and all other interested groups, agencies, and individuals. Public participation will be encouraged throughout the process; (3) The planning process will include an Environmental Impact Statement that will comply with NEPA and Council on Environmental Quality guidelines; (4) The plan will emphasize the protection and enhancement of the historic values of the Trail, while providing the public with opportunities for compatible recreation activities; (5) Development and management of each segment of the National Trails System shall be designed to harmonize with, and complement, any established multiple-use plans for the specific area in order to ensure continued maximum benefits from the land (National Trails System Act, Sec 7. (a)(2); (6) The lifestyles and concerns of area residents, including the activities of grazing and hunting, will be recognized in the plan; (7) Any lands along the trail which are acquired by federal agencies from willing sellers to accomplish purposes for which the trail

was designated will be managed consistent with the National Trails System Act; (8) The planning process will involve American Indian tribal governments and will provide strategies for the protection of recognized traditional uses; (9) Decisions in the plan should strive to be compatible with the existing plans and policies of adjacent local, State and Federal agencies as long as the decisions are in conformance with Congressional direction and federal laws, regulation and policy; (10) The location of the trail has been determined by historical information and actual field surveys and will be further refined using Geographic Information Systems.

A range of alternatives, including a No Action alternative, will be developed to respond to the issues identified at the outset of the process. Each alternative will provide different solutions to the issues and concerns brought out. The objective in alternative formulation will be to develop realistic, implementable solutions that represent a complete plan, in and of themselves. The public will assist in the development of a range of alternatives during the community workshops. Preliminary issues and management concerns include: (1) How the historic, scenic and natural resources of the trail will be preserved; (2) How management of the trail will affect activities and use by the public; (3) How trail management will be integrated with tribal and other government agency and community plans; (4) Availability of opportunities to provide visitor services, education and/or recreation; (5) Incorporation of international interest in the trail; and (6) Effect of National Historic Trail designation on private property.

A preliminary public participation plan has been developed and sets forth the methods by which the public has the opportunity to be informed and involved so they can participate effectively in the planning and NEPA process. The public involvement process will focus on an interactive dialogue of information that will result in the exchange of constructive ideas, alternatives and new possibilities for mitigating potential environmental impact associated with this project.

The plan will also be responsive to the requirements of Presidential Executive Order 12898 on Environmental Justice. This Executive Order requires Federal agencies to identify potential disproportionate impacts on low income and minority communities. In addition, the Executive Order requires each Federal agency to provide opportunities for community input in the NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving accessibility of meetings, crucial documents and notices.

This project impacts multiple agencies and local governmental jurisdictions. It is important to have roles and responsibilities, as well as input of the affected entities, established at the outset. The BLM and NPS will engage other affected or potentially interested Federal agencies, North American Indian tribes, state and county government, and international partners, early in the EIS process. Their opinions on issues, scope of work, decisions to be made, and process are essential to the EIS process. Documents pertinent to the Environmental Impact Statement, such as Land and Resource Management Plans, Resource Management Plans, State codes and regulations, County and City zoning, and land use policies, need to be identified during this stage. Ongoing communication throughout the project is vital. The Bureau of Land Management and the National Park Service are committed to a collaborative planning approach.

Contact Terry Humphrey, BLM, El Camino Real Planning Team Leader at Taos Field Office, 226 Cruz Alta Road, Taos, New Mexico 87571 or Harry Myers, NPS, El Camino Real Planning Team Leader at P.O. Box 728, Santa Fe, New Mexico 87504–0728 for additional information.

Dated: May 9, 2001.

Carsten F. Goff,

Acting State Director, BLM—New Mexico.

Michael D. Snyder,

Acting Director, NPS, Intermountain Region.

[FR Doc. 01–12508 Filed 5–17–01; 8:45 am]

BILLING CODE 4310–AG–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council's Ecosystem Roundtable Amendments Subcommittee Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meetings.

SUMMARY: The Bay-Delta Advisory Council's (BDAC) Ecosystem Roundtable Amendments Subcommittee will meet on May 23, 2001 to discuss proposed contract modifications for several ongoing ecosystem restoration projects. This meeting is open to the public. Interested persons may make oral statements to the Amendments Subcommittee or may file written statements for consideration.

DATES: The BDAC's Ecosystem Roundtable Amendments Subcommittee meeting will be held from 9 a.m. to 12 p.m. on Wednesday, May 23, 2001.

ADDRESSES: The Amendments Subcommittee will meet at the Resources Building, 1416 Ninth Street, Room 1131, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Terry Mills, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan that addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA). The BDAC provides advice CALFED on the program mission,

problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: May 11, 2001.

Lowell F. Ploss,

Deputy Regional Director, Mid-Pacific Region.

[FR Doc. 01–12604 Filed 5–17–01; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

Summary of Commission Practice Relating to Administrative Protective Orders

AGENCY: International Trade Commission.

ACTION: Summary of Commission practice relating to administrative protective orders.

SUMMARY: Since February 1991, the U.S. International Trade Commission (''Commission'') has issued an annual report on the status of its practice with respect to violations of its administrative protective orders (''APOs'') in investigations under Title VII of the Tariff Act of 1930 in response to a direction contained in the Conference Report to the Customs and Trade Act of 1990. Over time, the Commission has added to its report discussions of APO breaches in Commission proceedings other than Title VII and violations of the Commission's rule on bracketing business proprietary information (''BPI'')(the ''24-hour rule''), 19 CFR 207.3(c). This notice provides a summary of investigations of breaches in Title VII investigations completed during calendar year 2000. There were no completed investigations of breaches for other Commission proceedings or for 24-hour rule violations during that period. The Commission intends that this report educate representatives of parties to Commission proceedings as to some specific types of APO breaches encountered by the Commission and the corresponding types of actions the Commission has taken.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3088. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810. General information concerning the Commission can also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: Representatives of parties to investigations conducted under Title VII of the Tariff Act of 1930 may enter into APOs that permit them, under strict conditions, to obtain access to BPI of other parties. See 19 U.S.C. 1677f; 19 CFR 207.7. The discussion below describes APO breach investigations that the Commission has completed, including a description of actions taken in response to breaches. The discussion covers breach investigations completed during calendar year 2000.

Since 1991, the Commission has published annually a summary of its actions in response to violations of Commission APOs and the 24-hour rule. See 56 FR 4846 (Feb. 6, 1991); 57 FR 12,335 (Apr. 9, 1992); 58 FR 21,991 (Apr. 26, 1993); 59 FR 16,834 (Apr. 8, 1994); 60 FR 24,880 (May 10, 1995); 61 FR 21,203 (May 9, 1996); 62 FR 13,164 (March 19, 1997); 63 FR 25064 (May 6, 1998); 64 FR 23355 (April 30, 1999); 65 FR 30434 (May 11, 2000). This report does not provide an exhaustive list of conduct that will be deemed to be a breach of the Commission's APOs. APO breach inquiries are considered on a case-by-case basis.

As part of the effort to educate practitioners about the Commission's current APO practice, the Commission Secretary issued in March 2001 a third edition of *An Introduction to Administrative Protective Order Practice in Import Injury Investigations* (Pub. No. 3403). This document is available upon request from the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, tel. (202) 205–2000.

I. In General

The current APO form for antidumping and countervailing duty investigations, which the Commission has used since March 1995, requires the applicant to swear that he or she will:

(1) Not divulge any of the BPI obtained under the APO and not otherwise available to him, to any person other than—

(i) personnel of the Commission concerned with the investigation,

(ii) the person or agency from whom the BPI was obtained,

(iii) a person whose application for disclosure of BPI under this APO has been granted by the Secretary, and

(iv) other persons, such as paralegals and clerical staff, who (a) are employed or supervised by and under the direction and control of the authorized applicant or another authorized applicant in the same firm whose application has been granted; (b) have a need thereof in connection with the investigation; (c) are not involved in competitive decisionmaking for the interested party which is a party to the investigation; and (d) have submitted to the Secretary a signed Acknowledgment for Clerical Personnel in the form attached hereto (the authorized applicant shall sign such acknowledgment and will be deemed responsible for such persons' compliance with the APO);

(2) Use such BPI solely for the purposes of the Commission investigation [or for binational panel review of such Commission investigation or until superceded by a judicial protective order in a judicial review of the proceeding];

(3) Not consult with any person not described in paragraph (1) concerning BPI disclosed under this APO without first having received the written consent of the Secretary and the party or the representative of the party from whom such BPI was obtained;

(4) Whenever materials (*e.g.,* documents, computer disks, etc.) containing such BPI are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container (N.B.: storage of BPI on so-called hard disk computer media is to be avoided, because mere erasure of data from such media may not irrecoverably destroy the BPI and may result in violation of paragraph C of the APO);

(5) Serve all materials containing BPI disclosed under this APO as directed by the Secretary and pursuant to section 207.7(f) of the Commission's rules;

(6) Transmit such document containing BPI disclosed under this APO:

(i) with a cover sheet identifying the document as containing BPI,

(ii) with all BPI enclosed in brackets and each page warning that the document contains BPI,

(iii) if the document is to be filed by a deadline, with each page marked ''Bracketing of BPI not final for one business day after date of filing,'' and

(iv) if by mail, within two envelopes, the inner one sealed and marked ''Business Proprietary Information—To

be opened only by [name of recipient]'', and the outer one sealed and not marked as containing BPI;

(7) Comply with the provision of this APO and section 207.7 of the Commission's rules;

(8) Make true and accurate representations in the authorized applicant's application and promptly notify the Secretary of any changes that occur after the submission of the application and that affect the representations made in the application (e.g., change in personnel assigned to the investigation);

(9) Report promptly and confirm in writing to the Secretary any possible breach of the APO; and

(10) Acknowledge that breach of the APO may subject the authorized applicant and other persons to such sanctions or other actions as the Commission deems appropriate including the administrative sanctions and actions set out in this APO. The APO further provides that breach of a protective order may subject an applicant to:

(1) Disbarment from practice in any capacity before the Commission along with such person's partners, associates, employer, and employees, for up to seven years following publication of a determination that the order has been breached;

(2) Referral to the United States Attorney;

(3) In the case of an attorney, accountant, or other professional, referral to the ethics panel of the appropriate professional association;

(4) Such other administrative sanctions as the Commission determines to be appropriate, including public release of or striking from the record any information or briefs submitted by, or on behalf of, such person or the party he represents; denial of further access to business proprietary information in the current or any future investigations before the Commission; and issuance of a public or private letter of reprimand; and

(5) Such other actions, including but not limited to, a warning letter, as the Commission determines to be appropriate.

Commission employees are not signatories to the Commission's APOs and do not obtain access to BPI through APO procedures. Consequently, they are not subject to the requirements of the APO with respect to the handling of BPI. However, Commission employees are subject to strict statutory and regulatory constraints concerning BPI, and face potentially severe penalties for noncompliance. *See* 18 U.S.C. 1905; Title 5, U.S. Code; and Commission personnel policies implementing the statutes. Although the Privacy Act (5 U.S.C. 552a) limits the Commission's authority to disclose any personnel action against agency employees, this should not lead the public to conclude that no such actions have been taken.

An important provision of the Commission's rules relating to BPI is the ''24-hour'' rule. This rule provides that parties have one business day after the deadline for filing documents containing BPI to file a public version of the document. The rule also permits changes to the bracketing of information in the proprietary version within this one-day period. No changes—other than changes in bracketing—may be made to the proprietary version. The rule was intended to reduce the incidence of APO breaches caused by inadequate bracketing and improper placement of BPI. The Commission urges parties to make use of the rule. If a party wishes to make changes to a document other than bracketing, such as typographical changes or other corrections, the party must ask for an extension of time to file an amendment document pursuant to section 201.14(b)(2) of the Commission's rules.

II. Investigations of Alleged APO Breaches

Upon finding evidence of a breach or receiving information that there is a reason to believe one has occurred, the Commission Secretary notifies relevant offices in the agency that an APO breach investigation file has been opened. Upon receiving notification from the Secretary, the Office of General Counsel (OGC) begins to investigate the matter. The OGC prepares a letter of inquiry to be sent to the possible breacher over the Secretary's signature to ascertain the possible breacher's views on whether a breach has occurred. If, after reviewing the response and other relevant information, the Commission determines that a breach has occurred, the Commission often issues a second letter asking the breacher to address the questions of mitigating or aggravating circumstances and possible sanctions or other actions. The Commission then determines what action to take in response to the breach. In some cases, the Commission determines that although a breach has occurred, sanctions are not warranted, and therefore has found it unnecessary to issue a second letter concerning what sanctions might be appropriate. Instead, it issues a warning letter to the individual. The Commission retains sole authority to determine whether a breach has occurred and, if so, the appropriate action to be taken.

The records of Commission investigations of alleged APO breaches in antidumping and countervailing duty cases are not publicly available and are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552, section 135(b) of the Customs and Trade Act of 1990, and 19 U.S.C. 1677f(g).

The breach most frequently investigated by the Commission involves the APO's prohibition on the dissemination of BPI to unauthorized persons. Such dissemination usually occurs as the result of failure to delete BPI from public versions of documents filed with the Commission or transmission of proprietary versions of documents to unauthorized recipients. Other breaches have included: the failure to bracket properly BPI in proprietary documents filed with the Commission; the failure to report immediately known violations of an APO; and the failure to supervise adequately non-legal personnel in the handling of BPI.

Counsel participating in Title VII investigations have reported to the Commission potential breaches involving the electronic transmission of public versions of documents. In these cases, the document transmitted appears to be a public document with BPI omitted from brackets. However, the BPI is actually retrievable by manipulating codes in software. The Commission has recently completed an investigation of such a breach that will be reported in the annual **Federal Register** notice for calendar year 2001. In that case, the Commission found that the electronic transmission of a public document containing BPI in a recoverable form was a breach of the APO.

The Commission advised in the preamble to the notice of proposed rulemaking in 1990 that it will permit authorized applicants a certain amount of discretion in choosing the most appropriate method of safeguarding the confidentiality of the BPI. However, the Commission cautioned authorized applicants that they would be held responsible for safeguarding the confidentiality of all BPI to which they are granted access and warned applicants about the potential hazards of storage on hard disk. The caution in that preamble is restated here:

> [T]he Commission suggests that certain safeguards would seem to be particularly useful. When storing business proprietary information on computer disks, for example, storage on floppy disks rather than hard disks is recommended, because deletion of information from a hard disk does not necessarily erase the information, which can often be retrieved using a utilities program.

Further, use of business proprietary information on a computer with the capability to communicate with users outside the authorized applicant's office incurs the risk of unauthorized access to the information through such communication. If a computer malfunctions, all business proprietary information should be erased from the machine before it is removed from the authorized applicant's office for repair. While no safeguard program will insulate an authorized applicant from sanctions in the event of a breach of the administrative protective order, such a program may be a mitigating factor. Preamble to notice of proposed rulemaking, 55 FR 24,100, 21,103 (June 14, 1990).

In 2000, the Commission conducted four investigations of instances in which members of a law firm or consultants working with a firm were granted access to APO materials by the firm although they were not APO signatories. In all these cases, the firm and the person using the BPI mistakenly believed an APO application had been filed for that person. The Commission has completed three of these investigations to date and determined in all three cases that the person who was a non-signatory, and therefore did not agree to be bound by the APO, could not be found to have breached the APO. These persons could be sanctioned, however, under Commission rule 201.15 (19 CFR 201.15) for good cause shown. In all three cases, the Commission decided that the non-signatory was a person who appeared regularly before the Commission and was aware of the requirements and limitations related to APO access and should have verified their APO status before using the BPI. In all three cases the Commission issued warning letters because it was the first time the persons in question were subject to possible sanctions under section 201.15 and there were no aggravating circumstances. These investigations will be individually summarized in the **Federal Register** notice summarizing cases completed in 2001.

Sanctions for APO violations serve two basic interests: (a) preserving the confidence of submitters of BPI that the Commission is a reliable protector of BPI; and (b) disciplining breachers and deterring future violations. As the Conference Report to the Omnibus Trade and Competitiveness Act of 1988 observed, ''the effective enforcement of limited disclosure under administrative protective order depends in part on the extent to which private parties have confidence that there are effective sanctions against violation.'' H.R. Conf. Rep. No. 576, 100th Cong., 1st Sess. 623 (1988).

The Commission has worked to develop consistent jurisprudence, not only in determining whether a breach has occurred, but also in selecting an appropriate response. In determining the appropriate response, the Commission generally considers mitigating factors such as the unintentional nature of the breach, the lack of prior breaches committed by the breaching party, the corrective measures taken by the breaching party, and the promptness with which the breaching party reported the violation to the Commission. The Commission also considers aggravating circumstances, especially whether persons not under the APO actually read the BPI. The Commission considers whether there are prior breaches by the same person or persons in other investigations and multiple breaches by the same person or persons in the same investigation.

The Commission's rules permit economists or consultants to obtain access to BPI under the APO if the economist or consultant is under the direction and control of an attorney under the APO, or if the economist or consultant appears regularly before the Commission and represents an interested party who is a party to the investigation. 19 CFR 207.7(a)(3) (B) and (C). Economists and consultants who obtain access to BPI under the APO under the direction and control of an attorney nonetheless remain individually responsible for complying with the APO. In appropriate circumstances, for example, an economist under the direction and control of an attorney may be held responsible for a breach of the APO by failing to redact APO information from a document that is subsequently filed with the Commission and served as a public document. This is so even though the attorney exercising direction or control over the economist or consultant may also be held responsible for the breach of the APO.

III. Specific Investigations in Which Breaches Were Found

The Commission presents the following case studies to educate users about the types of APO breaches found by the Commission. The case studies provide the factual background, the actions taken by the Commission, and the factors considered by the Commission in determining the appropriate actions. The Commission has not included some of the specific facts in the descriptions of investigations where disclosure of such facts could reveal the identity of a particular breacher. Thus, in some cases, apparent inconsistencies in the facts set forth in this notice result from the Commission's inability to disclose particular facts more fully.

Case 1: One associate attorney breached an APO by failing to redact BPI from the public version of his firm's Final Comments. Although the BPI was aggregate data, it had been bracketed in the Commission's staff report because it could be used with other publicly available data to determine the market share of one company. The BPI in the confidential version of the firm's Final Comments was properly bracketed.

The Commission Secretary discovered the breach. Letters of inquiry were sent to three other attorneys in addition to the associate because their names were on the Final Comments. Responses to the letters showed that the associate had been responsible for the error and had been the only attorney to sign the public version of the Final Comments. Therefore, the Commission determined that the associate attorney had breached the APO and the three other attorneys had not. The Commission issued a private letter of reprimand to the associate because the record did not clearly show that the BPI had not been reviewed by a non-signatory.

Three parties on the public service list, who were not signatories to the APO, received the Final Comments. One of these parties had forwarded the document to three client officials, one of whom had made copies. Although they destroyed all copies of the page with the BPI, their certifications did not state that they had not reviewed the document.

In reaching its decision, the Commission also considered that the breach had been inadvertent and that the associate made prompt efforts to limit the possibility of disclosure to persons not already under the APO. This was the associate's first breach of an APO.

Cases 2, 3, and 4: A law firm, new to Commission practice, became involved in a series of breaches in one investigation. Case 2 was a breach in which one of the partners had submitted BPI obtained under the Commission's APO to the Commerce Department. Before that information was retrieved, it had been read by individuals who were non-signatories to the Commission's APO. Case 3 involved two breaches. The first breach was caused by a junior associate attorney serving the BPI version of the prehearing brief on parties who were not APO signatories. In the second breach, the same associate served the public version of the post hearing brief while failing to redact one instance of BPI. Case 4 was a breach in which the law firm and the economic consulting firm working with the law

firm on the investigation failed to file certificates of destruction or return of the BPI obtained under the APO.

The Commission found that all five of the attorneys in the law firm breached the APO. Two of the attorneys were given public letters of reprimand with six months suspension from access to BPI. Three of the attorneys, including the associate, were given private letters of reprimand. For the final breach, the economic consultants were issued warning letters.

The Commission decided on the sanctions it imposed after considering the role of each of the attorneys in the preparation of the prehearing and posthearing briefs and the failure of the partners and senior attorneys to adequately supervise the junior associate and to develop procedures for the handling of BPI to avoid all of these breaches.

The Commission found that the first breach, sending Commission BPI to Commerce, was the sole responsibility of one attorney who is a partner practicing for many years. The second and third breaches involving the pre hearing and post hearing briefs were the responsibility of the associate, the lead attorney, and a partner of the firm. The lead attorney prepared the briefs with the assistance of the associate and the partner reviewed the documents. The associate was given the sole responsibility for proofreading, cite checking, implementing final changes, filing, and serving the documents. Both the lead attorney and the partner were issued a public letter of reprimand and were suspended from access to BPI for six months because they delegated primary responsibility for APO compliance to a junior attorney and then failed to provide appropriate supervision of that attorney, which resulted in two APO breaches; they repeatedly failed to remedy obvious flaws in their firm's procedures for protecting BPI obtained under the APO; and they failed to certify to the return or destruction of the BPI obtained under the APO. The associate was issued a private letter of reprimand for serving a prehearing brief containing BPI on persons not covered by the APO, failing to redact BPI from the public version of the post-hearing brief, failing to remedy flaws in the firm's procedures for protecting BPI, and failing to certify to the return or destruction of the BPI obtained under the APO. The Commission noted that it reached its decision after considering that the associate was involved in multiple breaches over a short period of time and that the associate did not discover the breaches. In deciding on a private letter of reprimand, the Commission also considered that the breaches appear to have been inadvertent and that the associate made prompt efforts to minimize the public dissemination of BPI.

The partner who transmitted Commission BPI to Commerce was issued a private letter of reprimand. The Commission noted that breach and found him also responsible for the third breach involving the post hearing brief because he failed to remedy flaws in his firm's procedures for protecting BPI. He also failed to certify to the return or destruction of the BPI obtained under the APO.

The Commission issued a private letter of reprimand to the fifth attorney, also a partner. He was found responsible for the third breach for failing to remedy flaws in his firm's procedures for protecting BPI and by failing to certify to the return or destruction of the BPI obtained under the APO.

In the letters to the partners and lead attorney the Commission explained that it recognized the firm's inexperience with Commission practice. Although such inexperience is a mitigating factor for the first breach, that breach put the firm on notice that the Commission's APO rules require a great deal of attention. Inexperience does not excuse the firm's subsequent lack of attention to APO compliance, particularly with regard to the delegation of unsupervised authority over APO matters to a junior attorney, and the continued reliance on that attorney after the attorney had committed one breach. Therefore, the Commission did not consider inexperience after the first breach to be a mitigating factor.

Case 5: A law firm legal assistant provided the firm's clients, who were not signatories to the APO, with redacted copies of the confidential version of the pre-hearing brief, which contained BPI that had been left on two pages. The legal assistant had redacted the confidential version of the brief when the assistant was unable to locate the firm's public version of the pre-hearing brief.

The Commission Secretary sent letters of inquiry to three attorneys who were named on the brief. One attorney responded with an affidavit that indicated he had no knowledge and was not involved in the breach. The Commission determined that he was not responsible for the breach. The lead attorney responded by taking responsibility for the breach and providing the Commission with information about the changed APO procedures in the law firm. The lead attorney was the attorney responsible for maintaining APO compliance by clerical employees, including legal assistants, since he signed the clerical acknowledgement as part of the firm's APO application. The third attorney was the attorney who had directed the legal assistant to provide the clients with copies of the public version of the pre-hearing brief and was for that purpose the immediate supervisor of the legal assistant.

The Commission found the lead attorney, the supervising attorney, and the legal assistant to be responsible for the breach and issued warning letters to all three. The clients who received the brief had not read it before the firm retrieved the brief. In determining to issue warning letters, the Commission also considered the facts that neither the attorneys nor the legal assistant had breached an APO in the previous several years, that the breach was unintentional, and that prompt action was taken to remedy the breach.

Case 6: A lead attorney served the BPI version of a pre-hearing brief on a party that was not on the APO. When filing and serving the brief, the attorney had mistakenly printed from his computer and used the public service list. The attorney realized his mistake in the evening on the same day he served the briefs. He contacted the recipient law firm that was not a signatory to the APO the next morning. The law firm immediately returned the unopened envelope containing the brief.

The Commission Secretary sent letters of inquiry to the lead attorney and another attorney whose name was also on the brief. Those attorneys and four other persons on the APO from the firm sent affidavits in response. The response also provided information on new procedures that were developed at the firm to prevent similar breaches in the future. The responses indicated that only the lead attorney participated in the serving of the brief. The Commission found that the lead attorney had breached the APO and issued a warning letter to him. The Commission informed the other attorney who had received a letter of inquiry of its decision that he did not breach the APO.

In determining to issue a warning letter to the lead attorney, the Commission considered the facts that the breach was unintentional, he had no prior breaches, he took prompt action to remedy the breach, and no non-signatory of the APO actually read the document.

Case 7: The Commission found two attorneys responsible for a breach in which they served the confidential version of their Final Comments on a firm that was not on the APO. The

Commission issued a warning letter to each of these attorneys.

The more senior of the two attorneys directed the second attorney, a junior associate, to prepare a certificate of service for the BPI version of the final comments. The associate mistakenly retrieved a prior public certificate of service from his computer and changed pertinent dates and headings, but did not verify or modify the names on the list. He presented the certificate of service as the BPI version to the senior attorney who then directed others to copy the BPI version of the final comments and serve it on the parties on the certificate of service.

The senior attorney discovered the mistake the following day when preparing to file the public version of the final comments. He immediately investigated the matter and took action to retrieve the document from the firm that had been served but was not on the APO. He was able to retrieve the document in the unopened, sealed envelope. The non-signatory who had received it declined to open the envelope because its markings showed it contained BPI. The senior attorney also immediately informed the Commission Secretary of the error.

The Secretary sent letters of inquiry to the three attorneys whose names were on the Final Comments. After receiving the initial response to these letters, the Secretary sent a letter of inquiry to the junior associate who was involved. The Commission received affidavits from the four attorneys and seven other personnel subject to the APO. The responses indicated that the one senior attorney and the associate were the only ones involved in the service of the final comments. The responses also provided a description of new procedures that were being implemented to avoid a similar breach in the future.

Based on the information provided, the Commission determined that the senior attorney and the associate were both responsible for the breach. The senior attorney admitted that the junior attorney was inexperienced and should have been supervised more closely. The Commission determined that the other two senior attorneys did not breach the APO because they were not involved in the service of the final comments. The Commission sent them letters informing them of that fact. In deciding to issue warning letters to the senior attorney and the associate, the Commission considered that neither attorney had prior breaches, the breach was unintentional, prompt action was taken to remedy the breach, and no non-signatory actually read the document.

Case 8: In a five year review investigation, a law firm filed the public version of a prehearing brief that contained BPI which had been bracketed but not redacted. The BPI was contained in two footnotes in the text of the brief and in a chart in the economic analysis portion of the brief. The public version of the brief had been prepared by an attorney. A economic consultant working with the firm prepared the public version of the economic analysis. In addition, two other attorneys reviewed the brief and another economic consultant reviewed the economic analysis portion of the brief. The Commission determined that all three attorneys and the two consultants breached the APO and issued warning letters to each of them.

One of the attorneys who had reviewed the brief discovered the breach the morning after it had been filed. He immediately contacted the economic consultants, opposing counsel, and the Commission Secretary. The opposing counsel had forwarded the document to three of his clients. However, he was able to retrieve the documents in unopened envelopes and then return the unredacted pages to the attorneys who had filed the brief. Thus, the three non-signatories to whom the brief was sent did not read the BPI.

The Secretary initially sent letters of inquiry to the two attorneys whose names were on the brief and to a third attorney who had signed the certificate of service. The Secretary also sent a letter of inquiry to all of the economic consultants working for the firm who had signed the APO. The lead attorney responded to the letters of inquiry and enclosed affidavits from the APO signatories. The response indicated that the firm will continue its procedure of having two attorneys review a public document for BPI, but will make every effort to conduct the review the day before it is scheduled for filing so a more thorough review is possible.

In deciding to issue warning letters to the three attorneys and the two consultants involved in this breach, the Commission considered the facts that this was the only breach in which they had been involved over the previous several year period, that the breach was unintentional, and that prompt action was taken to remedy the breach.

IV. Investigation in Which No Breach Was Found

During 2000, the Commission completed one investigation in which no breach was found. A law firm filed the public version of the pre-hearing brief and failed to redact bracketed information. One of the attorneys in the firm discovered the error, notified the Commission, and retrieved the document from the parties on whom it had been served. The information on the record does not indicate that any non-signatory read the unredacted information. The Commission Secretary sent letters of inquiry to three attorneys at the firm. Two of the attorneys responded in a letter and attached affidavits from the three attorneys and four other employees at the firm who had worked on the matter. The response presented the argument that the unredacted information was not BPI and the attorneys attached pages from the staff report and the Commission's report that contained public numbers the attorneys had used to derive the unredacted information. Based on the information provided by the firm and research that included discussions with the drafters of the two reports about what the information could reveal, the Commission determined that the information was aggregated data that would not reveal information about an individual company and, therefore, it was not BPI. The Commission therefore informed the involved persons that there was no breach of the APO.

Issued: May 14, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–12496 Filed 5–17–01; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–888–890 (Final)]

Stainless Steel Angle From Japan, Korea, and Spain

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Japan, Korea, and Spain of stainless steel angle, provided for in subheading 7222.40.30 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Background

The Commission instituted these investigations effective August 18, 2000, following receipt of a petition filed with the Commission and Commerce by Slater Steels Corp., Specialty Alloys Division, Fort Wayne, IN, and the United Steelworkers of America, AFL–CIO/CLC, Pittsburgh, PA. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of stainless steel angle from Japan, Korea, and Spain were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 26, 2001 (66 FR 7942). The hearing was held in Washington, DC, on March 27, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in these investigations to the Secretary of Commerce on May 11, 2001. The views of the Commission are contained in USITC Publication 3421 (May 2001), entitled Stainless Steel Angle from Japan, Korea, and Spain: Investigations Nos. 731–TA–888–890 (Final).

Issued: May 14, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–12497 Filed 5–17–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Notice of Determination Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of April, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm of subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–38,834; Reptron Manufacturing Service, Gaylord, MI

TA–W–38,844; Discwax Corp., Stanley, NC

TA–W–39,069; Rosboro Lumber Co., Mill B, Springfield, OR

TA–W–38,684; Ashley Leigh Enterprises, Inc., Hillsville, VA

TA–W–38,879; Hastings Manufacturing Co., Hastings, MI

TA–W–38,908; Electronic Circuits and Design Co., Sebring, OH

TA–W–38,796; Electronic Corp., Edingburg, TX

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increases imports did not contribute importantly to worker separation at the firm

TA–W–38,687; Outboard Maring Corp. (OMC), Lebanon, MO

TA–W–38,574; Outboard Marine Corp., Lowe Aluminum Boats Div., Syracuse, IN

TA–W–39,051; Pleasant River Lumber Co., Dover Foxcroft, ME

TA–W–38,797; Lehigh Coal and Navigation Co., Tomaqua, PA

TA–W–38,750; Porex Technologies, College Point, NY

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–39,141; Textile Sales & Repair, Inc., Gastonia, NC

TA–W–38,849; BI–Comp, Inc., York, PA

TA–W–39,138; Small Woodland Services, Inc., Eagle Point, OR

TA–W–39,035; Precision Twist Drill Co., Sandvik Div., Crystal Lake, IL

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–38,821; Donohue Industries, A subsidiary of Abitibi Consolidated, Sheldon Mill, Sheldon, TX

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–38,811; Universal Furniture Limited, Morristown, TN: March 10, 2000.

TA–W–38,945; Avaya, Inc., Formerly Known as Lucent Technologies, Shreveport, LA: March 15, 2000.

TA–W–39,038; Woodbury Apparel Group, Woodbury, TN: March 29, 200.

TA–W–38,761; Snuffy's Pet Products, Inc., McConnellsburg, PA: February 12, 2000.

TA–W–38,759; GST Steel Co., Kansas City, MO: February 12, 2000.

TA–W–38,572; Outboard Maine Corp. (OMC), Calhoun, GA: January 4, 2000.

TA–W–38,564 & A, B; Outboard Maine Corp.

TA–W–38,606; Outboard Marine Corp. (OMC), Andrews, NC, Burnsville, NC and Spruce Pine, NC: January 5, 2000.

TA–W–38,606; Outboard Marine Corp. (OMC), Beloit, WI: January 10, 2000.

TA–W–38,772; Hedstrom Corp., Alma, GA: March 5, 2000.

TA–W–38,838; Centec Roll Corp., Div. of Whemco Corp., Bethlehem, PA: February 22, 2000.

TA–W–39,003; Cajun Bag and Supply Corp., Rayne, LA: March 23, 2000.

TA–W–39,063; Grove U.S. LLC, Shady Grove, PA: March 28, 2000.

TA–W–38,565; Outboard Marine Corp. (OMC), Waukegan, IL: January 5, 2000.

TA–W–38,685; Hendrickson-Spring, Chicago, Chicago, IL: January 31, 2000.

TA–W–38,985 & A, B & C; Dunbrooke Industries, Inc., Orange City, IA, Hawarden, IA, Marcus, IA and Rock Rapids, IA: March 23, 2000.

TA–W–38,976; Cummins, Inc., Cummins Power Generation, St. Peter, MN: March 20, 2000.

TA–W–38,688; Cooper Tools/Nicholson Saw, Greenville, MS: February 5, 2000.

TA–W–38,006; American Steel Foundries, ASK-Keystone, Inc., East Chicago, IN: March 22, 2000.

TA–W–38,771; Elkins Hardwood Dimension, Elkins, West Virginia: February 9, 2000.
TA–W–38,977; The Doe Run Co., Smelter Division, Herculaneum, MO: March 16, 2000.
TA–W–38,749; Guilford Mills, Inc., Herkimer, NY: February 20, 2001.
TA–W–38,897; J.E. Morgan Knitting Mills, Inc., Tamaqua, PA: March 7, 2000.
TA–W–38,672; TECO Westinghouse Motor Co., Round Rock, TX: January 30, 2000.
TA–W–38,858; The Goodyear Tire and Rubber Co., Cartersville, GA: June 17, 2000.
TA–W–38,714; Spec Cast, Dyersville, IA: February 3, 2000.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of April, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in ports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–04651; Discwax Corp., Stanley, NC
NAFTA–TAA–04640; Hastings Manufacturing Co., Hastings, MI
NAFTA–TAA–04542; Weyerhaeuser Co., Mt. Pine Wood Products, Mt. Pine, AR
NAFTA–TAA–04630; Sierra Pacific Industries, Loyalton, CA
NAFTA–TAA–04439 & A, B; Outboard Maine Corp. (OMC), Andrews, NC, Burnsville, NC and Spruce Pine, NC
NAFTA–TAA–04444; Outboard Marine Corp. (OMC), Waukegan, IL
NAFTA–TAA–04440; Outboard Marine Corp. (OMC), Beloit, WI
NAFTA–TAA–04597; Reptron Manufacturing Services, Gaylord, MI
NAFTA–TAA–04734; Pleasant River Lumber Co., Dover Foxcroft, ME
NAFTA–TAA–04699; American Steel Foundries, ASK-Keystone, Inc., East Chicago, IL

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

NAFTA–TAA–04755; Diamler Chrysler AG, Auburn Hills, MI
NAFTA–TAA–04746; Small Woodlands Services, Inc., Eagle Point, OR
NAFTA–TAA–04767; Precision Twist Drill Co., Sandvik Division, Crystal Lake, IL

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–04645; Acme Die Casting, Racine, WI: March 9, 2000.
NAFTA–TAA–04711; Snuffy's Pet Products, Inc., McConnellsburg, PA: March 30, 2000.
NAFTA–TAA–04687; Avaya, Inc., Formerly Known as Lucent Technologies, Shreveport, LA: March 15, 2000.
NAFTA–TAA–04577; GST Steel Co., Kansas City, MO: February 13, 2000.
NAFTA–TAA–04490; Fleischmann's Yeast, Div. of Burns Philip Food, Inc., Gastonia, NC: January 25, 2000.
NAFTA–TAA–04689; Cajun Bag and Supply Corp., Rayne, LA: March 23, 2000.
NAFTA–TAA–04742; Grove U.S. LLC, Shady Grove, PA: March 28, 2000.
NAFTA–TAA–04554; Haggar Clothing Co., Edinburg Manufacturing, Edinburg, TX and Haggar Clothing Co., Weslaco Operations, Weslaco, TX: May 1, 2001.
NAFTA–TAA–04698; Cummins, Inc., Cummins Power Generation, St. Peter, MN: March 29, 2000.

I hereby certify that the aforementioned determinations were issued during the month of April, 2001. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 7, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 01–12562 Filed 5–17–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,024]

Alabama Structural Beams, a Division of Gulf States Steel, Gadsden, AL; Notice of Negative Determination Regarding Application for Reconsideration

By application dated January 15, 2001, the attorney for United Steelworkers of America, Local 2176, requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on December 5, 2000, and was published in the **Federal Register** on December 21, 2000 (65 FR 80456).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Alabama Structural Beams, a Division of Gulf States Steel, Gadsden, Alabama, was denied because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The ''contributed importantly'' test is generally demonstrated through a survey of customers of the workers' firm. None of the customers reported purchasing imported I-beams.

The petitioner states that the workers at the Structural Beams plant should be eligible to apply for the program benefits because the Structural Beams plant and the parent company, Gulf States Steel, were on in the same. They shared the same Board of Directors, payroll, on-site medical facilities, workers compensation, and health insurance. The petitioner adds that Alabama Structural Beams was part of Gulf States Steel in every sense except that the pay scale and employee union contract was different. When Gulf States Steel closed, so too did the subject firm plant. The petitioner states that the Structural Beam plan relied on the parent company for the raw material to produce the I-beams. The I-beams were sold mainly to manufacturers of mobile homes.

The source of the raw material to produce the I-beams is irrelevant in this case. Workers of the Alabama Structural Beams plant could be certified only if they supplied the I-beams to Gulf States Steel (whose workers were certified eligible to apply for TAA).

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 30th day of April 2001.

Linda A. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–12564 Filed 5–17–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,507]

Dresser-Wayne Division (Halliburton) Salisbury, MD; Notice of Negative Determination Regarding Application for Reconsideration

By Application of February 8, 2001, the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW), Local 354, request administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on January 17, 2001, and published in the **Federal Register** on February 8, 2001 (66 FR 9599).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers producing retail fuel dispensers at Dresser-Wayne Division (Halliburton) in Salisbury, Maryland, was denied because the group eligibility requirement of Section 222(2) of the Trade Act of 1974, as amended, was not met. Sales and production of articles produced at the plant increased from 1999 to 2000.

The petitioner provided a copy of an e-mail from a company official at Dresser-Wayne to the President of UAW, Local 354, indicating that jobs were lost at the plant because some of the work at the subject firm plant was being sent to Brazil.

The transfer of work, or shift of production, is not a basis for worker group certification under the worker adjustment assistance provisions of Section 222 of the Trade Act of 1974.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC, this 30th day of April, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–12565 Filed 5–17–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,964, TA–W–37,964A]

Hampton Industries, Kinston, NC; Hampton Industries Distribution Center, Snow Hill, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on October 11, 2000, applicable to workers of Hampton Industries, Kinston, North Carolina. The notice was published in the **Federal Register** on November 1, 2000 (65 FR 65330).

At the request of the Company, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of Men's and boys' woven and knit shirts. New information shows that worker separations have occurred at the subject firms' Distribution Center located in Snow Hill, North Carolina. The Snow Hill, North Carolina location provided distribution services for Hampton Industries' production facilities including Kinston, North Carolina.

Accordingly, the Department is amending the certification to cover the workers of Hampton Industries, Distribution Center, Snow Hill, North Carolina.

The intent of the Department's certification is to include all workers of Hampton Industries who were adversely affected by increased imports of men's and boys' woven and knit shirts.

The amended notice applicable to TA–W–37,964 is hereby issued as follows:

All workers of Hampton Industries, Kinston, North Carolina (TA–W–37,964) and Distribution Center, Snow Hill, North Carolina (TA–W–37,964A) who became totally or partially separated from employment on or after July 20, 1999, through October 11, 2002, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 30th day of April, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–12566 Filed 5–17–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 29, 2001.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 29, 2001.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 16th day of April, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 04/16/2001]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
39,010	Intel Puerto Rico, Ltd (Comp)	Las Piedras, PR	03/28/2001	Computer Equipment.
39,011	Texas Boot, Inc. (Comp)	Hartsville, TN	03/27/2001	Western Footwear.
39,012	Commtouch, Inc. (Comp.)	Mountain View, CA	03/28/2001	Provide Office Solutions.
39,013	Boise Cascade Corp. (WCIW)	Emmett, ID	04/02/2001	Softwood Dimension Lumber.
39,014	North American Heritage (Wrks)	Faribault, MN	03/15/2001	Woven Blankets and Afghens.
39,015	Wheeling Pittsburgh Steel (USWA)	Allenport, PA	03/29/2001	Hot and Cold Rolled Sheet, Galvanized.
39,016	Wabash Alloys (IAM)	Oak Creek, WI	03/28/2001	Secondary Aluminum Ingots.
39,017	Federal Mogul Ignition (UAW)	Cambridge, OH	03/30/2001	Spark Plugs.
39,018	Alamac Knit Fabrics (Comp)	New York, NY	03/30/2001	Yarn Dye and Piece Dye Knit Fabric.
39,018	Alamac Knit Fabrics (Comp)	New York, NY	03/30/2001	Yarn Dye and Piece Dye Knit Fabric.
39,019	Opelika Foundry Co. (Comp)	Opelika AL	04/02/2001	Grey Iron Castings.
39,020	Magnesium Corp of America (Comp)	Salt Lake City, UT	04/03/2001	Magnesium Metal, Alloy & Granular.
39,021	Ferry Cap and Set Screw (Wkrs)	Cleveland, OH	03/31/2001	Steel Fasteners.
39,022	General Automotive (Comp)	Franklin, WI	03/28/2001	Precision Machining—Diesel Engines.
39,023	Texas Instruments (Wkrs)	San Jose, CA	03/29/2001	Automotive Sensors.
39,024	Premier Circuit Assembly (Wkrs)	Springhope, NC	03/31/2001	Cables—Computers, Telephones.
39,025	Talon Automotive Group (Wkrs)	New Baltimore, MI	03/30/2001	Metal Stampings—Automotive.
39,026	Bristol Myers Squibb (PACE)	North Brunswick, NJ	03/29/2001	Medication.
39,027	Mar-Bax Shirt Co. (Comp)	Gassville, AR	03/12/2001	Shirts.
39,028	M and G Polymers USA (Comp)	Apple Grove, WV	03/27/2001	PET Resin.
39,029	Atofina Chemicals, Inc. (IAM)	Portland, OR	04/04/2001	Chloralkali Chemicals.
39,030	Novo Knitting Co. (Wkrs)	Mansfield, OH	03/30/2001	Knitted Outerwear.
39,031	IER, Inc. (Wkrs)	Temple, TX	03/30/2001	Airline Ticket Printers.
39,032	Pinson Mining Co. (Comp)	Winnemucca, NV	04/05/2001	Gold Mining.
39,033	General Electric	Bucyrus, OH	03/06/2001	Florescent Lamps.
39,034	Thermodisc, Inc. (Comp)	El Paso, TX	04/05/2001	Fabricated Molded Products.
39,035	Precision Twist Dril Co. (Wkrs)	Crystal Lake, IL	03/21/2001	Warehousing—Drills.
39,036	Nooter Fabricators (Comp)	St. Louis, MO	03/30/2001	Custom Metal Plate Vessels.
39,037	Clinton Industries, Inc. (Comp)	Carlstadt, NJ	04/03/2001	Industrial Sewing Machine Parts.
39,038	Woodbury Apparel Group (Owner)	Woodbury, TN	03/29/2001	Men's and boys' Shirts.
39,039	Fashions International (UNITE)	Scranton, PA	03/31/2001	Men's Sportswear, Suits, & Overcoats.
39,040	Lebanon Apparel Corp. (Comp)	Lebanon, VA	03/28/2001	Career Apparel.
39,041	Rawlings Manufacturing (UNITE)	Ava, MO	04/02/2001	Baseballs, Footballs, Gloves, Helmets.
39,042	Agilent Technologies (Comp)	Loveland, CO	03/30/2001	Volt Meters & Bench Top Instruments.
39,043	Pete's Cutting Service (Wkrs)	Hialeah, FL	03/25/2001	Cut Materials.
39,044	Kahn-Lucas Lancaster (Wkrs)	Columbia, PA	03/23/2001	Children's Garments.
39,045	Longview Aluminum Corp. (LATC)	Longview, WA	03/30/2001	Aluminum.
39,046	Deferiet Paper Co. (PACE)	Deferiet, NY	03/23/2001	Groundwood Specialty Paper.
39,047	Rayovac Corp. (Comp)	Wonewoc, WI	03/28/2001	Latern Batteries, Flashlights.
39,048	Invensys Powerware Corp. (Wkrs)	Necedah, WI	03/23/2001	Power Protection, Power Supplies.
39,049	Saunders Manufacturing Co. (Comp)	Readfield, ME	04/05/2001	Aluminum Clipboards, Bus. Form Holders.
39,050	SCI Systems, Inc. (Comp)	Augusta, ME	04/06/2001	Electronic Assemblies.
39,051	Pleasant River Lumber Co. (Wkrs)	Dover Foxcroft, ME	04/05/2001	Softwood Dimensional Lumber.
39,052	Bechtel Jacobs LLC (PACE)	Piketon, OH	04/06/2001	Enriched Uranium Products.
39,053	SGL Carbon LLC (USWA)	Niagara Falls, NY	03/29/2001	Carbon Graphite.
39,054	Consolidated Loose Leaf (Wrks)	New York, NY	04/03/2001	Book Binders, Folders & Indexes.

APPENDIX—Continued

[Petitions instituted on 04/16/2001]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
39,055	Newport Steel Corp. (CO.)	Newport, KY	04/06/2001	Steel Pipe.
39,056	Peerless Pattern Works (Wkrs)	Portland, OR	04/02/2001	Foundry Patterns.
39,057	Kolb Lena Bresse Bleu (UFCW)	Watertown, WI	04/06/2001	Goat's Milk Cheese.
39,058	Garden State Cutting Co. (Wkrs)	Passaic, NJ	03/28/2001	Ladies' Apparel.
39,059	Ludlow Coated Products (Wkrs)	Adrian, MI	04/02/2001	Laminatee Fiber Board.
39,060	Ludlow Coated Products (Wkrs)	Adrian, MI	04/02/2001	Laminated Fibre Board.
39,061	SOLA Optical (Comp)	Petaluma, CA	03/30/2001	Ophthalmic Lens.
39,062	Gateway Sportswear Corp. (UNITE)	Charleroi, PA	04/02/2001	Sportswear Apparel.
39,063	Grove U.S. LLC (Wkrs)	Shady Grove, PA	03/28/2001	Aerial Work Platforms.
39,064	Minnesota Rubber Co. (IAM)	Minneapolis, MN	04/05/2001	Rubber Gastets, Sealers.
39,065	Mundy Industrial Contract (Comp)	Leland, NC	04/05/2001	Yarn Filament, Staple Material.
39,066	Boston Scientific (Comp)	Maple Grove, MN	03/30/2001	Diagnostic Catheters.

[FR Doc. 01–12561 Filed 5–17–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,396]

Philips Electronics North American Corporation, Philips Display Components Company Ottawa, OH; Notice of Negative Determination Regarding Application for Reconsideration

By application of February 23, 2001, the International Brotherhood of Electrical Workers (IBEW), Local 1654, requests administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on January 24, 2001, and was published in the **Federal Register** on February 20, 2001 (66 FR 10916).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition for workers at Philips Electronics North America Corporation, Philips Display Components Company, Ottawa, Ohio, was denied because criterion (3) of Section 222 of the Trade Act of 1974, as amended, was not met. The workers were engaged in employment related to yoke matching which is attaching a yoke to the back of a television picture tube. The investigation found that layoffs occurred when the company shifted yoke matching to Mexico. The workers are separately identifiable by product line. The yoke matching operation is not imported. Furthermore, yoke matching increased up until the shift to Mexico.

The petitioner provides a history of cathode ray tube (CRT) production at the Ottawa facility over the past 50 years and describes various operations that the company is transferring abroad. A shift of production to a foreign location is not a criterion for worker group eligibility. Increases of imports of articles like or directly competitive with those produced by the workers must contribute importantly to sales or production declines and worker separations.

Workers engaged in yoke matching were certified eligible, on January 24, 2001, to apply for North American Free Trade Agreement-Transitional Adjustment Assistance under NAFTA–4336.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC, this 30th day of April, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–12563 Filed 5–17–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[Docket No. TA–W–38,325, TA–W–38,325A]

Posies, Inc., Rockport, ME; Posies, Inc., Posies Showroom, Dallas, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on February 20, 2001, applicable to workers of Posies, Inc., Rockport, Maine. The notice was published in the Federal Register on April 5, 2001 (66 FR 18118).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred at Posies' Showroom, Dallas, Texas when the company closed in August, 2000. The Dallas, Texas location was the corporate showroom, sales and marketing office which supported the production of children's dresses at the subject firm's Rockport, Maine facility.

Based on these findings, the Department is amending the certification to include workers of Posies, Inc., Posies Showroom, Dallas, Texas.

The intent of the Department's certification is to include all workers of Posies, Inc. who were adversely affected by increased imports of children's dresses.

The amended notice applicable to TA–W–38, 325 is hereby issued as follows:

All workers of Posies, Inc., Rockport, Maine (TA–W–38,325) and the Posies Showroom, Dallas, Texas (TA–W–38,325A)

who became totally or partially separated from employment on or after November 3, 1999, through February 20, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 30th day of April, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–12567 Filed 5–17–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of decisions listed to the Government Printing Office document entitled ''General Wage determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Rhode Island
RI010001 (Mar. 02, 2001)

Volume II

Pennsylvania
PA010014 (Mar. 02, 2001)

Volume III

Kentucky
KY010003 (Mar. 02, 2001)
KY010004 (Mar. 02, 2001)
KY010029 (Mar. 02, 2001)

Volume IV

Ohio
OH010009 (Mar. 02, 2001)
OH010012 (Mar. 02, 2001)
OH010023 (Mar. 02, 2001)
OH010029 (Mar. 02, 2001)

Volume V

None

Volume VI

None

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 10th day of May 2001.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 01–12206 Filed 5–17–01; 8:45 am]

BILLING CODE 4510–27–M

MERIT SYSTEMS PROTECTION BOARD

Agency Information Collection Activities; Proposed Collection

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Merit Systems Protection Board (MSPB) request for a three-year reinstatement of its expired Generic Clearance Request for Voluntary Customer Surveys under Executive Order 12862, ''Setting Customer Service Standards,'' has been forwarded to the Office of Management and Budget (OMB) for review and comment. The original approval for this information collection was provided by OMB on February 28, 1994, as a three-year generic clearance request for voluntary customer surveys under Executive Order 12862, ''Setting Customer Service Standards,'' and in accord with 44 U.S.C. 3506. Surveys under this approval are assigned OMB Control Number 3124–0012. That approval expired on February 28, 1997. A limited-term approval from OMB reinstated that authority through April 30, 2001.

In this regard, we are soliciting comments on the public reporting burden. The reporting burden for the collection of information on this form is estimated to vary from 10 minutes to 30 minutes per response, with an average of 15 minutes, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Estimated Annual Reporting Burden

5 CFR section	Annual number of respondents	Frequency per response	Total annual responses	Hours per response (average)	Total hours
1201, 1208 and 1209	2,000	1	1,500	.25	375

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the address shown below. Please refer to OMB Control No. 3124–0012 in any correspondence.

DATES: Comments must be received on or before June 18, 2001.

ADDRESSES: Comments concerning the paperwork burden should be addressed to Mr. John Crum, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419, by e-mail to *john.crum@mspb.gov,* or by calling (202) 653–8900, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for MSPB, 725—17th Street NW., Washington, DC 20503.

Dated: May 14, 2001.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 01–12499 Filed 5–17–01; 8:45 am]

BILLING CODE 7400–01–U

MERIT SYSTEMS PROTECTION BOARD

Opportunity To File Amicus Briefs in Cassandra Augustine v. Department of Veterans Affairs, MSPB Docket Number SF–3443–00–0085–I–1

AGENCY: Merit Systems Protection Board (MSPB).

ACTION: The Merit Systems Protection Board is providing interested parties with an Opportunity to submit amicus briefs in the above-referenced appeal. The issues to be addressed in such briefs are set forth in the Board's May 14, 2001, opinion and order, which is reprinted in its entirety in the summary below.

SUMMARY: The Department of Veterans Affairs (DVA) petitions for review of the initial decision which found that it violated the appellant's veterans' preference rights. The Office of Personnel Management (OPM) has intervened in support of DVA's petition for review. For the reasons set forth below, we VACATE the initial decision, REOPEN the record, and ORDER presentation of further argument and evidence. We also invite interested parties to submit briefs amicus curiae on the issues discussed in this decision.

Background

The appellant, a veteran with a 30% service-connected disability, applied for the position of Veterans Service Representative (VSR), GS–996–7, with the DVA. Initial Appeal File (IAF), Tab 8, Subtab 2 at 3, 20, 23. The vacancy announcement listed nine locations, and indicated that there were ''[o]ne or more positions at each location.'' The announcement also stated that the candidates would be ''rated'' and ''rank[ed]'' according to how well their knowledge, skills, and abilities ''matche[d] * * * the requirements identified for the position.'' In addition, the announcement indicated that individuals who met one of the following ''recruitment categories'' could apply: ''Outstanding Scholar''; ''Veterans Readjustment Act (VRA) eligibles''; ''30% or more disabled veterans''; ''Preference Eligibles'' and veterans honorably discharged after 3 or more years of active military duty; ''Chapter 31 veterans''; ''Handicapped Eligibles''; and ''VA CTAP or Interagency CTAP Eligibles.'' The announcement further stated, however, that ''first consideration'' would be given to ''[i]nternal candidates'' who applied under DVA's ''Merit Promotion'' plan. Id., Subtab 1 at 1–3.

DVA, which holds delegated authority from OPM to examine candidates, generated seven certificates, each corresponding to one of the recruitment categories listed in the vacancy announcement. The appellant's name appeared on the 30% or more disabled veteran certificate and the VRA certificate. Although the appellant qualified as a preference eligible pursuant to 5 U.S.C. 2108(3)(C), the agency did not include her name on the certificate of ''Preference Eligibles'' and veterans honorably discharged after 3 or more years of active military duty. DVA did not rank any of the candidates. Ultimately it filled nine positions, selecting five individuals from the 30% or more disabled veteran certificate, three individuals from the Outstanding Scholar certificate (none of whom were preference eligible), and one individual from the certificate of ''Preference Eligibles'' and veterans honorably discharged after 3 or more years of active military duty. The record indicates that the individual selected from the final certificate was preference eligible pursuant to 5 U.S.C. 2108(3)(E) as the spouse of a service-connected disabled veteran. Although the initial decision indicates that the agency did not treat this candidate as a preference eligible, IAF, Tab 11 at 4, the certificate on which this candidate's name appeared clearly indicated that she was entitled to 10 veterans preference points, IAF, Tab 8, Subtab 3 at 9. IAF,

Tab 8, Subtab 3 at 9–10; Petition for Review (PFR) File, Tab 3. DVA found the appellant qualified for the position but did not select her. IAF, Tab 8, Subtab 3 at 1–5, Subtab 5.

The appellant filed a complaint with the Department of Labor (DoL) claiming that her veterans' preference rights had been violated. After an investigation, DoL notified the appellant that her claim did ''not have merit.'' IAF, Tab 8, Subtab 9. The appellant then filed this timely appeal. Id., Tab 1; see 5 U.S.C. 3330a(d). The administrative judge, after considering argument and documentary evidence from the parties (the appellant did not request a hearing, IAF, Tab 1 at 7), held that DVA violated the appellant's veterans' preference rights at 5 U.S.C. 3318 by ''passing [her] over'' in favor of non-veterans without seeking and obtaining OPM's approval. He further held that DVA's ''practice of issuing multiple certificates'' corresponding to different recruitment categories ''and then selecting from them all at once, regardless of whether preference eligibles have been exhausted,'' had the effect of ''nullif[ying]'' the appellant's veterans'' preference. By way of relief, the administrative judge ordered DVA to appoint the appellant retroactive to the date she would have entered on duty had she been selected, to provide her with back pay, and to pay her an additional sum as damages. IAF, Tab 11.

DVA argues in its timely petition for review that the authority relied on by the administrative judge, 5 U.S.C. 3318, applies only to selections from ranked certificates, and that it was not required to rank candidates for the VSR position the appellant sought because it filled the position by ''internal agency merit promotion procedures.'' DVA further argues that by regulation, it has broad discretion in choosing how it fills positions. DVA argues, in the alternative, that the remedies ordered by the administrative judge are not authorized by statute. Petition for Review File (PRF), Tab 3. In response, the appellant argues, as she did below, that ''[c]ivil service law requires Federal examining offices to give job applicants numerical scores and to refer candidates for employment based on their scores.'' She further maintains that as part of this process, veterans preference rules mandate that the scores of preference eligibles be ''augment[ed].'' Id., Tab 4; see also IAF, Tab 9 at 8. Although labeled ''Cross Petition for Review,'' the appellant's response to the petition for review is not actually in the nature of a cross petition because the appellant does not argue that the initial decision contains an error. See *Hanner* v. *Department of the Army,* 62 M.S.P.R. 677, 680 n.2 (1994), aff'd, 48 F.3d 1236 (Fed. Cir. 1995) (Table).

OPM has intervened as a matter of right. PRF, Tab 7; see 5 U.S.C. 7701(d)(1). OPM argues that the authority relied on by the administrative judge, 5 U.S.C. 3318, applies only to ''competitive appointments,'' and that ''[h]ere, the agency filled the positions non-competitively.'' OPM further argues that agencies have ''wide discretion in selecting the method by which they make appointments,'' and that the seven recruitment categories used in this case, each of which represents a different ''hiring authorit[y],'' are all based on ''non-competitive procedures.'' OPM maintains that DVA was not required to rank the candidates. OPM argues, in the alternative, that even if there was a violation of the appellant's veterans' preference rights, the remedies ordered by the administrative judge are not authorized by statute. PRF, Tab 11. The appellant argues in response to OPM's brief that DVA was required to rank candidates, and that it was not permitted to segregate VRA-eligibles from other candidates. She also appears to contend that the remedies ordered by the administrative judge are authorized by statute. Id., Tab 12.

Analysis

The appellant has veterans' preference eligibility, she claims that her statutory veterans' preference rights were violated when DVA did not select her for the VSR position in 1999, and she has exhausted her remedy with DoL. Accordingly, her appeal is within the Board's jurisdiction under the Veterans Employment Opportunities Act (VEOA). See 5 U.S.C. 3330a(a), (d); see also *Smyth* v. *U.S. Postal Service*, 85 M.S.P.R. 549, ¶¶ 2 & 6 (2000) (VEOA creates a right of redress for actions taken after October 30, 1998 that are alleged to violate an individual's veterans' preference rights). The appellant appears to claim that irrespective of her veterans' preference rights, she was qualified for an Outstanding Scholar appointment. See IAF, Tab 9 at 3–4; PRF, Tab 12 at 7. This appeal, however, is limited to the question of whether the agency violated the appellant's veterans' preference rights. 5 U.S.C. 3330a(a). The Board lacks independent authority to enforce an individual's rights under the Outstanding Scholar program.

With the exception of certain high-level and specialized jobs that have no relevance here, positions in the federal civil service are either ''competitive'' or ''excepted.'' See 5 U.S.C. §2102, 2103. The parties have not addressed, and the vacancy announcement does not expressly state, whether the VSR position is in the competitive service. Nonetheless, the position is not listed in the comprehensive schedules of excepted-service positions published by OPM. See 5 CFR 213.3101–213.3302; 64 Fed. Reg. 48,461–48,464 (1999). Moreover, according to regulations and guidance issued by OPM, at least two of the recruitment categories listed in the vacancy announcement for the VSR position, VRA and Outstanding Scholar, are restricted to competitive-service positions. See 5 CFR 307.101(d); see also <http://www.opm.gov/employ/luevano.htm>. Finally, the SF–50 memorializing the appellant's appointment to the VSR position in compliance with the interim relief order unmistakably indicates that the position is in the competitive service. PRF, Tab 1, Ex. 1 at 2.

Having determined that the VSR position is in the competitive service, we now turn to how veterans' preference operates in hiring for competitive-service positions. Veterans' preference in this context takes two basic forms. First, by statute, agencies are permitted to appoint certain veterans non-competitively. For example, veterans with compensable service-connected disabilities of 30% or more may receive ''non-competitive appointment[s] leading to conversion to career or career-conditional employment.'' 5 U.S.C. 3112. To take another example, veterans of certain conflicts who meet specified education requirements are eligible for non-competitive ''excepted'' appointments at or below particular grades to positions ''otherwise'' in the competitive service. See 38 U.S.C. 4214; 5 CFR 307.104; Exec. Order No. 11,521, 35 FR 5311 (1970).

The second form that veterans' preference takes in hiring comes into play in the competitive examining process. An examination may consist of a written test, but it might instead consist of a work sample assessment, a structured interview, rating and ranking according to job-related competencies, verification of a professional certification recognized by a general professional community, or a combination of these or other formal evaluation devices. See Delegated Examining Operations Handbook, Office of Personnel Management (Oct. 1999), 2.2. In this decision we cite OPM's Delegated Examining Operations Handbook as general background and as evidence of what OPM's official guidance to employing agencies is. We make no finding on whether the Handbook or any part of it is consistent

with related statutes and regulations, whether it is entitled to deference, whether it was promulgated under or subject to notice-and-comment procedures, see 5 U.S.C. 553, or any other matter bearing on its validity. The appellant correctly points out that an integral part of the competitive examining process is the assignment of numerical scores, and then rating and ranking candidates according to those scores. PRF, Tab 4 at 2 (''[c]ivil service law requires Federal examining offices to give job applicants numerical scores and to refer candidates for employment based on their scores''); see also IAF, Tab 9 at 8. An examining authority, either OPM or an agency operating under a delegation of authority from OPM pursuant to 5 U.S.C. 1104(a)(2), ''shall assign numerical ratings'' to candidates. 5 CFR 337.101(a).

Under the Veterans' Preference Act, Pub. L. 359, ch. 287, 58 Stat. 390, as amended, preference-eligible veterans have additional points added to their passing scores on examinations. See 5 U.S.C. 3309; 5 CFR 337.101(b). The names of applicants who have qualified for appointment to the competitive service are entered onto registers, or ''lists of eligibles,'' in rank order, with preference eligibles ranked ahead of others with the same rating. See 5 U.S.C. 3313; 5 CFR 332.401. For positions other than scientific and professional positions in the grades of GS–9 or higher, disabled veterans who have a compensable service-connected disability of 10 percent or more are entered onto registers in order of their ratings ahead of all remaining applicants. See 5 U.S.C. 3313(2). An examining authority certifies ''enough names from the top of the appropriate register'' to permit the appointing authority ''to consider at least three names for appointment to each vacancy in the competitive service.'' 5 U.S.C. 3317(a). The appointing authority ''shall select for appointment to each vacancy from the highest three eligibles available for appointment on the certificate furnished under section 3317(a).'' 5 U.S.C. 3318(a). If an appointing authority ''proposes to pass over a preference eligible on a certificate in order to select an individual who is not a preference eligible, such authority shall file written reasons with (OPM) for passing over the preference eligible'' and obtain OPM's approval for the passover. 5 U.S.C. 3318(b)(1). In the case of a preference-eligible veteran with a 30% or more disability (such as the appellant), the veteran is entitled to notice of the proposed passover and an opportunity to respond to OPM. 5 U.S.C. 3318(b)(2). For appointments to vacancies in the excepted service in the executive branch, the nominating or appointing authority must select applicants in the same manner and under the same conditions required for the competitive service by 5 U.S.C. 3308–3318. See 5 U.S.C. 3320.

The administrative judge held that DVA violated the appellant's rights as a preference-eligible veteran under 5 U.S.C. 3318 when it selected non-preference eligibles without notifying the appellant and OPM that it proposed to pass her over. He further held that DVA's use of multiple certificates, and then its selection from them ''all at once,'' had the effect of ''nullif[ying]'' the appellant's veterans'' preference. DVA and OPM disagree, offering three different explanations for why DVA was permitted to use multiple certificates of unranked candidates. None of these explanations squares with the vacancy announcement itself, which expressly indicates that candidates would be rated and ranked. IAF, Tab 8, Subtab 1 at 3.

Before the administrative judge, DVA explained its actions by citing a regulation governing selection from unranked candidates for *excepted*-service positions. IAF, Tab 8 at 4 n.3 & Subtab 11 (relying on 5 CFR 302.401(a)). This regulation does not appear to have any application in this case, which concerns the selection process for a *competitive*-service position. However, as noted supra, ¶ 16 n.6, the individual selected from the certificate for ''Preference eligibles'' and veterans honorably discharged after 3 or more years of active military duty was appointed using a Schedule B excepted service appointing authority. The VEOA, as originally enacted, directed OPM to create a new appointing authority pursuant to 5 U.S.C. 3304(f). See Pub. L. 105–336, section 2, 112 Stat. 3182. OPM then announced a new Schedule B excepted appointing authority for appointments under the statute. See 63 FR 66,705 (1998) (codified at 5 CFR 213.3202(n) (1999)). Congress amended 5 U.S.C. 3304(f) in 1999, requiring that an individual hired under the new authority receive a career or career-conditional appointment. Pub. L. 106–117, § 511, 113 Stat. 1575 (codified at 5 U.S.C.A. 3304(f)(2) (West. Supp. 2000)). Thereafter, OPM announced that the Schedule B excepted appointing authority could no longer be used for new appointments after November 30, 1999, and that a new competitive appointing authority would replace it. See 65 FR 14,431 (2000) (to be codified at 5 CFR 315.611). In this case, the individual hired under the VEOA to the VSR position the appellant sought was appointed on or about August 2, 1999, under the then-existing Schedule B excepted authority. IAF, Tab 8, Subtab 3 at 9.

On review, DVA now contends that ranking of the candidates and recognition of veterans' preference was not required because it filled the positions by ''internal Agency merit promotion procedures.'' PRF, Tab 3 at 3. Based on the statutes cited above and an OPM regulation, it appears that promotion of a current employee—as opposed to a new appointment in the competitive service—does not require competitive examination. 5 CFR § 332.101(b) (''An examination for promotion, demotion, reassignment, transfer, or reinstatement may be a noncompetitive examination.''). Nonetheless, in this case DVA described the vacancy announcement in a letter to DoL as ''a solicitation for *new* employees who could join our roles (sic).'' IAF, Tab 8, Subtab 4 at 1 (emphasis supplied). Furthermore, the selection certificates indicate that outside candidates were considered. Id., Subtab 3 at 1, 3, 5, 7. Indeed, three of the selectees were hired under the Outstanding Scholar program; it appears that the order approving the consent decree that created that program and OPM's official guidance describing the program limit Outstanding Scholar appointments to *new* hires into the competitive service. See generally *Luevano* v. *Campbell,* 93 F.R.D. 68 (D.D.C. 1981); Delegated Examining Operations Handbook, § 2.8(A). In short, on this record we have no basis to conclude that DVA filled all nine of the VSR positions (or any of them, for that matter) by internal promotion.

OPM offers a third explanation for what happened: DVA exercised its discretion to fill the VSR position ''non-competitively.'' PRF, Tab 11 at 3. Five of the selectees in this case were appointed under a statute authorizing non-competitive appointment of a veteran with a 30% or greater service-connected disability; the statute is written in permissive terms, and its use appears to be committed to agency discretion. See 5 U.S.C. 3112 (''Under such regulations as the Office of Personnel Management shall prescribe, an agency may make a noncompetitive appointment leading to conversion to career or career-conditional employment of a disabled veteran who has a compensable service-connected disability of 30 percent or more.''). The sixth selectee was appointed from the certificate of preference eligibles and veterans honorably discharged after 3 or more years of active military duty; this appointment was made under 5 U.S.C.

3304(f), which at the relevant time OPM interpreted as allowing the non-competitive appointment of certain veterans under merit promotion procedures when an agency is accepting applications from outside its workforce. All indications are that use of this authority also was discretionary. The VEOA, as originally enacted, directed OPM to create a new appointing authority pursuant to 5 U.S.C. 3304(f). See Pub. L. 105–336, sec. 2, 112 Stat. 3182. OPM then announced a new Schedule B excepted appointing authority for appointments under the statute. See 63 FR 66,705 (1998) (codified at 5 CFR 213.3202(n) (1999)). Congress amended 5 USC 3304(f) in 1999, requiring that an individual hired under the new authority receive a career or career-conditional appointment. Pub. L. 106–117, sec. 511, 113 Stat. 1575 (codified at 5 U.S.C.A. 304(f)(2) (West. Supp. 2000)). Thereafter, OPM announced that the Schedule B excepted appointing authority could no longer be used for new appointments after November 30, 1999, and that a new competitive appointing authority would replace it. See 65 FR 14,431 (2000) (to be codified at 5 CFR § 315.611). In this case, the individual hired under the VEOA to the VSR position the appellant sought was appointed on or about August 2, 1999, under the then-existing Schedule B excepted authority. IAF, Tab 8, Subtab 3 at 9.

The remaining three selectees were appointed under the Outstanding Scholar program. This program was created in 1981 under a consent decree entered in a class action suit in which the plaintiffs alleged that OPM's competitive examination for entry into over 100 civil service occupations had a disparate impact on minority racial and ethnic groups. See Luevano, 93 F.R.D. at 73–74, 78–79. The GS–0996 job series covering the VSR position the appellant sought is covered by the decree. See Delegated Examining Operations Handbook, Appendix B. OPM's official guidance concerning the Outstanding Scholar program states as follows:

> Under the terms of the Luevano consent decree the Outstanding Scholar program was established as a supplement to the competitive examining process where under-representation of Blacks and Hispanics exists. This authority was not intended to replace competitive examining, nor to become the primary method of hiring. This authority allows agencies to appoint Outstanding Scholars [meeting specified college grade-point or class standing criteria] as an exception to normal competitive procedures, that is, the rule of three and veterans' preference do not apply.

Id., § 2.8(A).

OPM contends that DVA had the discretion to fill the VSR position under the Outstanding Scholar program instead of under competitive examination procedures. PRF, Tab 11 at 7. However, the only authority cited by OPM in support of this argument is the Luevano consent decree itself. Id. At this stage we are not convinced that the consent decree—an agreement between an executive agency and private parties approved by a district court judge—by itself is sufficient authority for an agency to choose not to use competitive examining, especially when a qualified veteran with statutory preference in such an examination applies for an announced vacancy. Indeed, in explaining why it interpreted the original version of VEOA as requiring a new excepted appointing authority under 5 U.S.C. 3304, see note 5 above, OPM stated that ''absent specific legislation or Executive order, OPM has no authority to permit the noncompetitive appointment of candidates in the competitive service.'' 65 FR 14,431 (2000). If this is so, then we would expect OPM to cite ''specific legislation or [an] Executive order'' as authority for the Outstanding Scholar program, but OPM does not cite any such source. OPM does argue that DVA's use of the Outstanding Scholar appointing method was authorized by 5 CFR 330.101, which states that ''[a]n appointing officer may fill a position in the competitive service by any of the methods authorized in this chapter.'' PRF, Tab 11 at 4. The current version of Chapter I, Title 5 CFR, contains three references to the Outstanding Scholar program, but none actually authorizes an appointment under that program; more important, OPM does not argue that these provisions are based on ''specific legislation or Executive order.'' See 5 CFR 315.710, 330.205(g), 330.705(b)(2). At one point Outstanding Scholar appointments were covered by a special Schedule B appointing authority at 5 CFR 213.3202. That authority, however, was an interim measure to be used while OPM developed an alternative competitive examining method for positions covered by the Luevano consent decree, which it ultimately did when it announced the Administrative Careers with America examination. The Schedule B hiring authority no longer covers Outstanding Scholars. See 57 FR 724 (1992); 54 FR 15,369 (1989); *National Treasury Employees Union* v. *Newman,* 768 F. Supp. 8, 9–10 (D.D.C. 1991).

To recapitulate, even if OPM's regulations authorize non-competitive hiring under the Outstanding Scholar program, OPM and DVA have not shown, or even argued, that Congress or the President approved the Outstanding Scholar program as an exception to competitive examining laws. Likewise, OPM and DVA have not shown, or even argued, that any statute or executive order delegates to OPM or any other executive agency the power to create a non-competitive appointing authority such as the Outstanding Scholar program. Finally, even if the Outstanding Scholar program was within OPM's or another executive agency's authority to create, OPM and DVA have not explained what rules, if any, guide its use, either in general, or when, as in this case, a qualified preference-eligible veteran vies for a position. In particular, the record does not show, with respect to the VSR position at issue, that DVA's use of the Outstanding Scholar program was consistent with OPM's requirement that the program be invoked ''as a *supplement* to the competitive examining process where under-representation of Blacks and Hispanics exists.'' Delegated Examining Operations Handbook, § 2.8(A) (emphasis supplied). It is undisputed that DVA did not conduct a competitive examination before selecting nine individuals for the VSR position the appellant sought; moreover, the record as currently developed does not indicate that DVA invoked the Outstanding Scholar appointing authority to ameliorate ''under-representation of Blacks and Hispanics.''

We are mindful of the important social goals of the civil rights laws under which the Luevano plaintiffs brought their suit. This case seeks redress for alleged violation of the veterans' preference provisions of the civil service laws. The government ''is obliged to abide by both [sets of] statutes, and may not satisfy one at the expense of the other.'' *National Treasury Employees Union* v. *Horner,* 654 F. Supp. 1159, 1166 n.5 (D.D.C. 1987), aff'd in part, rev'd in part on other grounds, 854 F.2d 490 (D.C. Cir. 1988). We must consider seriously the appellant's argument that DVA was not permitted to choose to hire non-veterans without competitive examination because of the primacy that competitive examination has in the civil service system, as discussed below.

The Pendleton Civil Service Act of 1883 replaced a patronage system, under which civil service appointments had frequently been used to reward political supporters, with a ''classified civil service,'' entry into which required competitive examination. See *Hampton* v. *Mow Sun Wong,* 426 U.S. 88, 106

(1976); *Arnett* v. *Kennedy,* 416 U.S. 134, 149 (1974). The ''fundamental'' idea underlying the Pendleton Act was that ''a new appointment'' in the civil service ''shall be given to the [person] who is best fitted to discharge the duties of the position, *and that such fitness shall be ascertained by open, fair, honest, impartial competitive examination.*'' *National Treasury Employees Union* v. *Horner,* 654 F. Supp. at 1161–62 (quoting S. Rep. No. 576, 47th Cong., 1st Sess., at 13–14 (1882) (emphasis supplied by court)). Nearly 100 years after the Pendleton Act, Congress reaffirmed the principle of fair and open competition for entry into the civil service. The Civil Service Reform Act of 1978 codified the ''merit system principles,'' the first of which states:

> Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, *after fair and open competition* which assures that all receive equal opportunity.

5 U.S.C. 2301(b)(1) (emphasis supplied).

Exceptions to the competitive examination requirement are permitted. See 5 U.S.C. 3304(b) (''[a]n individual may be appointed in the competitive service only if he has passed an examination'' or is appointed under an authority excepting him from the examination requirement); see also 5 U.S.C. 3302(2). For example, statutes such as those mentioned in ¶ 9 above authorize non-competitive appointment of veterans meeting certain criteria. Likewise, Civil Service Rules 1.3(c) and 7.1, first promulgated by the President in 1954 under 5 U.S.C. 3301, give an appointing officer the discretion to fill a position in the competitive service either by competitive examination or by non-competitive appointment of a former federal employee who acquired ''competitive status'' under a prior appointment. See Exec. Order No. 10,577 (Nov. 23, 1954), sec. 101, 19 FR 7521 (1954), reprinted at 5 U.S.C.A. 3301 note, currently codified at 5 CFR Part 1, §§ 1.3(c), 7.1; see also 5 CFR 212.301 (explaining how competitive status is acquired). Apart from the discretionary use of non-competitive appointing authorities, Civil Service Rule 3.2 allows appointment without competitive examination ''in rare cases,'' namely, when because of the ''duties or compensation'' of a position or the scarcity of ''qualified persons,'' the position ''cannot be filled through open competitive examination.'' 5 CFR Part 1, 3.2; see also 5 CFR 332.101(a) (OPM may authorize non-competitive examinations ''when sufficient competent persons do not compete''). The parties do not argue, and there is no evidence to indicate, that these exceptions to the competitive examining requirement were or could properly have been invoked with regard to the VSR position the appellant sought.

In light of the importance of the above questions to veterans and to class members in the Luevano litigation, we decline to rule on the merits of the appellant's claim without further briefing. A decision either way could profoundly affect one group or the other (or both), and as the above discussion indicates, thus far the issues have not been well-framed or discussed. Furthermore, it would be unwise for us to decide this case and potentially set precedent with just the appellant, DVA, and OPM in front of us, considering that individuals, veterans' groups, Luevano class members, unions, minority advocacy groups, and other government agencies, have a large stake in the outcome.

Order

The initial decision's findings on the merits may or may not survive review, and in any event, OPM and DVA make strong arguments that the remedy ordered in the initial decision exceeds the Board's authority. Accordingly, we VACATE the initial decision, without deciding the propriety of the remedy ordered below. We will revisit the issue of the appropriate remedy if, after further briefing, we conclude that DVA violated the appellant's veterans' preference rights.

The record is reopened for presentation of supplemental argument and evidence on the following related questions: (1) Was the execution of the Luevano consent decree a valid exercise of delegated executive authority for necessary exceptions of positions from the competitive service or necessary exceptions from the provisions of sections 2951, 3304(a), 3321, 7202, and 7203 of Title 5, United States Code; (2) what rules govern the use of the Outstanding Scholar appointing method, both in general, and when, as in this case, a qualified individual with veterans' preference applies for a competitive-service position; (3) when a qualified individual with veterans' preference applies for a competitive-service position, is the appointing authority limited to filling the position through competitive examination or non-competitive appointment of a preference-eligible, or are there other means by which an appointing authority may fill the position, and if so, what are the other means; (4) does an agency with delegated examining authority have the discretion to issue multiple certificates of unranked candidates, grouped according to specific hiring authorities or criteria, for consideration by a selecting official; and (5) if the agency can issue multiple certificates based on specific criteria, and a candidate meets the criteria for inclusion on more than one such certificate, does the agency have the discretion to exclude a candidate from a certificate for which she meets the criteria? For example, in this case it appears that the agency excluded the 30% disabled veterans from the VEOA certificate despite the fact that each of these veterans was eligible to compete pursuant to the VEOA. See supra, ¶3. The supplemental argument addressing question (1)–(3) should focus on the matters discussed in ¶¶ 17–19 of this opinion, although the parties are not limited to those matters.

Within 30 days of the date of this order, OPM and DVA shall submit (individually or jointly) legal argument on the questions posed above. OPM and DVA shall also submit (individually or jointly) copies of the full Luevano consent decree and DVA's merit promotion plan. In addition, DVA shall submit, no later than 15 days from the date OPM files its response to this order, supplemental evidence and argument showing that the appointments it made under the Outstanding Scholar program met the requirements of that program as explained in OPM's response.

The appellant may reply within 30 days of the date of service of OPM's and DVA's legal argument and evidence. (If OPM and DVA do not make service on the same date, the appellant's response is due no later than 30 days from the later date of service.) The appellant may supplement her reply, no later than 15 days from the date DVA files its supplemental evidence and argument, with regard to whether the Outstanding Scholar appointees met the terms of that program.

The Clerk is directed to cause this decision to be printed in the **Federal Register**, and to advise any interested party that it may submit an amicus brief on the questions posed above, within 30 days of the date of publication. The notice shall instruct amici to file two copies of their briefs with the Clerk of the Board, and shall include instructions for service of briefs on DVA and OPM. The Clerk will serve copies of amicus briefs on the appellant.

DVA, OPM, and the appellant may respond to any amicus briefs filed within 20 days from the latest date an amicus brief is served, but in any case no later than 60 days from the date of

publication of the notice in the **Federal Register**.

DATES: All briefs in response to this notice shall be filed with the Clerk of the Board within 30 days of May 18, 2001.

ADDRESSES: All briefs submitted must include the case name and docket number noted above (Cassandra Augustine v. Department of Veterans Affairs, docket number SF–3443–00–0085–I–1) and be entitled ''Amicus Brief,'' and should be submitted in duplicate. Briefs should be filed with the Office of the Clerk, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419. A copy of any amicus brief that is submitted must also be served on Patricia Geffner, Department of Veterans Affairs, (344/02), Office of Regional Counsel, 11000 Wilshire Boulevard, Los Angeles, CA 90024, and Rafael Morell, Office of Personnel Management, Office of General Counsel, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Shannon McCarthy, Deputy Clerk of the Board, or Matthew Shannon, Counsel to the Clerk (202) 653–7200.

Dated: May 15, 2001.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 01–12627 Filed 5–17–01; 8:45 am]

BILLING CODE 7400–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (01–060)]

NASA Advisory Council, Space Flight Advisory Committee (SFAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Flight Advisory Committee.

DATES: Friday, May 25, 2001 from 4 p.m. until 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street, SW., Room 9H40, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Y. Edgington (Stacey), Code M, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–4519.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to seating capacity of the room. The agenda for the meeting is as follows:

–Shuttle upgrade review.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: May 15, 2001.

Beth M. McCormick,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 01–12536 Filed 5–17–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (01–061)]

NASA Advisory Council, Biological and Physical Research Advisory Committee, Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Biological and Physical Research Advisory Committee.

DATES: Thursday, June 14, 2001, 10 a.m. to 5 p.m.; and Friday, June 15, 2001, 8 a.m. to 12 Noon.

ADDRESSES: National Aeronautics and Space Administration Headquarters, 300 E Street, SW., MIC–7, Room 7H46, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Bradley M. Carpenter, Code UG, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0826.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—OBPR Personnel & Organization Status
—ISS Status
—OBPR Performance Targets
—Division Director's Reports—Status
—Interim Mission Status Report
—Subcommittee Reports
—Discussion of Committee Findings and Recommendations

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: May 15, 2001.

Beth M. McCormick,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 01–12537 Filed 5–17–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental: Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (1189).

Date/Time: June 7–8, 2001, 8 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Michael Domach, Program Director, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 292–7941.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 15, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–12590 Filed 5–17–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Biological Sciences (1754).

Date/Time: June 13, 14, 15, 2001.

Place: National Science Foundation, 4201 Wilson Boulevard, Stafford II—Room 525, 545, 565 and 575, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Matthew Kane, Division of Environmental Biology, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 292–8480.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Biocomplexity and the Environment: Genome-Enabled Environmental Sciences and Engineering proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 15, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–12594 Filed 5–17–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical System; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date/Time: June 1, 2001, 8:30 a.m. to 5 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 530, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Ken P. Chong, Program Director, Mechanics and Structures of Materials, Division of Civil and Mechanical Systems, National Science Foundation, 4201 Wilson Blvd., Room 545, Arlington, VA, (703) 292–8360.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY'01 Surface Engineering and Material Design Review Panel as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: May 15, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–12593 Filed 5–17–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Engineering Education and Centers; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Engineering Education and Centers (#173).

Date & Time: May 24, 2001, 8:30 a.m.–5:30 p.m.

Place: National Science Foundation, Room 730, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Mr. Alex Schwarzkopf, Program Manager, Engineering Education and Centers Division, National Science Foundation, Room 585, 4201 Wilson Blvd., Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Industry/University Cooperative Research Centers Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Reason for Late Notice: Conflicting schedules of members and the necessity to proceed with review of proposals.

Dated: May 15, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–12586 Filed 5–17–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunity in Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunity in Science and Engineering (1173).

Date/Time: June 14, 2001, 8 a.m.–5:45 p.m. and June 15, 2001, 8 a.m.–3 p.m.

Place: Room 1235, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Open.

Contact Person: Michelle McMurry, Executive Secretary, CEOSE, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Phone (703) 292–8094.

Minutes: May be obtained from the Executive Secretary at the above address.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda

Thursday, June 14, 2001, 8 AM–5:45 PM

8:00 AM Breakfast with NSF Staff
8:30 AM
Welcome
Approval of February 2001 Minutes
8:45 AM Report of Executive Council Liaison
9:00 AM Historical Summary of Main CEOSE Issues and Overview of Issues to Be Discussed At This Meeting
10:00 AM Discussions with Dr. Bob Suzuki
12:00 PM Lunch
1:00 PM Research Presentation by Dr. Thomas Windham
1:45 Directorate Dialogue: Education and Human Resources
3:45 PM Break
4:00 PM Research Presentation by Dr. Willie Pearson
4:45 PM Committee Discussion I: Reflections of Departing Members
5:45 PM Adjourn for the day

Friday, June 15, 2001, 8 AM–3 PM

8:00 AM Breakfast
8:30 AM Committee Discussion II: Report Planning for 2002
10:30 AM Break
10:45 AM Directorate Dialogue: Geological Sciences
11:45 AM
Lunch
Committee Discussion III: Advisory Committee Reports
1:00 PM Budget Overview, Report Response, and Criterion 2
2:00 PM Committee Discussion IV: Wrap-up and Future Directions
3:00 PM Adjourn

Dated: May 15, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–12595 Filed 5–17–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Experimental and Integrative Activities; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings of the Special Emphasis Panel in Experimental and Integrative Activities (#1193):

Date/time	Place
June 4, 2001; 8 a.m.–5 p.m.	National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.
June 11–12, 2001; 8 a.m.–5 p.m.	National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.
June 14–15, 2001; 8 a.m.–5 p.m.	National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.
June 21–22, 2001; 8 a.m.–5 p.m.	National Science Foundation, 4201, Wilson Boulevard, Arlington, VA.

Type of Meetings: Closed.

Contact Person: Gary Strong, National Science Foundation, 4201 Wilson Boulevard, Room 1160, Arlington, VA 22230, (703) 292–8980.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Information Technology Research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 15, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–12587 Filed 5–17–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Human Resource Development (#1199).

Date/Time: June 7–8, 2001, 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Rooms 320 & 330, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Victor Santiago, Program Director, Human Resource Development Division, Room 815, National Foundation, 4210 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 292–4673.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 15, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–12591 Filed 5–17–01 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Information and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Information and Intelligent Systems (1200).

Date/Time: June 4–June 5, 2001, 8:30 a.m.–5 p.m.

Place: National Science Foundation, Room 1150, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Ephriam Glinert, Deputy Division Director, Division of Information and Intelligent Systems, Room 1115, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 292–8930.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review evaluate Computer and Social Systems proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 15, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–12589 Filed 5–17–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Integrative Activities (1373).

Date/Time: June 5–7, 2001—8:30 am—5:30 pm.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Nathaniel G. Pitts, Director, Office of Integrative Activities, Room 1270, 4201 Wilson Blvd, Arlington, Virginia 22230; Telephone: (703) 292–8040.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate full proposals submitted to the Science and Technology Centers: Integrative Partnerships Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under U.S.C. 552B(c)(4) and (6) of the Government Sunshine Act.

Dated: May 15, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–12588 Filed 5–17–01; 8:45am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Material Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Materials Research (DMR) #1203.

Dates/Times: June 6 and 7, 2001, 7:30 a.m.–9 p.m.; June 8, 2001, 7:30 a.m.–3 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Ulrich Strom, Program Director, Materials Research Science and Engineering Centers, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4938.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552

b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 15, 2001.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 01–12592 Filed 5–17–01; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collection under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted.

1. *The title of the information collection:*
   NRC Form 4, ''Cumulative Occupational Exposure History''
   NRC Form 5, ''Occupational Exposure Record for a Monitoring Period''
2. *Current OMB approval number:*
   NRC Form 4: 3150–0005
   NRC Form 5: 3150–0006
3. *How often the collection is required:*
   NRC Form 4: Occasionally
   NRC Form 5: Annually
4. *Who is required or asked to report:* Licensees who are required to comply with 10 CFR Part 20.
5. *The number of annual respondents:*
   NRC Form 4: 286 (104 reactor sites and 182)
   NRC Form 5: 5,400 (104 reactor sites and 5,296 materials licensees)
6. *The number of hours needed annually to complete the requirement or request:*
   NRC Form 4: 11,531 hours or an average of 0.5 hours per response.
   NRC Form 5: 66,682 hours (55,242 hours for recordkeeping hours or an average of 10 hours per recordkeeper and 11,440 hours for reporting hours or an average of 40 hours per response).
7. *Abstract:* NRC Form 4 is used to record the summary of an individual's cumulative occupational radiation dose for the current year to ensure that dose does not exceed regulatory limits. NRC Form 5 is used to record and report the results of individual monitoring for an occupational dose from radiation during a one-year period to ensure regulatory compliance with annual dose limits.

Submit, by July 17, 2001, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: http://www.nrc.gov/NRC/PUBLIC/OMB/index.html. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 14th day of May 2001.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–12556 Filed 5–17–01; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27397]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

May 11, 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 June 5, 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 June 5, 2001, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

National Grid USA, et al. (70–9089)

National Grid USA (''Grid''), a registered public utility holding company, and its electric public utility subsidiary companies, Massachusetts Electric Company), (The Narragansett Electric Company, New England Electric Transmission Corporation, New England Hydro-Transmission Electric Company, Inc., New England Hydro-Transmission Corporation, New England Power Company, New England Energy Incorporated, and National Grid USA Service Company, Inc. (''Service Company''), all located at 25 Research Drive, Westborough, Massachusetts 01582, and Granite State Electric Company, 407 Miracle Mile, Suite 1, Lebanon, New Hampshire 03766, Nantucket Electric Company, 25 Fairgrounds Road, Nantucket, Massachusetts 02554, and the Narragansett Electric Company, 280 Melrose Street, Providence, Rhode Island 02901 (collectively, ''Applicants'') have filed a post-effective amendment to their application-declaration under sections 6(a), 7, 9(a), 10 and 12 of the Act and rule 43, 45 and 54 under the Act. The Commission issued a notice describing various proposed financing transactions on January 26, 2001 (Holding Co. Act Release No. 27340), and a supplemental order authorizing those transactions was issued on April 19, 2001 (Holding Co. Act Release No. 27381) (''April Order''). This supplemental notice describes Applicants' proposal to engage in

certain additional internal financing transactions as described below.

In late April Order, the Commission, among other things, approved Service Company's request for authority to borrow up to $60 million (''Service Company Borrowing Limit'') through May 31, 2003 (''Authorization Period''), either by issuing notes or commercial paper, or by borrowing from Grid's intrasystem money pool. As described in this supplemental notice, Applicants also request authority to meet Service Company's borrowing requirements, up to the Service Company Borrowing Limit, by direct loans from Grid to Service Company through the Authorization Period.

These loans would be at the rate equal to the prime rate for Fleet/Boston less 1%. Based on the 7.5% prime rate existing as of April 19, 2001, the effective interest costs of these borrowings would be 6.5%. The loans would have no stated maturities, but the borrowings may be prepaid by the Service Company without penalty.

Conectiv, et al. (70–9095)

Conectiv, a registered holding company, Conectiv's public-utility subsidiaries: Atlantic City Electric Company (''ACE''); Delmarva Power & Light Company (''Delmarva''); Conectiv Atlantic Generation, L.L.C. (''CAG''); and Conectiv Delmarva Generation, L.L.C. (''CDG'') [1] (collectively, ''Utility Subsidiaries''); and Conectiv's nonutility subsidiaries (''Nonutility Subsidiaries''): ACE REIT, Inc. (''ACE REIT''); ATE Investment, Inc.; ATS Operating Services, Inc.; Atlantic Generation, Inc.; Atlantic Jersey Thermal Systems, Inc.; Atlantic Southern Properties, Inc.; Binghamton General, Inc., Binghamton Limited, Inc.; Conectiv Communications, Inc.; Conectiv Energy Holding Company (''CEH''); Conectiv Energy Supply, Inc.; Conectiv Mid-Merit, Inc.; Conectiv Operating Services Company; Conectiv Resource Partners, Inc.; Conectiv Services, Inc.; Conectiv Solutions, LLC; Conectiv Thermal Systems, Inc.; DCI I, Inc.; DCI II, Inc.; DCTC-Burney, Inc.; Delmarva Capital Investments, Inc.; Delmarva Services Company; King Street Assurance, Ltd. (''KSA''); Pedrick Gen., Inc.; Vineland Limited, Inc.; and Vineland General, Inc., all located at 800 King Street, Wilmington, Delaware 19899; and Conectiv Plumbing, L.L.C., located at 621 Chapel Avenue, Cherry Hill, New Jersey 08034 (collectively, ''Applicants''), have filed a post-effective amendment (''Post-Effective Amendment'') under sections 6(a), 7, 9(a), 10, and 12(b) of the Act and rules 45, 53 and 54 under the Act, to its application-declaration previously filed under the Act. Utility Subsidiaries and Nonutility Subsidiaries are referred to collectively as ''Subsidiaries.''

I. Background

By order dated February 26, 1998 (Holding Co. Act Release No. 26833), and by various supplemental orders[2] (collectively, ''Financing Orders''), the Commission authorized Conectiv and its subsidiaries to effect certain financing transactions through March 31, 2002. These included: (1) The issuance by Conectiv of short-term debt in an aggregate amount not to exceed $1.3 billion less any amount of short-term debt issued by Delmarva under its authorization to issue up to $275 million of short-term debt; (2) the issuance by Conectiv of up to $250 million of long-term debt with the reservation of jurisdiction over an additional $750 million of long-term debt; [3] (3) the issuance by Conectiv of common stock which, when combined with any long-term debt issued, does not exceed $500 million in the aggregate; [4] and (4) the issuance by Conectiv of guaranties, letters of credit, expense agreements or other forms of credit support for the obligations of Subsidiaries in an aggregate amount not to exceed $350 million.

Financings authorized in the Financing Orders are subject to the following limitations (''Financing Parameters''): (1) Conectiv's consolidated common equity will be at least 20% of its total consolidated capitalization (''Common Equity Ratio''), as adjusted to reflect subsequent events that affect capitalization; (2) the effective cost of money on long-term debt securities will not exceed 300 basis points over comparable term U.S. Treasury securities and the effective cost of money on short-term debt securities will not exceed 300 basis points over the comparable term London Interbank Offered Rate (''LIBOR''); (3) maturity of indebtedness will not exceed 50 years; and (4) the underwriting fees, commissions, or similar remuneration paid in connection with the issue, sale or distribution of a security will not exceed 5% of the principal amount of the financing. Conectiv proposes that these Financing Parameters also apply to all transactions proposed by this Post-Effective Amendment.

II. Description of Proposed Transactions

A. Summary of Requests

By this Post-Effective Amendment, Applicants request the following: (1) An extension of the effective period for all authorizations contained in the Financing Orders through September 30, 2003 (''Authorization Period''); (2) an increase in the amount of short-term debt that Conectiv is authorized to have outstanding during the Authorization Period from $1.3 billion to $2.0 billion, with Conectiv permitted to issue securities during the Authorization Period so long as the Common Equity Ratio is at least 20% [5] (3) an increase in the amount of guaranties, letters of credit and other forms of credit support that Conectiv can offer to third parties on behalf of the obligations of Subsidiaries from $350 million to $1.5 billion and the addition of obligations of certain nonaffiliated third parties to the obligations that may be guaranteed; (4) the establishment of special purpose direct or indirect subsidiaries of CEH (''New Utility Subsidiaries'') and the acquisition of utility property by CDG, CAG and the New Utility Subsidiaries in an amount not to exceed $1 billion in the aggregate; (5) the issuance of up to $1 billion of debt and equity securities in the aggregate by CDG, CAG and the New Utility Subsidiaries to their respective parent companies (''GENCO Securities''), and the acquisition of the GENCO Securities by each of these parent companies; (6) the issuance of up to $1 billion of debt and equity securities in the aggregate by CDG and CAG's parent company, CEH, to Conectiv in order to fund CEH's acquisition of the securities issued by its subsidiaries; and (7) participation in the Conectiv System Money Pool (''Money Pool'') by the New Utility Subsidiaries, with aggregate Money Pool borrowings by CDG, CAG and the New Utility Subsidiaries limited to $1 billion, less

[1] The Commission authorized the acquisition of CDG and CAG by order dated June 29, 2000 (Holding Co. Act Release No. 27192) (''GENCO Order'').

[2] These orders were issued on August 21, 1998 (Holding Co. Act Release No. 26907); September 28, 1998 (Holding Co. Act Release No. 26921); October 21, 1998 (Holding Co. Act Release No. 26930); November 13, 1998 (Holding Co. Act Release No. 26941); December 14, 1999 (Holding Co. Act Release No. 27111); and August 17, 2000 (Holding Co. Act Release No. 27213).

[3] If this reservation of jurisdiction is released, the proceeds of any new issuance of long-term debt exceeding $250 million must be used to reduce short-term debt.

[4] Conectiv has issued $250 million of long-term debt under the Financing Orders. Therefore, Conectiv may issue up to an additional $250 million of common stock and long-term debt.

[5] Conectiv's proposed short-term debt authorization would be exclusive of any short-term debt issued by Delmarva.

the amount of any GENCO Securities issued to their respective parents.

B. Proposed Increase in Short-term Debt Authorization

Conectiv requests an increase in the aggregate amount of short-term debt it may issue at any one time outstanding during the Authorization Period to no more than $2 billion, exclusive of any short-term debt issued by Delmarva.[6] Applicants state that the continued uncertainty of the timing of the receipt of certain funds, as described below, combined with the need to fund the ongoing operations of Conectiv and the Subsidiaries, require this increased short-term debt authorization.

Applicants note that Delmarva and ACE entered into agreements to sell substantially all of Delmarva's generation assets and all of ACE's generation assets to third parties.[7] However, these sales have not yet closed, and applicants state that they may be further delayed or modified. After ACE closes on the sales of its generation assets, it is expected that debt will be issued by a special purpose subsidiary of ACE and secured by regulatory assets created under the New Jersey Electric Discount and Energy Competition Act (''Securitized Debt'').[8]

The primary use of the funds from the sales of the generation facilities and the issuance of the Securitized Debt is planned to be short-term and long-term debt reduction, ACE and Delmarva equity repurchase and new investments. The additional short-term debt proposed in this Post-Effective Amendment will be used to bridge any further delays in these sales, to finance Conectiv's capital program, including the construction of mid-merit generation facilities, and for other general corporate purposes.[9]

Applicants state that the types of short-term debt securities will include, but not be limited to, borrowings under one or more revolving credit facilities, commercial paper, short-term notes and bid notes. Interest rates on short-term debt will be comparable to interest rates on debt with like terms and maturities issued by companies with similar credit ratings, and in any case will not exceed 300 basis points over the comparable term LIBOR rate. The maturity of any short-term debt issued will not exceed 364 days or, if the notional maturity is greater than 364 days, the debt security will include put options at appropriate points to cause the security to be accounted for as a current liability under United States generally accepted accounting principles (''GAAP''). All short-term debt will be unsecured, ranking pari passu with other unsecured debt of Conectiv. Applicants state that it is highly unlikely that the increased level of short-term debt requested in this Post-Effective Amendment would reduce the common stock equity positions on a consolidated basis of Conectiv, ACE and Delmarva as detailed in exhibit H–3 to this Post-Effective Amendment through the Authorization Period.

C. Proposed Increase in Conectiv Guaranties

Authorization is requested for Conectiv to enter into guaranties, obtain letters of credit, enter into support or expense agreements or otherwise provide credit support to third parties during the Authorization Period in an aggregate amount up to $1.5 billion (''Guaranty Limit'') with respect to: (1) The obligations of the Subsidiaries as may be appropriate to carry on their respective businesses; and (2) the obligations of certain nonaffiliated third parties in connection with certain lease transactions, as described below. Applicants state that the increased level will permit Conectiv to provide guaranties to vendors involved in the construction of mid-merit generation plants, to lenders for potential financing transactions related to mid-merit plants and to counterparties for a higher level of energy trading activity.[10] Conectiv also may issue a portion of the proposed guaranties in connection with the business of Conectiv's subsidiary, Conectiv Energy Supply, Inc. (''CESI''), which conducts the power marketing and trading operations of the Conectiv System.[11] To the extent that any guaranties appear as short-term debt on Conectiv's balance sheet, that debt also would be included in the short-term debt limitation.

Conectiv proposes to guarantee certain obligations of non-affiliated third parties in connection with a financial transaction known as a ''synthetic lease.'' Applicants state that the synthetic lease affords off-balance sheet accounting treatment but permits Conectiv to retain the tax benefits of ownership. Specifically, under such an arrangement, Conectiv would receive the tax benefits of depreciation but would not have to recognize such depreciation in its income statement. To implement a synthetic lease, Conectiv would lease certain mid-merit generation facilities, which may be either exempt wholesale generators (''EWGs'') or utility property, from a non-affiliated third-party special purpose entity (''SPE'') established to finance construction of the generation facilities. The SPE would borrow on a short-term basis from a group of lenders to fund construction and Conectiv would guarantee a portion of the short-term debt of the SPE. These guarantees would be included under the Guaranty Limit.[12]

D. Proposed Formation of New Subsidiaries and Related Transactions

Conectiv requests authorization to establish the New Utility Subsidiaries and for CDG, CAG, or the New Utility Subsidiaries to acquire up to an aggregate amount of $1 billion of utility property during the Authorization Period.[13] Applicants assert that use of the New Utility Subsidiaries is necessary to provide operating and tax planning flexibility, and that the New Utility Subsidiaries may be corporations or limited liability companies wholly owned directly or indirectly by CEH.

Conectiv intends to retain and develop additional flexible, low-cost mid-merit generation to address competitive opportunities in the Mid-Atlantic region. As part of this business strategy, Conectiv has transferred certain net generating capacity to CDG

[6] Delmarva would retain its authorization under the Financing Orders to issue up to $275 million of short-term debt.

[7] Applicants state that, under the Delaware, Maryland, Virginia and New Jersey electric industry restructuring legislation and the implementing rules, Delmarva and ACE are required to exit the business of generating electricity.

[8] The Securitized Debt will be issued under an order of the New Jersey Board of Public Utilities and an order of this Commission under an application to be filed later.

[9] In addition, Conectiv states that it needs to maintain a liquidity facility for certain subsidiary variable rate demand bonds, and capacity to handle margin calls for energy trading operations and the requirement to be the provider of last resort in deregulated electricity markets.

[10] Applicants state that obligations exempt under rule 45 are excluded from the Guaranty Limit. The issuance of guarantees will be subject to the limitations of the financing Order issued under rule 53(c) authorizing Conectiv to invest up to $350 million in exempt wholesale generators, or rule 58(a)(1), as applicable. *See* Holding Co. Act Release No. 27213 (August 17, 2000).

[11] Conectiv states that it may wish to provide credit support in connection with the trading positions of CESI entered into in the ordinary course of CESI's energy marking and trading businesses. Applicants assert that the provision of parent guaranties by holding companies to affiliates in the generation and power marketing business is standard business practice.

[12] Applicants state that the leased assets are not utility property for purposes; of state regulation. Therefore, the synthetic lease arrangement would not require the approval of any state public utility commission.

[13] Conectiv's proposed acquisition of utility property is in addition to CDG's previously authorized reacquisition of certain utility assets by means of a like-kind exchange. *See* GENCO Order. This proposed acquisition also is in addition to Conectiv's authority under the Financing Orders to invest up to $350 million in EWGs.

and CAG,[14] and will pursue acquisition and development opportunities for additional CDG and CAG generation. This generation will be located within the region where Conectiv currently operates and participates in the power supply business.

E. Proposed Financing of Utility Property; Participation by New Utility Subsidiaries in Conectiv System Money Pool (''Money Pool'')

Conectiv expects to fund the construction of these mid-merit generating facilities using internally generated funds and short-term debt until such time as long-term debt may be issued. Applicants request authority: (1) For Conectiv to fund CEH, the subsidiary formed to hold CDG, CAG, and ACE REIT, an intermediate holding company parent of CAG; (2) for CEH in turn to fund CDG and ACE REIT; (3) for ACE REIT to fund CAG; and (4) for CDG and CAG to fund any New Utility Subsidiary formed by each through the issuance of debt or equity securities to, and the acquisition of those securities by, CDG's and CAG's respective parent company.

The aggregate amount of securities issued by CDG, CAG or the New Utility Subsidiaries will not exceed $1 billion during the Authorization Period.[15] Any debt issued by CDG, CAG or the New Utility Subsidiaries will mature in thirty years or less and will bear interest at a rate designed to approximate the lender's cost of money. This interest rate will not exceed 300 basis points over comparable term United States Treasury securities for long-term debt and the effective cost of money on short-term debt securities will not exceed 300 basis points over the comparable term LIBOR rate.

Applicants state that CDG, CAG and the New Utility Subsidiaries may finance all or part of the construction using borrowings from the Money Pool. To facilitate these borrowings, Applicants request authorization for the New Utility Subsidiaries to participate in the Money Pool.[16] Aggregate Money Pool borrowings by CDG, CAG and the New Utility Subsidiaries, in combination with any debt or equity securities issued to their respective parents as described above, will not exceed $1 billion during the Authorization Period. Applicants further state that the Money Pool borrowings will be made under the same terms and conditions as borrowings by existing Money Pool participants.

Kansas City Power & Light Company, et al. (70–9861)

Great Plains Energy Incorporated (''GPE''), a newly formed Missouri holding company; Kansas City Power & Light Company (''KCPL''), an electric public utility company; Great Plains Power, Inc. (''GP Power''), KCPL's wholly owned nonutility subsidiary; KCPL Receivable Corporation (''KCPL Receivable''), KCPL's wholly owned special purpose entity all located at 1201 Walnut Street, Kansas City, Missouri 64106 and KLT Inc. (''KLT''), 10740 Nall Street, Suite 230, Overland Park, Kansas 66211, KCPL's wholly owned intermediate holding company (collectively, ''Applicants'') have filed an application-declaration under sections 6(a), 7, 9(a)(1), 10, 11(b)(1), 12(b), 12(c), 13(b), 32, and 33 of the Act and rules 45(b), 46, 52, 53, 54, and 80–92 under the Act.

Under a corporate reorganization (''Reorganization''), KCPL proposes to adopt a new corporate structure in which KCPL will become a wholly owned subsidiary of the newly formed Missouri holding company, GPE. Applicants state they are undertaking the Reorganization in response to the dramatic changes in the wholesale electric power market, the emergence of unregulated competitive generators, open access to the nation's transmission grid, and the appearance of competitive retail electricity markets in a significant percentage of the country. Upon completion of the Reorganization, GPE will register. In addition to the Reorganization, Applicants request post-Reorganization financing authority and request approval for other intrasystem transactions.

I. Description of the Applicants

A. KCPL

KCPL is an electric utility company engaged in the generation, transmission, distribution, and sale of electric energy in Missouri and Kansas. KCPL owns approximately 3,700 MW of generation and provides retail electric service to approximately 467,000 customers in Kansas and Missouri, serving retail customers in the region in and around the Kansas City metropolitan area. KCPL also engages in limited gas brokering activities.

KCPL is subject to the regulatory jurisdiction of the Missouri Public Service Commission (''MPSC'') and the Corporation Commission of the State of Kansas (''KCC'') with respect to its retail operations. KCPL also is subject to regulation of the Federal Energy Regulatory Commission (''FERC'') with respect to its wholesale and transmission-related operations and the Nuclear Regulatory Commission (''NRC'') with respect to licensing and operation of its nuclear generating units.

B. Nonutility Subsidiaries

KCPL wholly owns the following nonutility subsidiaries (''Nonutility Subsidiaries''): WYMO Fuels, Inc. (''WYMO''), a Missouri corporation that was established to acquire and develop coal properties in Wyoming, but is in the process of divesting its assets and will dissolve; Home Service Solutions, Inc. (''Home Services''), a Missouri corporation that is an intermediate holding company that owns a 100 percent interest in Worry Free Services, Inc. and a 49.4 percent interest in R.S. Andrews Enterprise, Inc.; KCPL Receivable, a Delaware corporation, that is a special purpose entity established to purchase customer accounts receivable from KCPL; GP Power, a recently created Missouri corporation which will hold interests in exempt wholesale generators (''EWGs''); and KLT, a Missouri corporation that is an intermediate holding company with the following subsidiaries: KLT Investments Inc.; invests, as a limited partner, in affordable housing partnerships; KLT Investments Inc. II, pursues passive investment in community, economic development and energy-related opportunities, KLT Energy Services, Inc., and its subsidiaries, which invest in companies that provide products and services to customers to control the amount, cost and quality of electricity to commercial and industrial customers, provide demand-side management services, power supply coordination (including purchasing electricity at wholesale for resale to end users), gas management, energy consulting, and generation optimization (such as scheduling and dispatching generation and wholesale marketing services); KLT Gas Inc., owns and operates interests in oil and gas producing properties; and

[14] In the GENCO Order, the Commission authorized Conectiv, Delmarva and ACE to form CDG and CAG in order to hold certain net generating and related assets of Delmarva and ACE.

[15] Under the GENCO Order, CEH is authorized to issue up to $750 million of equity or debt securities less any amount of debt issued by a CEH subsidiary directly to Conectiv, CDG is authorized to issue up to $150 million of equity or debt securities and ACE REIT and CAG each are authorized to issue up to $100 million of equity or debt securities. To consolidate all authorizations related to financing of or by subsidiaries under one file, Conectiv requests that increased authorizations be approved in this file and that the CEH, CDG, ACE REIT and CAG financing portion of the GENCO Order and the authorization for CEH, CDG, ACE REIT and CAG to participate in the Money Pool be deemed replaced by the order issued in this file.

[16] The Commission approved the participation in the Money Pool of CEH, ACE REIT, CDG and CAG in the GENCO Order.

KLT Telecom Inc., pursues investment opportunities in telecommunications and wireless technology and will qualify as an exempt telecommunications company (''ETC'') under section 34 of the Act. KLT also wholly-owns Energetechs, Inc., which is currently inactive.

Applicants request that the Commission find that the KCPL system constitutes an ''integrated'' electric utility system within the meaning of section 2(a)(29)(A) and that all of the direct and indirect Nonutility Subsidiaries are retainable under the standards of section 11(b)(1) of the Act. Applicants also request that investments in Nonutility Subsidiaries prior to the date of the Reorganization be disregarded for purposes of calculating the dollar limitation placed on GPE for investments under rule 58.

For the year ended December 31, 2000, KCPL had consolidated operating revenues of approximately $1.1 billion,[17] resulting in a net income of approximately $159 million. At December 31, 2000, KCPL had consolidated total assets of approximately $3.3 billion, including approximately 1,700 miles of transmission lines, approximately 8,900 miles of overhead distribution lines, and approximately 3,400 miles of underground distribution lines.

II. The Reorganization

GPE, the newly formed holding company, is authorized under its Articles of Incorporation to issue 150,000,000 shares of common stock, without par value (''Common Stock'') and 390,000 shares of cumulative preferred stock, $100 par value (''Preferred Stock''). Also, under the Articles of Incorporation, GPE is authorized to issue 1,572,000 shares of cumulative no par preferred stock without par value and 11,000,000 shares of preference stock without par value.

GPE will form another new Missouri subsidiary, KC Merger Sub Incorporated, (''NewCo''). KCPL will merge with and into NewCo, with KCPL as the surviving corporation, resulting in KCPL becoming a wholly owned subsidiary of GPE. KCPL will dividend to GPE two of KCPL's nonutility subsidiaries, KLT and GP Power, making both wholly owned subsidiaries of GPE. KCPL Receivable, WYMO, and Home Service will remain wholly owned subsidiaries of KCPL or become direct or indirect subsidiaries of GPE, unless they are disposed of or dissolved. Following the completion of the Reorganization, GPE will register as a public utility holding company under section 5 of the Act.

To effect the Reorganization approximately 62 million shares of GPE common stock and approximately 390,000 shares of GPE Preferred Stock will be issued in a one-to-one exchange of shares. As of December 31, 2000, no shares of cumulative no par preferred stock or preference stock were issued or outstanding. To the extent KCPL may issue these types of shares prior to the Reorganization, GPE requests authority to issue corresponding shares of no par preferred stock and preference stock as necessary to consummate the one-to-one exchange of shares.

Upon consummation of the share exchange, (A) all of KCPL's common shares will be held by GPE, (B) KCPL will have no preferred shares outstanding, (C) all of GPE's common shares will be held by the former KCPL common shareholders, and (D) all of GPE's preferred shares will be held by the former KCPL preferred shareholders (with the exception of the 4.00% cumulative preferred stock to be redeemed).

III. Post-Reorganization Financing

Applicants request authority to establish: (A) A program of external financing; (B) intrasystem credit support arrangements; (C) interest rate hedging measures; (D) and other intrasystem transactions. Applicants are requesting approval for each of the proposals through December 31, 2004 (the ''Authorization Period'').

A. External Financing

GPE proposes to issue and sell from time Common Stock and, directly or indirectly, short-term and long-term debt securities and other forms of preferred or equity-linked securities. In addition, as part of the one-to-one share exchange for the Reorganization, GPE also proposes to issue a limited amount of Preferred Stock upon consummation of the Reorganization. The aggregate amount of all securities issued by GPE during the Authorization Period will not exceed $450 million.

1. GPE's Issuance of Common Stock

GPE requests authority to issue Common Stock, either: (a) Through negotiation with underwriters, dealers, or agents; (b) effected through competitive bidding among underwriters; (c) through private placements or other non-public offerings to one or more persons; and (d) through its employee and director compensation plans.[18] If Common Stock is sold in an underwritten offering, GPE may grant the underwriters a ''green shoe'' option permitting the purchase from GPE, at the same price, additional shares offered solely for the purpose of covering over-allotments.

Also, as consideration for the purchase of equity securities or assets of other existing companies, GPE proposes to issue stock options, performance shares, stock appreciation rights (''SARs''), warrants, or other stock purchase rights that are exercisable for Common Stock and to issue Common Stock upon the exercise of options, SARs, warrants, or other stock purchase rights. Applicants further state that the acquisition of any equity securities or assets would be authorized in a separate proceeding or would be exempt under the Act or the rules. If this type of consideration is used, the market value of the Common Stock on the day before closing, as negotiated by the parties, will be counted against the proposed $450 million limitation on financing.

2. GPE's Issuance of Preferred Stock

GPE requests authorization to issue Preferred Stock, as necessary to accomplish the one-to-one exchange of shares for the Reorganization. The dividend rate on only series of Preferred Stock will not exceed at the time of issuance 500 basis points over the yield to maturity of a U.S. Treasury security having a remaining term equal to the term of such securities. Dividends or distributions on such Preferred Stock will be made periodically and to the extent funds are legally available for this purpose, but may be made subject to terms which allow the issuer to defer dividend payments for specified periods. Preferred Stock may be convertible or exchangeable into share of Common Stock.

3. GPE's and the Financing Subsidiaries' Issuance of Long-term Debt and Other Preferred or Equity-Linked Securities

GPE requests authorization to issue long-term debt, directly or indirectly, through one or more financing subsidiaries (''Financing Subsidiary'') and to issue indirectly, through one or more Financing Subsidiaries, other types of preferred or equity-linked securities (including, specifically, trust preferred securities).

Long-term debt of GPE may be in the form of unsecured notes (''Debentures'') issued in one or more series. The

[17] Approximately $952 million or 85% is derived from regulated sales of electricity and electric transmission service and $164 million or 15% is derived from activities of the Nonutility Subsidiaries.

[18] KCPL maintains the following employee and director stock plans (the ''Stock Plans''): The Dividend Reinvestment and Direct Stock Purchase Plan; The Employee Savings Plus Plan; and The Long-Term Incentive Plan.

Debentures of any series (a) may be convertible into any other securities of GPE, (b) will have a maturity ranging from one to 50 years, (c) will bear interest at a rate not to exceed 500 basis points over the yield to maturity of a U.S. Treasury security having a remaining term approximately equal to the term of these series of Debentures, (d) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above or discounts below the principal amount, (e) may be entitled to mandatory or optional sinking fund provisions, (f) may provide for reset of the coupon under a remarketing arrangement, and (g) may be called from existing investors or put to the company, or both. the Debentures will be issued under an indenture (''Indenture'') to be entered into between GPE and a national bank, as trustee. Also, GPE's long-term debt may be in the form of bank lines of credit. Loans under these bank lines will have maturities of not more than five years from the date of each borrowing and the effective cost of the loans will not exceed at the time of issuance 500 basis points above London Interbank Offered Rate (''LIBOR'').

GPE contemplates that the Debentures would be issued and sold directly to: (a) One or more purchasers in privately negotiated transactions; (b) one or more investment banking or underwriting firms or other entities that would resell the Debentures without registration under the 1933 Act, in reliance upon one or more applicable exemptions from registration; or (c) the public through underwriters. The maturity dates, interest rates, call and/or put options, redemption and sinking fund provisions and conversion features, if any, will be established by negotiation or competitive bidding and reflected in the applicable supplemental indenture, officer's certificate and purchase agreement, or underwriting agreement.

Preferred or equity-linked securities may be issued by one or more Financing Subsidiaries, in one or more series, and with rights, preferences, and priorities as may be designated in the instrument creating each series as determined by GPE's board of directors. The dividend rate on any series of preferred or equity-linked securities will not exceed at the time of issuance 500 basis points over the yield of maturity of a U.S. Treasury security having a remaining term equal to the term of these securities. Dividends of distribution on preferred or equity-linked securities will be made periodically and to the extent funds are legally available, but may be made subject to terms which allow the issuer to defer dividend payments for specified periods. Preferred or equity-linked securities may be convertible or exchangeable into shares of Common Stock.

GPE states that without further Commission authorization it will not issue any preferred or equity-linked securities or any Debentures that are not at the time of original issuance rated at least investment grade by a nationally recognized statistical rating organization.

4. GPE's, KCPL's, and the Nonutility Subsidiaries' Issuance of Short-term Debt

GPE may sell, directly or indirectly through one or more Financing Subsidiaries, commercial paper or establish bank lines of credit (''Short-term Debt'') to provide financing for general corporate purposes, other working capital requirements, and investments in new enterprises until long-term financing can be obtained. The effective cost of money on Short-term Debt authorized in this proceeding will not exceed at the time of issuance 500 basis points above LIBOR for maturities of one year or less.

GPE also proposes to establish, directly or indirectly, bank lines in an aggregate principal amount sufficient to support projected levels of short-term borrowings and to provide an alternative source of liquidity. Loans under these lines will have maturities not more than one year from the date of each borrowing. GPE also may engage, directly or indirectly, in other types of short-term financing generally available to borrowers with comparable credit ratings.

KCPL requests authorization to issue and sell from time to time during the Authorization Period notes and other evidence of indebtedness having a maturity of one year or less in an aggregate principal amount outstanding at any one time not to exceed $500 million. Short-term financing could include, without limitation, commercial paper sold in established domestic or European commercial paper markets in a manner similar to GPE, bank lines of credit, and other debt securities. The effective cost of money on short-term debt of KCPL authorized in this proceeding will not exceed at the time of issuance 500 basis points over LIBOR for maturities of one year or less.

Nonutility Subsidiaries will engage in financing transactions that are in almost all cases exempt from prior Commission authorization under rule 52(b), which requires that any loan by GPE to a Nonutility Subsidiary or by one Nonutility Subsidiary to another must have interest rates and maturities that are designed to parallel the lending company's effective cost of capital. Applicants also request authority to make loans to any associate company at interest rates and maturities designed to provide a return to the lending company of not less than its effective cost of capital, if the Nonutility Subsidiary making a borrowing is not wholly owned by GPE, directly or indirectly, and does not sell goods or services to KCPL.

B. GPE's and the Nonutility Subsidiaries' Guarantees and Other Forms of Credit Support

GPE proposes to enter into guarantees and other forms of credit support agreements on behalf of KCPL and the Nonutility Subsidiaries (collectively, ''Subsidiaries'') during the Authorization Period in an aggregate principal amount not to exceed $600 million outstanding at any one time. GPE requests authorization to enter into guarantees and capital maintenance agreements, obtain letters of credit, enter into expense agreements or otherwise provide credit support (collectively, ''GPE Guarantees'') on behalf or for the benefit of any Subsidiary in an aggregate principal amount not to exceed $600 million outstanding at any one time. GPE may guarantee both securities issued by and other contractual or legal obligations of any Subsidiary. GPE proposes to charge each Subsidiary a fee for each guarantee provided on its behalf that is determined by multiplying the amount of the GPE Guarantee provided by the cost of obtaining the liquidity necessary to perform the guarantee (*i.e.,* bank line commitment fees or letter of credit fees, plus other transactional expenses) for the period of time the guarantee remains outstanding.

Applicants request authority for Nonutility Subsidiaries to provide guarantees and other forms of credit support (''Nonutility Subsidiary Guarantees'') on behalf or for the benefit of other Nonutility Subsidiaries in an aggregate principal amount not to exceed $300 million outstanding at any one time. The Nonutility Subsidiary, which provides any credit support, may charge its associate company a fee for each guarantee provided on its behalf, to be determined by the same method used for GPE's Guarantees.

C. GPE and Subsidiary Hedging Transactions

GPE and the Subsidiaries request authorization to enter into interest rate hedging transactions with respect to existing indebtedness (''Interest Rate

Hedges''), subject to certain limitations and restrictions, in order to reduce or manage interest rate cost. Interest Rate Hedges will involve the use of financial instruments commonly used in today's capital markets, such as interest rate swaps, caps, collars, floors, and structured notes (*i.e.,* a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations.

D. Other Intrasystem Transactions and Organizational Changes

1. Changes in Capital Stock of Subsidiaries

Applicants state that the proposed sale of capital securities may in some cases exceed the then-authorized capital stock of a Subsidiary. A Subsidiary may choose to use capital stock with no par value or receive a capital contribution without issuing capital stock. Also, a wholly owned Subsidiary may engage in a reverse stock split to reduce franchise taxes. To accommodate the proposed transactions and to provide for future issues, Applicants request authority to change the terms of any wholly owned Subsidiary's authorized capital stock capitalization by an amount deemed appropriate by GPE or other intermediate parent company. A Subsidiary would be able to change the par value, or change between par value and no-par stock, without additional Commission approval. Applicants state that such action by a utility subsidiary would be subject to and would only be taken upon the receipt of any necessary approvals by the state commissions in the state or states in which the utility subsidiary is incorporated and doing business.

2. Financing Subsidiaries

GPE and the Subsidiaries request authority to acquire, directly or indirectly, the equity securities of one or more Financing Subsidiaries organized as corporations, trusts, partnerships or other entities created specifically for the purpose of facilitating the financing of the authorized and exempt activities (including exempt and authorized acquisitions) of GPE and the Subsidiaries through the issuance of long-term debt or equity securities, including but not limited to company-obligated mandatorily redeemable trust preferred securities, to third parties. Financing Subsidiaries would loan, dividend or otherwise transfer the proceeds of any financing to its parent or to other Subsidiaries provided, however, that a Financing Subsidiary of KCPL will dividend, loan or transfer proceeds of financing only to KCPL. The terms of any loan of the proceeds of any securities issued by a Financing Subsidiary to GPE would mirror the terms of those securities. GPE may, if required, guarantee or enter into expense agreements in respect to the obligations of any Financing Subsidiary that it organizes. The Subsidiaries also may provide guarantees and enter into expense agreements. If the direct parent company of a Financing Subsidiary is authorized in this proceeding or any subsequent proceeding to issue long-term debt or similar types of equity securities, then the amount of the securities issued by that Financing Subsidiary would count against the limitation applicable to its parent for those securities. However, the guaranty by the parent of that security issued by its Financing Subsidiary would not be counted against the limitations on GPE Guarantees or Subsidiary Guarantees. In other cases, in which the parent company is not authorized to issue similar types of securities, the amount of any guarantee not exempt that is entered into by the parent company with respect to securities issued by its Financing Subsidiary will be counted against the limitation on GPE Guarantees or Subsidiary Guarantees.

3. Intermediate Subsidiaries

GPE proposes to acquire, directly or indirectly through a Nonutility Subsidiary, the securities of one or more new subsidiary companies (''Intermediate Subsidiaries'') which may be organized exclusively for the purpose of acquiring, holding and/or financing the acquisition of the securities of or other interest in one or more EWGs, foreign utility companies (''FUCOs''), ETCs, rule 58 companies or other non-exempt Nonutility Subsidiaries.

An Intermediate Subsidiary may be organized: (a) To facilitate the making of bids or proposals to develop or acquire an interest in any exempt company, rule 58 company, or other non-exempt Nonutility Subsidiary; (b) to facilitate closing on the purpose or financing of the acquired company; (c) to effect an adjustment in the respective ownership interests in the business held by GPE and unaffiliated investors; (d) to facilitate the sale of ownership interest in one or more acquired nonutility companies; (e) to comply with applicable laws of foreign jurisdictions limiting or otherwise relating to the ownership of domestic companies by foreign nationals; (f) to limit GPE's exposure to U.S. and foreign taxes; (g) to further insulate GPE and KCPL from operational or other business risks that may be associated with investments in non-utility companies; or (h) for other lawful business purposes.

Investments in Intermediate Subsidiaries may take the form of any combination of the following: purchases of capital shares, partnership interests, member interests in limited liability companies, trust certificates or other forms of equity interests; capital contributions; open account advances with or without interest; loans; and guarantees issued, provided or arranged in respect of the securities or other obligations of any Intermediate Subsidiaries. Funds for any direct or indirect investment in any Intermediate Subsidiary will be derived from: (a) Financings authorized in this proceeding; (b) any appropriate future debt or equity securities issuance authorization obtained by GPE from the Commission; and (c) other available cash resources, including proceeds of securities sales by a Nonutility Subsidiary. To effect any consolidation or other reorganization, GPE seeks to either contribute the equity securities of one Nonutility Subsidiary to another Nonutility Subsidiary or sell (or cause a Nonutility Subsidiary to sell) the equity securities of one Nonutility Subsidiary to another Nonutility Subsidiary. These transactions may take the form of a Nonutility Subsidiary selling, contributing or transferring the equity securities of a subsidiary as a dividend to an Intermediate Subsidiary or the acquisition by Intermediate Subsidiaries, directly or indirectly, of the equity securities of companies, either by purchase or by receipt of a dividend. The purchasing Nonutility Subsidiary in any transaction structured as an intrasystem sale of equity securities may execute and deliver its promissory note evidencing all or a portion of the consideration given. Any transaction structured as a sale will be carried out for a consideration equal to the book value of the equity securities being sold.

GPE also requests authority for Intermediate Subsidiaries to provide management, administrative, project development and operating services to entities at fair market prices and requests an exemption (to the extent that Rule 90(d) does not apply) from the cost standards of section 13(b) and rules 90 and 91 under the Act in any case in which the Non-Utility Subsidiary purchasing such goods or services is:

(a) A FUCO and foreign EWG that derives no part of its income, directly or indirectly from the generation, transmission, or

distribution of electric energy for sale within the United States;

(b) An EWG that sells electricity at market-based rates which have been approved by the FERC, provided that the purchaser is not KCPL;

(c) A ''qualifying facility'' (''QF'') within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended (''PURPA'') that sells electricity exclusively (i) at rates negotiated at arms' length to one or more industrial, commercial customers purchasing the electricity for their own use and not for resale, and/or (ii) to an electric utility company at the purchaser's ''avoided cost'' as determined in accordance with the regulations under PURPA;

(d) A domestic EWG or QF that sells electricity at rates based upon its cost of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser is not KCPL; or

(e) A rule 58 subsidiary or any other Nonutility Subsidiary that (i) is partially-owned by GPE, provided that the ultimate purchaser of such goods or services is not KCPL (or any other entity that GPE may form whose activities and operations are primarily related to the provision of goods and services to KCPL), (ii) is engaged solely in the business of developing, owning, operating and/or providing services or goods to Nonutility Subsidiaries described in clauses (a) through (e) immediately above, or (iii) does not derive, directly or indirectly, any material part of its income from sources within the United States and is not a public-utility company operating within the United States.

4. Payment of Dividends out of Capital and Unearned Surplus

GPE proposes, on behalf of each of its current and future non-exempt Nonutility Subsidiaries, that the companies be permitted to pay dividends with respect to the securities of these companies, from time to time through the Authorization Period, out of capital and unearned surplus (including revaluation reserve), to the extent permitted under applicable corporate law. However, without further approval of the Commission, no non-exempt Nonutility Subsidiary will declare or pay any dividend out of capital or unearned surplus if the Nonutility Subsidiary derives any material part of its revenues from the sale of goods, services, electricity or natural gas to KCPL. GPE requests that the Commission reserve jurisdiction over dividends paid by any non-exempt Nonutility Subsidiary.

IV. Use of Proceeds

The proceeds from the post-Reorganization financings will be used for general corporate purposes, including: financing investments by and capital expenditures of GPE and its subsidiaries; funding of future investments in any EWG, FUCO, ETC, or energy-related or gas-related company within the meaning of rule 58; the repayment, redemption, refunding or purchase by GPE or any subsidiary of its own securities; financing working capital requirements of GPE and its subsidiaries; and for any other lawful corporate purposes. More specifically, the proceeds of the long-term debt or other preferred or equity-linked securities will enable GPE to reduce short-term debt with permanent capital and provide an important source of future financing for the operations of and investments in nonutility businesses exempt under the Act. Applicants represent that no financing proceeds will be used to acquire the securities of or other interest in any company unless the acquisition has been approved by the Commission in this proceeding, in a separate proceeding, or in accordance with an available exemption under the Act or rules, including sections 32 and 33 and rule 58. Also, proceeds of financings and guarantees utilized to fund investments in rule 58 companies will be subject to the limitations of that rule.

V. Leases and Service Arrangements

Finally, GPE requests authorization under section 9(a)(1) for KCPL and GPE to engage in certain leasing transactions and authorization under sections 12 and 13 for certain intrasystem transactions. KCPL currently leases certain utility assets for use in providing electric service within its service territory. Two of these leases are for transmission assets,[19] and one lease is for a combustion turbine.[20] KCPL also leases from nonaffiliates a number of railcars for the purpose of delivering fuel to KCPL's electric generating plants.

Also, KCPL holds contracts for delivery of five combustion turbines. Following the Reorganization, KCPL may transfer these contracts to GP Power, an EWG affiliate. In the alternative, KCPL may transfer these contracts to nonaffiliated parties that, in turn, would lease the delivered turbines to KCPL or GP Power for use in GP Power's EWGs.

KCPL has been providing administrative, management, technical, legal and other support services to its subsidiaries for some years, subject to regulation by the MPSC and KCC. KCPL intends to file with the Commission not later than October 1, 2001, an application/declaration seeking authority to create a service company and to implement the final support service structure for the GPE holding company system (''GPE System''). Until the application/declaration is made effective, Applicants request authorization under section 13(b) of the Act and rules for KCPL and the Nonutility Subsidiaries, after consummation of the Reorganization, to provide services on an interim basis, as well as sell goods, to each other and to GPE (as well as services and goods of a substantially similar nature). Applicants request that the provision of services of sale of goods may be on a basis other than ''cost,'' provided the pricing arrangements are consistent with applicable Missouri and Kansas statutes and regulations. KCPL request that the interim authority extend until December 31, 2001, at which time, KCPL intends to implement the final service company structure for the GPE System.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–12507 Filed 5–17–01; 8:45 am]

BILLING CODE 8010–01–M

[19] The first transmission line lease is with Kansas Gas and Electric Company, a wholly owned subsidiary of Western Resources, Inc., for the Wolf Creek/LaCygne transmission line under a tariff on file with the FERC. The second transmission line lease is with Associated Electric Cooperative, Inc. for KCPL's share of certain Joint Facilities, as defined in the Coordinating Agreement by and among Associated Electric Cooperative, Inc., Kansas City Power & Light Company, St. Joseph Light & Power Company, Nebraska Public Power District, Omaha Public Power District, City of Lincoln and Iowa Power Inc. for the Cooper-Fairport-St. Joseph 345 Kilovolt Interconnection.

[20] The combustion turbine lease is with First Security Bank, N.A. as Owner Trustee, which expires October 2001, unless extended by mutual agreement of KCPL and the lessor.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44304; File No. 4–444]

Roundtable on Portals

AGENCY: Securities and Exchange Commission

ACTION: Notice of roundtable meeting.

SUMMARY: On May 23, 2001, the Securities and Exchange Commission will host a roundtable to discuss issues related to relationships between Internet websites and financial service providers. Invitees include a cross section of individuals, including representatives from the financial industry, representatives of the Internet community, regulators, and academics.

The roundtable will take place at the Commission's William O. Douglas Room, Room 1C30, 450 Fifth Street, NW., Washington, DC, from 1 p.m. to

4:30 p.m. The public is invited to observe the roundtable discussions. Seating is available on a first-come first-serve basis. The schedule, agenda, and list of panelists for the roundtable will be posted on the Commission's Internet website (*http://www.sec.gov*).

FOR FURTHER INFORMATION CONTACT: Brian Bussey or Christine Richardson, Office of the Chairman, at (202) 942–0100.

Dated: May 14, 2001.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–12542 Filed 5–17–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44303; File No. SR–NASD–2001–30]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Establishing the Fee Schedule for the Nasdaq ReSource℠ Service

May 14, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 8, 2001, the National Association of Securities Dealers, Inc. (''NASD'') through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Act, and Rule 19b–4 thereunder, Nasdaq is herewith filing a proposed rule change of the NASD to establish the fee schedule Nasdaq's new ReSource℠ Service (''Service''). The Service is voluntary and is designed to assist NASD members in complying with Rule 11Ac1–5 under the Act. Below is the text of the proposed rule change; proposed additions are italicized.

* * * * *

7000. Charges for Services or Equipment

7010. System Services

(a)–(p) No Changes

(q) Nasdaq ReSource℠ Service

(1)(A) Subscribers to the Nasdaq ReSource℠ shall be charged an Activation Fee and an Annual Subscription Fee, both of which generally will vary depending upon a subscriber's trading volume, as measured in accordance with paragraphs (B) through (D) below, and corresponding tier classification as follows:

Tier	Average monthly trade volume
1	500,000 or greater.
2	100,000–499,999
3	10,000–99,999
4	5,000–9,999
5	1,000–4,999
6	500–999
7	0–499

(B) During the first year of the ReSource℠ Service (i.e., August 2001 through July 2002) Nasdaq will assign subscribers to one of the tiers listed in paragraph (A) above based on their average monthly trading volume reported to the tape, for the period from September 1, 2000, through February 28, 2001, in Nasdaq National Market securities for which the subscriber is registered as a market maker.

(C) Members that subscribe to the ReSource℠ Service other than at the beginning of a ''Subscription Year,'' as the term is defined below, will be assigned to one of the tiers listed in paragraph (A) above based on their average monthly trading volume reported to the tape, during the six month period preceding the date of their subscription, in Nasdaq National Market securities for which the subscriber is registered as a market maker.

(D) Beginning in July of 2002, and on an annual basis thereafter, Nasdaq will review each subscriber's average monthly trading volume and assign the subscriber to one of the tiers listed in paragraph (A) above based on their average monthly trading volume reported to the tape, during the preceding six month period, in Nasdaq National Market securities for which the subscriber is registered as a market maker.

(2)(A) Activation Fees and Annual Subscription Fees shall be as follows:

Tier	Activation fee	Annual subscription fee
1	$3,000	$35,000
2	3,000	30,000
3	2,000	20,000
4	1,000	10,000
5	1,000	7,500
6	1,000	5,000
7	1,000	2,500

(B) The Activation Fee shall be billed after execution of the Addendum to Nasdaq Workstation II Subscriber Agreement for Nasdaq ReSource℠ (''Agreement'').

(C) The Annual Subscription Fee shall be charged after execution of the Agreement, and at the beginning of each Subscription Year thereafter. A ''Subscription Year'' shall mean a 12-month period from August 1st to July 31st. The Annual Subscription Fee will be pro-rated on a monthly basis for those firms that subscribe to the Service other than at the beginning of a Subscription Year. Nasdaq will offer no refunds of the Annual Subscription Fee.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 2, 2001, the Commission approved the Nasdaq Resource ℠ Service, [3] which is designed to assist NASD members in complying with certain of their obligations pursuant to Rule 11Ac1–5 [4] (the ''Rule'') under the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 44246 (May 2, 2001), 66 FR 23289.

[4] 17 CFR 240.11Ac1–5.

[5] The Rule defines ''covered order'' as any market order or any limit order (including immediate-or-cancel orders) received by a market center during regular trading hours at a time when a consolidated best bid and offer is being disseminated, and, if executed, is executed during regular trading hours. Excluded from the definition of ''covered order'' is any order for which the customer requests special handling for execution, including, but not limited to, orders to be executed at a market opening or closing price, orders submitted with stop prices, orders to be executed only at their full size, orders

Act. Generally, the Rule seeks to improve the ability of public investors to evaluate how their orders are handled after being submitted to a broker-dealer for execution. The Rule requires ''market centers'' that trade national market system securities to prepare and make publicly available standardized, monthly reports containing statistical information concerning the handling and execution of their ''covered orders.''[5] A ''market center'' under the Rule is defined as ''any exchange market maker, OTC market maker, alternative trading system, national securities exchange, or national securities association.''[6] To facilitate cross-market comparisons, the Rule establishes and defines uniform measures of execution quality, including effective spread, rate of price improvement and disimprovement, fill rate, and execution speed.

Nasdaq's new voluntary service—Nasdaq ReSource SM—assists NASD member market centers in meeting their reporting obligations under Rule 11Ac1–5. For members that subscribe to the Service, Nasdaq will collect, compile, and web-host the reports required by the Rule. These reports will be referred to as Execution Quality Reports (''XQ Reports''SM) and will be available on a free, publicly accessible web site. Through certain existing systems, Nasdaq already can capture a portion of the data required to complete XQ Reports. In order to ensure complete XQ Reports, however, firms will be required to submit to Nasdaq additional data for certain categories of orders. Member firms will be required to provide an electronic file containing execution and cancellation information for orders routed to Nasdaq execution systems, orders routed to ECNs, orders routed to non-NASD members, and certain orders executed as riskless principal, depending upon which method the subscriber chooses to report riskless principal transactions.[7]

Generally, Nasdaq proposes a tiered fee structure for the ReSource SM Service that is based on a subscriber's average monthly trading volume reported to the tape, over a certain specified number of months, in Nasdaq National Market securities for which the subscriber is registered as a market maker. Firms that generate higher trading volume will be charged a proportionately higher fee to account for the greater computer system and Nasdaq staff resources needed to provide the Service to these firms. The seven different fee levels, or tiers, will be based on monthly trading volume averaged over a six-month period. The six-month period is designed to account for seasonal fluctuations in trading volume and significant business changes. The proposed tier structure is as follows:

Tier	Average monthly trade volume
1	500,000 or greater.
2	100,000–499,999
3	10,000–99,999
4	5,000–9,999
5	1,000–4,999
6	500–999
7	0–499

For the first year that Nasdaq offers the ReSource SM Service (*i.e.,* August 2000[8] through July 2002), Nasdaq will assign subscribers to one of the above tiers based on their average monthly trading volume reported to the tape, for the period from September 1, 2000, through February 28, 2001, in Nasdaq National Market securities for which they are registered as market makers. For members that subscribe other than at the beginning of a Subscription Year, as that term is defined in the fee schedule and described below, Nasdaq will place the subscriber in the appropriate tier based on the subscriber's average monthly trading volume during the six month period preceding the subscription date. Beginning with the first anniversary of the Service in July of 2002, and on an annual basis thereafter, Nasdaq will conduct a review of each subscriber's average monthly trading volume during the preceding six-month period, and will assign the applicant to the appropriate corresponding tier.

Fees for the ReSource SM Service will include an initial, one-time setup fee (''Activation Fee'') and an Annual Subscription Fee, both of which generally will vary depending upon the firm's trading volume and corresponding tier classification. The Activation Fee is related to the costs associated with assisting member firms in establishing the proper hardware and software configuration necessary to submit data to Nasdaq, establishing the necessary data feeds, and testing with Nasdaq. The Activation Fee will be billed upon receipt of an executed Addendum to Nasdaq Workstation II Subscriber Agreement for Nasdaq ReSource SM (''Agreement'').

The Annual Subscription Fee is related to the on-going costs associated with compiling, calculating, and web-hosting the statistical data required by Rule 11Ac1–5. Member firms will be billed for the Annual Subscription Fee after submitting the executed Agreement, and thereafter at the beginning of each Subscription Year (*i.e.,* the 12-month period from August 1st to July 31st). The Annual Subscription Fee will be pro-rated on a monthly basis for those firms that subscribe to the Service other than at the beginning of a Subscription Year. Nasdaq will offer no refunds of the Annual Subscription Fee.

The proposed Activation Fees and Annual Subscription Fees are as follows:

Tier	Activation fee	Annual subscription fee
1	$3,000	$35,000
2	3,000	30,000
3	2,000	20,000
4	1,000	10,000
5	1,000	7,500
6	1,000	5,000
7	1,000	2,500

2. Statutory Basis

Nasdaq believes that the proposed rule changes are consistent with Section 15A(b)(5) of the Act,[9] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Nasdaq represents that the proposed fee schedule complies with this statutory standard because Nasdaq will charge every member in a particular category or tier an amount that is related to the resources expended to provide the ReSource SM Service to such member. For instance, the computer system and staff resources required to provide the Service to a market center member with relatively high average monthly trading

[5] The Rule defines ''covered order'' as any market order or any limit order (including immediate-or-cancel orders) received by a market center during regular trading hours at a time when a consolidated best bid and offer is being disseminated, and, if executed, is executed during regular trading hours. Excluded from the definition of ''covered order'' is any order for which the customer requests special handling for execution, including, but not limited to, orders to be executed at a market opening or closing price, orders submitted with stop prices, orders to be executed only at their full size, orders to be executed on a particular type of tick or bid, orders submitted on a ''not held'' basis, orders for other than regular settlement, and orders to be executed at prices unrelated to the market price at the time of execution. 17 CFR 240.11Ac1–5(a)(8).

[6] 17 CFR 240.11Ac1–5(a)(14).

[7] *See* NASD Rule 4632(d)(B) and NASD Notice to Members 00–79.

[8] The initial compliance date for the reporting of listed securities under Rule 11Ac1–5 was May 1, 2001. The Commission has temporarily exempted (until July 31, 2001) all orders in Nasdaq securities. Letter from Annette L. Nazareth, Director, Division of Market Regulation, SEC, to Stuart J. Kaswell, Senior Vice President and General Counsel, Securities Indsutry Association, dated April 12, 2001.

[9] 15 U.S.C. 78*o*–3(b)(5).

volume is greater than that required for a member with relatively low average monthly trading volume.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[10] and Rule 19b–4(f)(2) thereunder,[11] in that it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2001–30 and should be submitted by June 8, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–12545 Filed 5–17–01; 8:45 am]

BILLING CODE 8010–01–M

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFT 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44296; File No. SR–NYSE–2001–09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Increase the Fee for Administering the Compliance Official Qualification Examination (''Series 14'')

May 11, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 3, 2001, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission''), the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks to increase the fee charged by the NYSE for the Compliance Official Qualification Examination (''Series 14 Examination'') from $200 to $300.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 342 (''Offices—Approval, Supervision and Control'') requires each member and member organization to designate a person to direct-to-day compliance activity. Such persons, as well as those compliance supervisors who direct ten or more persons engaged in compliance activity, must have overall knowledge of securities laws and Exchange rules and must pass the Series 14 Examination that was initially implemented in September 1989.

The fee for the Series 14 Examination has been $200 since its inception in 1989. The Exchange now seeks to increase the fee to $300. The fee increase will defray expenses incurred in developing, updating, and administering the Series 14 Examination.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[3] in that the proposed rule change is designed to provide for the equitable allocation of reasonable dues, fees and other charges among the Exchange members, issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[4] and subparagraph (f) of Rule 19b–4 thereunder.[5] Accordingly, the proposed rule change has become effective upon filing. At any time within 60 days of the filing of such proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b)(4).

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f).

rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the File Number SR–NYSE–2001–09 and should be submitted by June 8, 2001.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–12544 Filed 5–17–01; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.3–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44292; File No. SR–Phlx–2001–49]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Adopting a Monthly Credit of up to $1,000 to Qualified Members for an Aggregate Period of 36 Months

May 11, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 24, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 under the Act, proposes to adopt for an aggregate period of 36 months (''permanently adopt'')[3] its current pilot program that allows a monthly credit of up to $1,000 to be applied against fees, dues, charges and other amounts as may from time to time be owed to the Exchange that month (collectively referred to as ''credit-eligible fees'')[4], except fines, late fees, out-of-pocket expenses,[5] pass-through costs,[6] capital funding fees,[7] payment for order flow fees,[8] any fees paid by equity trading permit holders respecting any trading permits the Exchange may issue, the fee for electronic communications networks,[9] and the fee for the print subscription of the Phlx Guide[10] by members who own the membership by which they are a member (''member-owners'') and certain other categories of members described below. The Exchange's current pilot program[11] is in effect through May 16, 2001.

In addition to member-owners, a monthly credit of up to $1,000 may be applied against credit-eligible fees incurred by the following persons, who are so closely connected to the owners that the Exchange believes they should be treated as member-owners: (1) all members who are parties to an A–B–C Agreement[12] with a member organization who owns that membership; or (2) all members who are lessees if: (a) the member is also an owner of a different membership; (b) the member is an immediate family member of the owner of that membership;[13] (c) the member is associated with a member organization in which the owner of that membership has an interest of at least ten percent; (d) the member leases from an owner or a related entity of the owner who provides order flow to the Exchange through the member or member organization consisting of at least 5,000 equity trades over the preceding twelve months or 50,000 option contracts over the preceding twelve months; or (e) the member leases from a clearing firm or a related entity of the clearing firm that provides clearing services to the leasing member. The aforementioned categories

[3] This total period of 36 months includes the time period that the previous pilot programs were in effect. The first pilot program became effective upon filing on May 16, 2000 and lasted six months, expiring on November 16, 2000. *See* Securities Exchange Act Release No. 42791 (May 16, 2000), 65 FR 33606 (May 24, 2000) (SR–Phix–00–44). The pilot program was then extended for an additional six-month period through May 16, 2001. *See* Securities Exchange Act Release No. 43567 (November 15, 2000), 65 FR 71187 (November 29, 2000) (SR–Phlx–00–100). Therefore, the credit program will be in effect from May 16, 2000 until May 16, 2003.

[4] The credit-eligible fees are fees assessed on members and include transaction as well as trading floor fees. Transaction fees include equity transaction value charges, equity floor brokerage transaction fees, option comparison charges and option transaction charges. Trading floor fees include charges for trading post/booth, controller space, shelf space, transmission, execution/communication charge and floor facility fees. Fees assessed on foreign currency options participants are not considered credit-eligible fees.

[5] Out-of-pocket expenses include charges for wireless telephone services, postage, ILX machines and Dow Jones News Service.

[6] Pass-through costs include charges for member health insurance and parcel delivery services.

[7] Capital funding fees are those fees assessed on owners to provide for funding for technological improvements and other capital needs. On June 29, 2000, the Commission permanently approved the capital funding fee. *See* Securities Exchange Act Release No. 4 2993 (June 29, 2000) 65 FR 42415 (July 10, 2000) (SR–Phlx–99–510.

[8] Payment for order flow fees are those fees imposed on transactions by Phlx specialists and Registered Options Traders in the Top 120 Options on the Phlx. *See* Securities Exchange Act Release Nos. 43177 (August 18, 2000), 65 FR 51889 (August 25, 2000) (SR–Phlx–00–77); 43480 (October 25, 2000), 65 FR 66275 (November 3, 2000) (SR–Phlx–00–86 and SR–Phlx–00–87); 43481 (October 25, 2000), 65 FR 66277 (November 3, 2000) (SR–Phlx–00–88 and SR–Phlx–00–89); and 44237 (April 30, 2001) (SR–Phlx–01–43).

[9] An ECN fee is currently a $2,500 monthly fee, imposed on a one-year pilot basis, for ECNs that are member organizations and send order flow to the Exchange's equity trading floor. *See* Securities Exchange Act Release No. 44155 (April 5, 2001), 66 FR 19274 (April 13, 2001) (SR–Phlx–01–09).

[10] *See* Securities Exchange Act Release No. 44198 (April 18, 2001), 66 FR 21035 (April 26, 2001) SR–Phlx–2001–47).

[11] *See* Securities Exchange Act Release No. 43567 (November 15, 2000), 65 FR 71187 (November 29, 2000) (SR–Phlx–00–100). This credit is part of the Exchange's long-term financing plan, which separately includes a $1,500 capital funding fee. *See supra* note 7. The Exchange reserves the right to suspend the credit at any time.

[12] Pursuant to Phlx Rule 940, the parties to an A–B–C Agreement are an employee, general partner, or officer and the member organization with which such person is associated. The member organization provides all or part of the funds for the purchase of a membership of which the legal title is placed in the member and the equitable title is placed in the member organization.

[13] Immediate family member is defined as a member's spouse, parents, stepmother, stepfather, mother-in-law, father-in-law, brothers, sons-in-law, brothers-in-law, stepbrothers, sisters, daughters-in law, sisters-in-law, stepsisters, children, stepchildren or any other person living with the member for whom the member provides at least 50 percent of his/her financial support per year.

(including member-owners) are hereinafter referred to as ''qualified members.''

Specifically, the amount of credit-eligible fees owed to the Exchange shall be reduced on a monthly basis by an amount equal to: (1) $1,000 per month if such fees, dues, charges and other amounts are equal to or greater than $1,000, or (2) the amount of such fees, dues charges and other amounts if such fees, dues, charges and other amounts are less than $1,000.[14] Credits may not be carried over from one month to the next and only one credit of up to $1,000 is available per membership per month.

Credits cannot be shared among members, except qualified member(s) in the same member organization may aggregate their credit(s). The monthly credit of up to $1,000 will be applied against the invoice of the member or member organization with which the member is associated. However, in no event shall the aggregated credit(s) exceed $1,000 per membership per month.

Initially, any request to receive the credit was application driven, with each applicant submitting an Exchange form delineating the credit-eligible fees for that calendar month. To reduce the burden on members, the Exchange may now include the amount of the credit directly on a member's invoice, once it has been established that the member is eligible for the credit, in lieu of the member completing a credit form each month.[15] A member's eligibility shall be determined by the opening of trading on the first business day of each month. The Exchange reserves the rights to suspend the credit at any time.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exhange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

1. Purpose

a. *Introduction.* The purpose of the proposed rule change is to amend the Exchange's schedule of fees, dues, and charges to allow for a monthly credit of up to $1,000 to be applied against certain fees, dues, charges and other amounts, as defined above, owed to the Exchange by a qualified member of the Exchange.

As more fully explained below, the Exchange believes that the proposed credit should provide qualified members with additional liquidity and an incentive for seat owners to trade on the Exchange. In turn, the Exchange believes that this will introduce additional liquidity into the marketplace to the benefit of the investing public.

The Exchange believes that leasing of memberships by passive holders of equitable title to leasees who trade on the Exchange (*e.g.,* members) does not necessarily promote the long-term interests of the Exchange. Although the practice of leasing by financial investors to members is permitted by the rules of the Exchange, and may provide an important means by which members can access trading rights on the Exchange, the Exchange believes that lessors who are passsive finanical investors have a limited stake and interest in the liquidity, technology or operations of the Exchange.

Moreover, such lessors have limited practical ability to influence the affairs of the Exchange, because practically all voting rights are vested in ''members'' under Phlx's Certificate of Incorporation and By-Laws.[16]

The Exchange also believes that members who acquire membership and access trading on the Exchange by means of a lease may in many cases have a very limited stake in the well-being and survival of the Exchange. Although such members may have voting rights, they have no capital investment in their membership, and, because leases typically may be terminated on 30 days notice,[17] they do not necessarily have the incentive to act in the long-term best interests of the Exchange.

Specifically, by terminating a lease with 30 days notice, lessees who do not have ''other'' business interests or relationships with the Exchange beyond the mere existence of a lease (such as those relationships enumerated in part b. below) may, and often do, leave the Exchange to trade on another exchange, perhaps seeking to trade a certain ''hot'' option or other product. Thus, their potential commitment to the Exchange's long-term well-being and survival is undercut by their easy ability to pursue business endeavors that further their own well-being. Further, although member-lessees may be appointed to certain Exchange committees and sub-committees, their motivation to devote the time to such service may be less, as is their incentive to make decisions focused on the long-term. Both daily and longer term, strategic decision-making could thus be affected.

This short-term commitment may also bear on the quality and quantity of liquidity provide don the Exchange. Building order flow commitments with order flow providers is a long-term endeavor, often requiring regular performance, evaluation, and most importantly, a relationship with the trading crowd providing liquidity. Thus, familiarity and consistency of crowd participation are an important marketing mechanism to order flow providers. Providing liquidity also involves a longer-term view of sacrificing profit today for continued order flow, as well as acknowledging that not every order is a profitable one, but continuous order flow, spawned by ample liquidity, should, over time, provide more opportunity for additional order flow.

Lessees that do not have other business interests or relationships (such as those referred to in part b. below) may also have a limited stake in the technology of the Exchange, including participation in and good use of technology, nor would they necessarily have an incentive to invest in the longer-term development of that technology. Such investment is not only financial, but also strategic. Such lessees may also have a limited stake in the operations of the Exchange, including the continued long-term refinement and upgrading of facilities, other equipment and the pricing of such operations. In sum, lessees, absent other factors tying them to the Exchange, may be less vested in the long-term success of the

[14] For example, if a member has $1,500 in credit-eligible fees for the month, such member is entitled to the full $1,000 credit. However, if the member has $600 in credit-eligible fees for the month, such member is entitled to a $600 credit.

[15] The Exchange believes, at this time placing the amount of credit on a member's invoice should reduce the burdens associated with completing the credit form each month. However, the Exchange may revert to the credit form application process at a later date if it is determined that credits are more efficiently processed that way. If any changes are made to the credit form process, members wil be given updated instructions as to how to apply for the credit.

[16] A lessor is entitled to vote in any decision relating to a compromise or arrangement between the Phlx and its creditors or its members, or relating to a reorganization of the Phlx. *See e.g.* Article Thirteenth of the Exchange's Certificate of Incorporation and Phlx By-Law Art. XII, Section 12–6.

[17] *See* Phlx Rule 930(b).

Exchange, in terms of a lesser inventive to create liquidity,invest in technology and be active in strategic and daily decision-making.

In contrast, the Exchange is of the view that members who *own* their own memberships (and their functional equivalents, such as members who lease their memberships from close family members), and members who have certain other business or financial relationships with owners who are active on the Exchange (*e.g.,* members who are associated with member organizations and hold their memberships pursuant to ''A–B–C Agreements'') have a combination of financial incentives and voting rights (in some cases, indirectly via the owners with whom they are closely related or associated) to create liquidity on the Exchange, to invest in systems and compliance infrastructure, to be active in and informed about the decision-making processes of the Exchange, and otherwise to act in the Exchange's long-term best interests. By providing the credit described in this filing to these groups of members, the Exchange expects to create economic incentives for owners to trade on the Exchange by actively using their memberships (or selling them to persons who would do so) and for members to organize their affairs in ways that, in the Exchange's view, properly align the interests of the members with the long-term interests of the Exchange. The Exchange also believes that the credit should help retain or create liquidity on the Exchange by freeing up funds that member-owners or their functional equivalents may otherwise be expending on credit-eligible fees.[18]

Although the credit described in this filing is available to some Exchange members and not others, it meets the criteria set forth in Sections 6(b)(4)[19] and 6(b)(5)[20] of the Act because it: (i) provides for ''* * * the equitable allocation of dues, fees and other charges among its members * * * and other persons using its facilities;'' and (ii) is not designed ''* * * to permit unfair discrimination between customers, issuers, brokers or dealers.'' Although the Exchange is not aware of precedent sin which other exchanges have established fee or credit programs based upon ownership of seats or the connection between lessees and their lessors, as the Phlx proposes to adopt in this filing, the Commission has approved many exchange fee and credit arrangements that do not treat all members (or other persons covered by Sections 6(b)(4)[21] and (5))[22] equally, such as credits and discounts based on transaction volume, fees based upon the usage by certain members of equipment or other services or resources of an exchange, and fee structures that distinguish among the various activities of persons and firms (*e.g.,* specialists versus floor brokers, or specialists versus market makers). As with the credit, such measures are designed to promote and encourage certain behaviors and/or discourage others. The Exchange believes that this is an appropriate, nondiscriminatory business strategy.

As more fully articulated below, the Exchange believes that the credit is equitably distributed and not unfairly discriminatory, because it is based on legitimate, reasonable business interests of the Exchange, and is reasonably designed to further those interests. Moreover, it does not unfairly single out individuals or groups for personal or political reasons. To the contrary, any member may become eligible for the credit by changing the way in which such member finances his or her access to the Exchange by purchasing the membership or by changing the member's lease arrangement.

b. *More Detailed Rationale Specifically Applied to the Various Eligibility Criteria.* i. *Member-Owners.* In many areas of economic life, businesses and governments establish incentives to encourage behavior that is deemed desirable. In the case of exchanges, volume discounts and credits encourage members to direct transaction volume and trading activity to the exchange; other fee structures are designed to deter excessive usage of exchange resources or to cause scarce resources to be allocated more efficiently (*e.g.,* equipment service fees or fees relating to use of post/booth space on the floor).[23] The Exchange, as a matter of policy, believes that owner-membership or its functional equivalents as described above, should be encouraged because:

(A) Unlike passive, financial investors, owner-members risk their capital by their trading and other activities on the floor, thereby (in many cases) creating liquidity in our market and generating revenues for the Exchange, both directly through transaction-based revenues, and indirectly, by generating activity that results in tape revenues, such as under the Consolidated Tape Association (''CTA'') and Options Price Reporting Authority (''OPRA'') plans.[24]

Seat ownership is one aspect of Exchange ''investment'' and the actual use of that membership by the qualified member is a different form. Member-owners or their functional equivalents, have *additional* operational and market risks. for example, a qualified member who is also a specialist or market maker may have additional risks related to fluctuations in the securities market and order-processing errors in addition to market risks associated with seat ownership. Similarly, a qualified member who is also a specialist may have risks (in addition to seat risk) associated with the specialists' obligation to promote a fair and orderly market and, particularly, maintain the limit order book. Furthermore, in addition to any fees assessed on owners, qualified members also contribute to the Exchange by paying transaction fees, such as equity transaction value charges, equity floor brokerage transaction fees, option comparison charges and option transaction charges, and trading floor fees, such as trading post/booth, controller space, shelf space, transmission, execution/communication charges and floor facility fees.

(B) Unlike members who lease their seats under typical lease arrangements that may be cancelled on 30 days' notice, member-owners have a

[18] The Exchange notes that, as part of its overall strategic financing plan, contemporaneously with the implementation of the credit described in this filing, it separately instituted a $1,500 monthly capital funding fee upon all ''owners,'' regardless of their level of activity (if any) on the Exchange. *See supra* note 7. Although the credit is not available to offset all or any portion of the capital funding fee, the credit will enable member-owners and others eligible for the credit to defray a portion of the transaction and other fees charged by the Exchange (that, in general, result from member activity on the Exchange), thereby effectively reducing, for member-owners and other eligible members the cost of trading on the Exchange. Therefore, the credit may also have the indirect effect of blunting the incremental economic burden of the capital funding fee for owners who are active and, directly or indirectly, trading on (or otherwise providing certain economic benefits to) the Exchange. In addition, the credit frees up funds for trading activity on the Exchange that would otherwise be used for the payment of credit-eligible Exchange fees.

[19] 15 U.S.C. 78f(b)(4).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78f(b)(4).

[22] 15 U.S.C. 78f(b)(5).

[23] *See e.g.,* Securities Exchange Act Release Nos. 41748 (August 16, 1999), 64 FR 46218 (August 24, 1999) (SR–CBOE–99–34); 40496 (September 29, 1998), 63 FR 54175 (October 8, 1998) (SR–PCX–98–42); and 41108 (February 25, 1999), 64 FR 10516 (March 4, 1999) (SR–BSE–99–2).

[24] The CTA Plan and the OPRA Plan are approved by the Commission as national market system plans under Exchange Act Rule 11Aa3–2, 17 CFR 240.11Aa3–2, governing the dissemination of market information for certain equity securities and options, respectively; these plans govern both the fees that can be charged for such information as well as the distribution of revenues derived from those fees among participants in these plans, including the Exchange.

significant capital investment at risk; and

(C) Unlike owners that are not members, member-owners may have voting rights under the Exchange's by-laws, and may participate on certain Exchange committees.[25]

Because of their dual interest in preserving and increasing the value of their memberships, and in the technological, operational, and regulatory infrastructure that affects the present and future conditions of transacting business on or at the Exchange, the Exchange believes that member-owners have powerful incentives to create liquidity on the Exchange, and to participate responsibility in the business life of the Exchange through the exercise of voting rights, and through service on the Board and certain Exchange committees. The concept (and the underlying policy) of making the credit available to member-owners is not unlike that of the federal government in providing tax incentives to homeowners that are not available to renters. The long-term capital stake of the homeowner in his or her property promotes various behaviors that have social utility in that it fosters community-oriented behavior, and increases the prospect that the homeowner will make further socially useful investments in the property and in the neighborhood.

The Exchange believes that similar principles are involved in this proposed rule change. The ability to lease memberships has been available for many years. Over time, the equitable ownership of memberships by passive financial investors has become a very pervasive phenomenon at the Exchange, with 326 of the Exchange's 505 memberships being owned by such financial investors.[26] Of those memberships owned by passive financial investors, approximately 13 memberships are currently dormant (neither used for active trading nor leased).[27] Although the Exchange believes that leasing of memberships has a legitimate role in providing members a means of accessing trading rights on the Exchange, it also believes that the extent to which long-term capital investment is currently divorced from voting rights and trading interest is not healthy insofar as it relates to the long-term viability of the institution and its membership as a whole. The credit should create an incentive for owners to actively use their trading rights through membership and for members to reconsider the manner in which they finance their access to the Exchange. Furthermore, the Exchange believes that the credit will free up funds for those owners who are most likely to put their capital to work by trading and creating liquidity on the floor. The credit may also effectively (but indirectly) lessen the overall impact of the capital funding fee on those owners who are trading at the Exchange and (because the credit may be applied against transactional fees) create further incentives to trade.

The Exchange notes that no member may claim that his or her lack of eligibility for the credit is unfair or discriminatory. Any member may obtain eligibility for the credit by changing his or her method of financing their access to the Exchange—*e.g.*, by purchasing their membership and (if they choose) borrowing from third-party lenders to effect that purchase. Any owner may obtain eligibility for the credit by, for instance, becoming an Exchange member (if they qualify for this and subject to the procedures set forth in the Exchange's rules).

ii. *Members/Member Organizations with A–B–C Agreements.* By definition, with respect to A–B–C Agreements, there is a very close nexus between a member and the member organization with whom the member is associated; in general, the member is an employee of the member organization. This close connection is reflected in the fact that the member organization provides all or part of the funds for the purchase of the membership of which the legal title is placed in the member, while the equitable title remains with the member organization.[28] In addition, the Exchange's By-Laws state, in part, that ''[a]n A–B–C Agreement is a contract between the member and member organization with which the member is associated in which a portion of the risk of fluctuations in the value of the membership shall rest with the member organization rather than with the member.''

Pursuant to the A–B–C Agreement, the member contributes the use of the membership to the member organization and subjects the membership to the claims of the creditors of the member organization. Moreover, the member organization pays the dues, fees and other charges on behalf of the member. Thus, given this unique business relationship, owners who are member organizations have significant capital investment at risk and have a long-term interest in preserving and increasing the value of their membership, much like member-owners. For this reason, the Exchange is providing the credit to members who are parties to an A–B–C Agreement with a member organization who owns that membership.[29]

iii. *Lessees.* As stated previously, although leasing arrangements are permitted, lessees, other than five types of qualifying members discussed in detail below (''non-qualifying lessees''), may have a limited stake in the long-term well-being of the Exchange. In fact, non-qualifying lessees may lack the incentive to engage in certain types of behavior that promote the long-term best interests of the Exchange, including providing liquidity and investing in technology enhancements. Specifically, non-qualifying lessees who do not put their own (or a member with whom they have a close nexus) capital at risk with respect to a membership may provide liquidity or order flow with less of a long-term view and more of a focus on their current market risk only. This view may be at odds with behavior needed to address long-term Exchange needs. These non-qualifying lessees who do not have the types of additional connections to owners on the Exchange described below, may only have the incentive to participate in a self-focused way for their short-term benefit. If the credit were made available to all lessees, it would not serve its purpose as an inducement to promote owner-membership or other relationships to the Exchange that the Exchange believes are the most conducive to its continued health and success. Therefore, the Exchange is not making the credit available to all lessees. However, the Exchange is seeking to provide the credit to those qualified members whose relationship with the owners from whom they lease their seats is such that the Exchange believes they (either individually or indirectly when viewed in conjunction with their owners) have incentives properly aligned with the long-term interests of the Exchange.

(A) *Members Who Are Lessees But Who Are Owners of Different Memberships.* Members who are lessees but who also are owners of a different membership should be accorded the same treatment as the traditional member-owners who were previously discussed. These members, who are also owners, have an interest in preserving and increasing the value of their membership as well as an interest in preserving and increasing the standard of technology and the operational and regulatory infrastructure that affects the present and future conditions of

[25] *See supra* note 16.

[26] As of March 31, 2001, 326 memberships were subject to lease agreements. This number may change on a monthly basis.

[27] As of March 31, 2001, 13 seats were dormant (neither used for active trading nor leased).

[28] *See* Phlx Rules 940 and 941.

[29] *See* supra note 12.

transacting business at the Exchange. As with traditional member-owners, the Exchange believes that the credit will free up funds for those members who are also owners thereby encouraging them to put their capital to work by trading and creating liquidity on the floor. As previously discussed, the credit may also effectively (but indirectly) lessen the overall impact of the capital funding fee on those owners who are trading at the Exchange.

(B) *Members Who Lease From Close Family Members.* At the Phlx, many member firms are family businesses, which choose to structure their operations with the owner being a relative (rather than that member) for tax or estate planning purposes. The Exchange believes that there is commonality of interest in property of close family members, thus affording the credit to members who lease from close family members. This concept is one that is widely accepted, especially in connection with rules relating to the securities industry and tax law. For example, Commission Rule 16a–1(a)(2) [30] under the Act defines the term ''beneficial owner'' to mean any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares a direct or indirect pecuniary interest in the equity security. Indirect pecuniary interest is then defined to include securities held by members of a person's immediate family sharing the same household.[31] In addition, Rule 701 under the Securities Act of 1933 (''Securities Act'') [32] exempts from Section 5 of the Securities Act [33] certain offers and sales of securities under a written compensatory benefit plan established by the issuer for the participation of their employees and their family members who acquire such securities from such persons though gifts or domestic relations orders. Family members are defined in Rule 701(c)(3) [34] the same as ''immediate family'' is defined in Rule 16a–1(e).[35]

Tax laws also recognize the commonality of interest in property of close family members. For example, the Internal Revenue Code (''IRC'') recognizes the shared interests of family members by way of attributing the ownership of stock held by close family members to the taxpayer.[36] The IRC treats stock owned by these close family members as owned by the taxpayer in determining the tax liability of the taxpayer in various situations.[37]

A further example is the National Association of Securities Dealers, Inc. (''NASD'') Freeriding and Withholding Interpretation,[38] which restricts sales by NASD members to accounts in which so-called ''restricted persons'' have a beneficial interest. Such restrictions are also applicable, with some exceptions, to immediate family members of those restricted persons.

The Exchange believes that it should not penalize members who choose to lease memberships from close family members, as it believes that these persons are the functional equivalents of member-owners, and the same rationale applies to giving the credit to these members as to member-owners.

(C) *Members who are Associated with a member Organization in which the Owner of That Membership has an Interest of at Least Ten Percent.* Members who are lessees and are associated with a member organization in which the owner has at least a ten percent interest also should be eligible for the credit based on their closely aligned interests with the owner. The federal securities laws and rules of the securities industry have long recognized that a ten percent ownership interest is a significant capital investment. For example, Section 16 of the Act [39] requires any person who is the beneficial owner of more than ten percent of an equity security registered under Section 12 of the Act [40] to file a statement with the Commission indicating his ownership interest. Section 16 [41] also treats such beneficial owners as company insiders and limits their ability to realize ''short swing'' profits. In enacting Section 16,[42] the Congress found that a ten percent owner was sufficiently involved in the affairs of the issuer to be treated as an insider.

Moreover, for purposes of NASD Conduct Rule 2720, which restricts the ability of an NASD member to participate in the distribution of a public offering of its own securities or the securities of the member's parent or affiliate, a company is presumed to control a member (and thus is an affiliate) if the company beneficially owns ten percent or more of the member firm. Finally, under the NASD's Freeriding and Withholding Interpretation,[43] an individual with a ten percent or more equity interest in an NASD member firm is deemed restricted by virtue of his ownership interest, and, thus, NASD member firms may not sell so-called ''hot issues'' to that individual.

In each of these examples, Congress or the NASD found that a ten percent owner is sufficiently involved in the affairs of the subject entity to be subject to the applicable restriction. A similar analysis is applicable with respect to owners of Phlx memberships who hold a ten percent or greater interest in the very member organization with which the lessee is associated. The interests of the owner, the member lessee and the member organization are sufficiently aligned to allow the lessee member the benefit of the credit.

(D) *members who Lease from Owners or Their Affiliates who Provide Order Flow to the Exchange.* Similar to member-owners and other eligible members discussed above, members who lease from owners or their affiliates who provide order flow to the Exchange through the member or member organization have a direct contractual relationship with that owner. For example, a floor broker who executes orders entered by the owner from whom the member leases his or her seat has a fiduciary relationship with that owner. The member derives income, by way of commissions, from the order floor provider and the order flow provider, in turn, provides revenue to the Exchange mainly by way of transaction fees (and indirectly via tape revenues). Giving a credit to members in this situation should encourage the member to fully maximize the business relationship between the floor broker and order flow provider by encouraging the member to get more order flow, which in turn equates to an increase in fees paid by the floor broker to the Exchange. The Exchange believes that by extending the credit to this category of members who are closely associated with the owner, it is encouraging behavior that is beneficial to the long-term interests of the Exchange, *e.g.,* providing more order flow.

(E) *Members who Lease from a Clearing Firm or a Related Entity of the Clearing Firm That Provides Clearing Services to the Leasing Member.* Members who lease from a clearing firm

[30] 17 CFR 240.16a–1(a)(2).

[31] Immediate family is defined to mean any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, and shall include adoptive relationships. 17 CFR 240.16a–1(e).

[32] 17 CFR 230.701.

[33] 15 U.S.C. 77e.

[34] 17 CFR 230.701(c)(3).

[35] 17 CFR 240.16a–1.

[36] *See* 26 U.S.C. Section 318.

[37] *See* 26 U.S.C. Section 301 *et seq.*

[38] NASD Conduct Rule IM–2110–1. The Freeriding and Withholding Interpretation is based on the premise that NASD members have an obligation to make a bona fide distribution of securities of a public offering that trade at a premium in the secondary market.

[39] 15 U.S.C. 78p.

[40] 15 U.S.C. 78l.

[41] 15 U.S.C. 78p.

[42] *Id.*

[43] *See supra* note 38.

or related entity of the clearing firm that provides clearing services to the leasing member should also be eligible to receive the credit. Members have a close connection to their clearing firms, or related entity of the clearing firms, in that the clearing firms provide important and essential services by contractual agreement with such members; for instance, they guarantee members' trades. In addition, clearing firms lend money and extend credit; they also manage risk by way of tracing positions and other monitoring functions. Moreover, the clearing firm offers various ancillary services to the members, including stock executions services, office space and other business amenities. Therefore, given this close connection between the members and clearing firms or their affiliates, the Exchange believes that the credit is appropriate and should further their joint interest in the well-being of the Exchange.

2. Statutory Basis

For these reasons, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[44] in general, and with Section 6(b)(4).[45]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change imposes no inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received respecting the permanent adoption of the credit for 36 months.[46]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[47] and Rule 19b–4(f)(2) thereunder[48] because it establishes a due, fee or other charge. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2001–49, and should be submitted by June 8, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[49]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–12543 Filed 5–17–01; 8:45 am]

BILLING CODE 8010–01–M

[44] 15 U.S.C. 78f(b).

[45] 15 U.S.C. 78(b)(4).

[46] Written comments were received in connection with the first proposed rule change relating to the credit, which implemented the initial pilot program for the credit (in effect May 16, 2000 through November 16, 2000). Those comments are discussed in the Commission's Notice of Filing and Immediate Effectiveness of that initial pilot program. *See* Securities Exchange Act Release Act Release No. 42791 (May 16, 2000), 65 FR 33606 (May 24, 2000)(SR–Phlx–00–44).

[47] 15 U.S.C. 78s(b)(3)(A)(ii).

[48] 17 CFR 240.19b–4(f)(2).

[49] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3338]

State of Illinois

As a result of the President's major disaster declaration on May 9, 2001, I find that Carroll, Hancock, Henderson, Jo Daviess, Rock Island and Whiteside Counties in the State of Illinois constitute a disaster area due to damages caused by flooding occurring between April 18, 2001 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 9, 2001 and for economic injury until the close of business on February 11, 2002 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties in Illinois may be filed until the specified date at the above location: Adams, Bureau, Henry, Lee, McDonough, Mercer, Ogle, Schuyler, Stephenson and Warren; Clark and Lewis Counties in the State of Missouri; and Grant and Lafayette Counties in the State of Wisconsin.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.625
Homeowners Without Credit Available Elsewhere	3.312
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 333806. For economic injury the numbers assigned are 9L6600 for Illinois; 9L6700 for Missouri; 9L6800 for Wisconsin. Iowa counties contiguous to the above named primary counties are not listed here because they have been previously declared.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 11, 2001.

James E. Rivera,

Acting Associate Administrator For Disaster Assistance.

[FR Doc. 01–12502 Filed 5–17–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3339]

State of Wisconsin

As a result of the President's major disaster declaration on May 11, 2001, I

find that Buffalo, Burnett, Crawford, Douglas, Grant, La Crosse, Pepin, Pierce, St. Croix, Trempealeau and Vernon Counties in the State of Wisconsin constitute a disaster area due to damages caused by flooding occurring between April 10, 2001 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 10, 2001 and for economic injury until the close of business on February 11, 2002 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties in Wisconsin may be filed until the specified date at the above location: Barron, Bayfield, Dunn, Eau Clair, Iowa, Jackson, Juneau, Lafayette, Monroe, Polk, Richland, Sauk, Sawyer and Washburn; and Carlton, Chisago, Dakota, Goodhue, Houston, Pine, St. Louis, Wabasha, Washington and Winona Counties in the State of Minnesota.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.625
Homeowners Without Credit Available Elsewhere	3.312
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses and Small Agriculture Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 333906. For economic injury the numbers assigned are 9L6900 for Wisconsin and 9L7000 for Minnesota.

Iowa counties and Illinois counties contiguous to the above named primary counties are not listed here because they have been previously declared.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 14, 2001.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 01–12584 Filed 5–17–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

New Markets Venture Capital Program; Extension of Application Deadline

AGENCY: U.S. Small Business Administration.

ACTION: Notice of extension of application deadline.

SUMMARY: SBA invites applications for designation as a New Markets Venture Capital (''NMVC'') Company and for grant awards available both to participants in the NMVC Program and to Specialized Small Business Investment Companies. SBA extends its deadline for accepting applications from 4 p.m. on May 21, 2001 to 4 p.m. on May 29, 2001.

DATES: Applications may be submitted to SBA immediately. The deadline for receipt of an application has been extended to 4 p.m. EST on May 29, 2001. Applications received in SBA's offices after that date and time will be rejected and returned to the sender.

ADDRESSES: Applications must be sent to Austin Belton, Director, Office of New Markets Venture Capital, Investment Division, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6300, Washington, DC 20416. Applications sent electronically or by facsimile will not be accepted.

FOR FURTHER INFORMATION CONTACT: If you have any questions about the requirements for this program or application procedures, or wish to request an application package, contact Austin Belton, Director, Office of New Markets Venture Capital, Investment Division, or Louis Cupp, Policy Analyst, Investment Division, 202–205–6510. Applications and other information regarding SBA and its programs may be downloaded from SBA's web site at *http://www.sba.gov/inv.*

SUPPLEMENTARY INFORMATION: SBA previously extended this application deadline from April 19, 2001 to May 21, 2001 (66 FR 18993, April 12, 2001). SBA originally published information about this funding opportunity in a Notice of Funds Availability (''NOFA''), published in the **Federal Register** on January 22, 2001 (66 FR 7247).

Applicants should refer to the NOFA (66 FR 7247) for more detailed information concerning this funding opportunity, including how to obtain applications and the amount of funds available for award. However, SBA makes one important revision to the NOFA. The NOFA referred applicants to an interim final rule SBA published in the **Federal Register** on January 22, 2001 (66 FR 7218). However, SBA will be withdrawing that interim final rule and, as a result, will not be implementing the NMVC program with that rule (see discussion in preamble to SBA's proposed rule, published in the **Federal Register** on April 23, 2001, 66 FR 20531–20532). Applicants instead are directed to a new final rule that SBA intends to publish in the **Federal Register** within a week of today's date. SBA will implement the NMVC program, including evaluating and selecting applications, through that new rule instead of through the interim final rule SBA previously published on January 22, 2001. Applicants should refer to SBA's new final rule for information concerning fee requirements, evaluation criteria, and other program requirements. SBA's new final rule will apply to all applications received for the NMVC program.

Authority: New Markets Venture Capital Program Act of 2001, Pub. L. No. 106–553, 114 Stat. 2762A; Federal Funding Act, Fiscal Year 2001, Pub. L. 106–554, 114 Stat. 2763; and 13 CFR part 108.

Dated: May 15, 2001.

Harry Haskins,

Acting Associate Administrator for Investment.

[FR Doc. 01–12585 Filed 5–17–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

RIN 3245–AE72

Small Business Innovation Research Program Policy Directive

AGENCY: Small Business Administration.

ACTION: Notice of proposed policy directive.

SUMMARY: This document proposes revisions to the Small Business Innovation Research (SBIR) Program Policy Directive. This revised proposed policy directive reflects recently enacted statutory requirements. It is proposed to provide guidance to participating Federal agencies for the general conduct of the SBIR Program.

DATES: Public comments on this proposed policy directive should be received on or before June 18, 2001.

ADDRESSES: Address all comments concerning this proposed revision to Maurice Swinton, Assistant Administrator for Technology, Office of Technology, Office of Policy, Planning, and Liaison, Office of Government Contracting/Business Development, U.S. Small Business Administration, 409 3rd Street, SW, Washington, DC 20416 or via email to technology@sba.gov.

FOR FURTHER INFORMATION CONTACT: Maurice Swinton, Office of Technology; Office of Policy, Planning, and Liaison; Office of Government Contracting/ Business Development, at (202) 205–6450. You may also e-mail technology@sba.gov.

SUPPLEMENTARY INFORMATION: In 1982, Congress enacted the Small Business Innovation Development Act of 1982 (SBIDA), Public Law 97–219 (codified at 15 U.S.C. 638), which established the Small Business Innovation Research Program (SBIR Program). SBIDA requires the SBA to ''issue policy directives for the general conduct of the SBIR programs within the Federal Government.'' 15 U.S.C. 638(j)(1). The U.S. Small Business Administration (SBA) published its first policy directive, Policy Directive No. 65–01, 19 years ago (47 FR 52966, Nov. 24, 1982). The last SBIR Policy Directive amendments were published 8 years ago (58 FR 6144–6158, Jan. 26, 1993).

The statutory purpose of the SBIR Program is to strengthen the role of innovative small business concerns (SBCs) in Federally-funded research and research and development (R/R&D). Specific program purposes are to: (1) Stimulate technological innovation; (2) use small business to meet Federal R/R&D needs; (3) foster and encourage participation by socially and economically disadvantaged SBCs, and by SBCs that are 51 percent owned and controlled by women, in technological innovation; and (4) increase private sector commercialization of innovations derived from Federal R/R&D. The SBIR Program is a phased process, uniform throughout the Federal Government, of soliciting proposals and awarding funding agreements for R/R&D to meet stated agency needs or missions. To stimulate and foster scientific and technological innovation, including increasing commercialization of Federal R/R&D, the program must follow a uniform competitive process of three phases: Phase I, Phase II, and Phase III.

Recently, Congress enacted the Small Business Innovation Research Program Reauthorization Act of 2000 (Reauthorization Act), Public Law 106–554 (Dec. 21, 2000). The Reauthorization Act extends the SBIR Program through September 30, 2008. In addition, the Reauthorization Act: (1) Clarifies SBIR data rights pertaining to SBIR Phase I and II awards and awards issued pursuant to Phase III (Proposed Policy Directive, section 8(b) and App. I, Instructions, § 5(d)(1)(iii)); (2) requires the establishment of SBIR Program Government-accessible and a public-accessible database (Proposed Policy Directive, section 11(e)); (3) requires each application for a Phase II award contain a succinct commercialization plan (Proposed Policy Directive, section 6(b)); (4) requires agencies to report to SBA all instances in which the agency fails to issue a Phase III or follow-on funding agreement (Proposed Policy Directive, section 4(c)(7–8)); (5) clarifies when a Phase III award can be issued (Proposed Policy Directive, section 4(c)); (6) requires agencies with extramural budgets over $50,000,000 to enter into an agreement with the National Academy of Sciences for the National Research Council to conduct a review of their SBIR Program (Proposed Policy Directive, section 2(a)(1)(iv)); (7) requires agencies to report to SBA annually on the calculations of the agency's extramural budget within 4 months of enactment of the agency's annual Appropriations Act (Proposed Policy Directive, sections 2(a)(1)(v) and 9(a)(1)); (8) establishes the Federal and State Technology (FAST) Partnership Program to strengthen the technological competitiveness of small business concerns (SBCs) in the United States (Proposed Policy Directive, § 12(a)); (9) and extends the Rural Outreach Program through September 30, 2005, (Proposed Policy Directive, section 12(b)). SBA welcomes comment on our proposed provisions to implement these new statutory requirements. In addition, we request comment on section 11(e)(3)(iii) of the Proposed Policy Directive, implementing the new statute requiring information provided to the SBIR databases to be privileged, confidential, and not subject to the Freedom of Information Act, codified at 15 USC 638(k)(4).

The Reauthorization Act directs SBA to modify its policy directive to address these amendments within 120 days after the date of enactment of the Reauthorization Act. In addition to addressing these recent amendments to the SBIR Program, SBA proposes changes in this policy directive to simplify and enhance the program. The proposed policy directive is organized into 12 self-explanatory sections: (1) Purpose; (2) Summary of Legislative Provisions; (3) Definitions; (4) Competitively Phased Structure of the Program; (5) Program Solicitation Process; (6) Eligibility and Application (Proposal) Requirements; (7) SBIR Funding Process; (8) Terms of Agreement Under SBIR Awards; (9) Responsibilities of SBIR Participating Agencies and Departments; (10) Annual Report to SBA; (11) Responsibilities of SBA; and (12) FAST Partnership Program and Rural Outreach Program. Two appendices are also included: (1) Instructions for SBIR Program Solicitation Preparation; and (2) Tech-Net Data Fields for Public Database.

Furthermore, this proposed policy directive will provide more flexibility to the agencies participating in the SBIR Program to continue vital research for meritorious proposals that could potentially go unfunded due to a lack of resources available under SBIR Program or Small Business Technology Transfer (STTR) Program budgets. STTR is a separate program from SBIR in which Federal agencies with extramural budgets for R/R&D in excess of $1 billion per fiscal year make funding agreements with SBC's joint venturing with a research institution, non-profit organization, or Federally Funded Research and Development Center (FFRDC). SBA proposes a new policy at section 4(b) that would allow participating Federal agencies to fund Phase II awards under their SBIR or STTR Programs, which had its origin in either program. Agencies must continue to meet the statutory expenditure of the extramural budget of 2.5 percent for the SBIR program and .15 percent for the STTR program. Any award that is funded through this process will then be deemed an award of the program which provides the Phase II funding. The awardee must meet the eligibility requirements for the program under which the Phase II award is funded. For example, if a Phase I STTR award is changed to a Phase II SBIR award, the collaborative partner for the Phase I STTR award could then be converted from a joint venture to a subcontractor. Conversely, if a Phase I SBIR award is changed to a Phase II STTR award, the small business concern must then partner with a research institution, Federal laboratory or non-profit organization.

In developing this proposed policy directive, SBA has considered initial comments from all agencies required to have SBIR programs. All of these comments received by SBA were individually reviewed and considered. SBA welcomes public comments upon this proposed policy directive and will revise the policy directive as necessary to improve the general conduct of the SBIR Program based upon comments received.

Notice of Proposed Policy Directive; Small Business Innovation Research Program

To: The Small Business Innovation Research Program Directors

Subject: Small Business Innovation Research Program Reauthorization Act of 2000—Amendments to the Small Business Innovation Research (SBIR) Program

1. *Purpose.* Section 9(j)(3) of the Small Business Act 15 U.S.C. 638(j)(3) requires the U.S. Small Business Administration (SBA) Administrator to modify the Small Business Innovation Research (SBIR) Program Policy Directive for the general conduct of the SBIR Program within the Federal Government.

2. *Authority.* This proposed policy directive is issued under the authority of 15 U.S.C. 638(j).

3. *Procurement Regulations.* The Federal Acquisition Regulations may need to be modified to conform to the requirements of the Reauthorization Act and a final policy directive. Regulatory provisions that pertain to the areas of SBA responsibility will require approval of the SBA Administrator or designee. The Office of Technology, Office of Policy, Planning, and Liaison, Office of Government Contracting/Business Development, SBA, is the appropriate office for coordinating such regulatory provisions.

4. *Personnel Concerned.* All Federal Government personnel who are involved in the administration of the program, including those involved with the issuance and management of funding agreements of the SBIR Program and the establishment of goals for small business concerns (SBCs) in research or research and development procurements or grants.

5. *Distribution.* Federal Government agencies and departments participating in the SBIR Program and those required to establish small business research and development goals as directed by section 9 of the Small Business Act 15 U.S.C. 638(j).

6. *Originator.* Office of Technology, Office of Policy, Planning, and Liaison, Office of Government Contracting/Business Development, SBA.

7. *Dates.* The SBIR Program is authorized through September 30, 2008. A final Policy Directive will be effective when published in the **Federal Register**.

Authorized By:

William A. Fisher,

Deputy Associate Deputy Administrator, Government Contracting/Business Development, U.S. Small Business Administration.

John Whitmore,

Acting Administrator, Small Business Administration.

Small Business Innovation Research (SBIR) Program, Proposed Policy Directive

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Appendix II: Tech-Net Data Fields For Public Database

1. Purpose

(a) Section 9(j) of the Small Business Act (Act) requires that the Small Business Administration (SBA) issue an SBIR Program Policy Directive for the general conduct of the SBIR Program within the Federal Government.

(b) This proposed policy directive fulfills SBA's statutory obligation to provide guidance to the participating Federal agencies for the general operation of the SBIR Program. Additional or modified instructions may be issued by the SBA as a result of public comment or experience.

(c) The statutory purpose of the SBIR Program is to strengthen the role of innovative small business concerns (SBCs) in Federally-funded research and research and development (R/R&D). Specific program purposes are to: (1) Stimulate technological innovation; (2) use small business to meet Federal R/R&D needs; (3) foster and encourage participation by socially and economically disadvantaged SBCs, and by SBCs that are 51 percent owned and controlled by women, in technological innovation; and (4) increase private sector commercialization of innovations derived from Federal R/R&D.

(d) Federal agencies participating in the SBIR Program (SBIR agencies) should follow the guidance provided by this proposed policy directive. Each agency is obligated to review its rules, policies, and guidance on the SBIR Program to ensure consistency with this policy directive and to make any necessary changes in accordance with each agency's normal procedures. This is consistent with the statutory authority provided to the SBA concerning the SBIR Program.

2. Summary of Legislative Provisions

(a) The Small Business Innovation Research Program Reauthorization Act of 2000, Public Law 106–554, amended section 9 of the Act (15 U.S.C. 638).

(1) The purposes of the amendments to the Act are to:

(i) Continue the SBIR Program through September 30, 2008;

(ii) Clarify data rights pertaining to SBIR Phase I, Phase II, and federally funded Phase III awards.

(iii) Establish databases—one for the public and one for Government use—to collect and maintain in a common format, information necessary to assist SBCs and assess the SBIR Program.

(iv) Require agencies with SBIR budgets of over $50,000,000 to enter into an agreement with the National Academy of Sciences for the National Research Council to conduct a review of each agency's SBIR Program.

(v) Require SBIR agencies to report to SBA on the calculation of the agency's extramural budget within 4 months of enactment of each agency's annual Appropriations Act.

(vi) Establish the Federal and State Technology (FAST) Partnership Program to strengthen the technological competitiveness of SBCs.

(vii) Extend the Rural Outreach Program through September 30, 2005.

(b) The Act requires each Federal agency with an extramural budget for Research/Research & Development (R/R&D) in excess of $100,000,000 to participate in the SBIR Program.

(c) The statutory requirements assist SBCs by establishing a uniform, simplified process for the operation of the SBIR Program while allowing the SBIR agencies flexibility in the operation of their individual SBIR Program. This policy directive fulfills the Congressional intent to minimize regulatory burden in the conduct of this program.

(d) The Act requires each SBIR agency to establish an SBIR Program by reserving not less than 2.5 percent of its extramural budget for awards to SBCs for R/R&D through a uniform, three-phase process, including:

(1) Phases I and II. The first two phases help SBIR agencies meet R/R&D and commercialization objectives through funding agreements.

(2) Phase III. The third phase, when appropriate helps SBCs,

(i) to pursue commercial applications from the Government-funded R/R&D in order to stimulate technological innovation and provide for the national return on investment from R/R&D, and/or

(ii) to obtain additional contract or grant activity with Federal agencies through non-SBIR funding agreements.

(e) The Act directs each SBIR agency to report annually to SBA. The Act also requires SBA to obtain annual reports and monitor each agency's SBIR Program and to report our findings annually to the Committee on Small Business of the Senate and to the Committee on Science and the Committee on Small Business of the House of Representatives.

(f) The competition requirements of the Armed Services Procurement Act of 1947 (10 U.S.C. 2302 *et seq.*) and the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 *et seq.*) must be read in conjunction with the procurement notice publication requirements of Section 8(e) of the Small Business Act (15 U.S.C. 637(e)). The following notice publication requirements of Section 8(e) of the Small Business Act (15 U.S.C. 637(e)) apply to SBIR agencies using contracts as a SBIR funding agreement:

(1) Any Federal executive agency intending to solicit a proposal to contract for property or services valued above $25,000 must transmit a notice of the impending solicitation to the governmentwide point of entry (GPE) for access by interested sources. *See* FAR 5.201. The GPE, located at http://www.fedbizopps.gov, is the single point where Government business opportunities greater than $25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public. The contracting office may transmit the notice to the Commerce Business Daily (CBD) in lieu of the GPE if the contracting office lacks the capability to access the GPE and the notice is issued prior to October 1, 2001.

(i) No agency shall issue its solicitation for at least 15 days from the date of the publication of the GPE or CBD notice. The agency may not establish a deadline for submission of proposals in response to a solicitation earlier than 30 days after the date on which the solicitation was issued.

(ii) When transmitting notices to the GPE before January 1, 2002, contracting officers must direct the GPE to forward the notice to the CBD.

(2) The contracting officer must generally make available through the GPE solicitations synopsized through the GPE including specifications and other pertinent information determined necessary by the contracting officer. *See* FAR 5.102.

(3) Any executive agency awarding a contract for property or services valued at more than $25,000 must submit a synopsis of the award through the GPE if a subcontract is likely to result from such contract. *See* FAR 5.301. The contracting office may transmit the notice to the CBD in lieu of the GPE if the contracting office lacks the capability to access the GPE and the notice is issued prior to October 1, 2001.

(4) The following are exemptions from the notice publication requirements:

(i) In the case of agencies intending to solicit Phase I proposals for contracts in excess of $25,000, the head of the agency may exempt a particular solicitation from the notice publication requirements if he/she makes a written determination, with the consultation of the Administrator of the Office of Federal Procurement Policy and the SBA Administrator, that it is inappropriate or unreasonable to publish a notice before issuing a solicitation.

(ii) The SBIR Phase II award process is exempt.

(iii) The SBIR Phase III award process is exempt.

3. Definitions

(a) *Act.* The Small Business Act (15 U.S.C. 631 *et seq.*), as amended.

(b) *Applicant.* The organizational entity that, at the time of award, will qualify as a SBC, as defined in this section, and that submits a contract proposal or a grant application for a funding agreement under the SBIR Program.

(c) *Affiliate.* This term has the same meaning as set forth in 13 CFR Part 121—Small Business Size Regulations, § 121.103, What is affiliation?

(d) *Awardee.* The SBC receiving an SBIR funding agreement.

(e) *Commercialization.* The process of developing markets and producing and delivering products or services for sale (whether by the originating party or by others) to Government and/or commercial markets.

(f) *Cooperative Agreement.* A financial assistance mechanism used when substantial Federal programmatic involvement with the awardee during performance is anticipated by the issuing agency. The Cooperative Agreement contains the responsibilities and respective obligations of the parties.

(g) *Data rights.* The license the Government obtains in scientific or technical data, including computer software and computer software documentation, generated during the performance of a funding agreement that an awardee provides to the Government upon completion of a Federally-funded project.

(h) *Essentially Equivalent Work.* The ''scientific overlap,'' which occurs when (1) substantially the same research is proposed for funding in more than one contract proposal or grant application submitted to the same Federal agency; (2) substantially the same research is submitted to two or more different Federal agencies for review and funding consideration; or (3) a specific research objective and the research design for accomplishing an objective are the same or closely related in two or more proposals or awards, regardless of the funding source.

(i) *Extramural Budget.* The sum of the total obligations for R/R&D minus amounts obligated for R/R&D activities by employees of a Federal agency in or through Government-owned, Government-operated facilities. For the Agency for International Development, the ''extramural budget'' shall not include amounts obligated solely for general institutional support of international research centers or for grants to foreign countries. For the Department of Energy, the ''extramural budget'' shall not include amounts obligated for atomic energy defense programs solely for weapons activities or for naval reactor programs. (*Also see* Section 7(i) of this policy directive for additional exemptions related to national security.)

(j) *Feasibility.* The practical extent to which a project is capable of being successfully performed.

(k) *Federal Agency.* An executive agency as defined in 5 U.S.C. 105, or a military department as defined in 5 U.S.C. 102 except that it does not include any agency within the Intelligence Community as defined in Executive Order 12333, Section 3.4(f), as amended.

(l) *Funding Agreement.* Any contract, grant, cooperative agreement, or other transaction entered into between any Federal agency and any SBC for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government.

(m) *Funding Agreement Officer.* A contracting officer, a grants officer, or a cooperative agreement officer.

(n) *Grant.* A financial assistance mechanism providing money, property, or both to an eligible entity to carry out an approved project or activity. A grant is used whenever the Federal agency anticipates no substantial programmatic involvement with the awardee during performance of the financially assisted activities.

(o) *Innovation.* Something new or improved, including research for (1) development of new technologies, (2) refinement of existing technologies, or (3) development of new applications for existing technologies.

(p) *Intellectual Property.* The four separate and distinct types of intangible property that are referred to collectively as ''intellectual property': patents, trademarks, copyrights, and trade secrets. The patent is the most common type of intangible property fostered by the SBIR Program.

(q) *Joint Venture.* An association of persons or concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out a single specific business venture for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. A joint venture is viewed as a business entity in determining power to control its management and is eligible under the SBIR Program provided that the entity created qualifies as a ''SBC'' as defined in this section of the policy directive.

(r) *Outcomes.* The measures of long-term, eventual, program impact.

(s) *Outputs.* The measures of near-term program impact.

(t) *Principal Investigator/Project Manager.* The one individual designated by the applicant to provide the scientific and technical direction to the project that will be supported by the funding agreement.

(u) *Program Solicitation.* A formal solicitation of proposals whereby a Federal agency notifies the small business community of its R/R&D needs and interests in selected areas and requests proposals in response to these needs from SBCs. Announcements in the *Federal Register, Commerce Business Daily,* or the GPE are not considered an SBIR Program solicitation.

(v) *Prototype.* A model of something to be further developed, which includes designs, protocols, questionnaires, software, and devices.

(w) *Research or Research and Development (R/R&D).* Any activity that is:

(1) A systematic, intensive study directed toward greater knowledge or understanding of the subject studied;

(2) A systematic study directed specifically toward applying new knowledge to meet a recognized need; or

(3) A systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.

(x) *Small Business Concern.* An SBC is a concern that, on the date of award for both Phase I and Phase II funding agreements:

(1) is organized for profit, with a place of business located in the United States, which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials or labor;

(2) is in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture;

(3) is at least 51 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States; and

(4) has, including its affiliates, not more than 500 employees.

(y) *Socially and Economically Disadvantaged Individual.* A member of any of the following groups:

(1) Black Americans.

(2) Hispanic Americans.

(3) Native Americans.

(4) Asian-Pacific Americans.

(5) Subcontinent Asian Americans.

(6) Other groups designated from time to time by SBA to be socially disadvantaged; or any other individual found to be socially and economically disadvantaged by SBA pursuant to Section 8(a) of the Small Business Act, 15 U.S.C. 637(a).

(z) *Socially and Economically Disadvantaged SBC. See* 13 CFR Part 124 —8(A) Business Development/ Small Disadvantaged Business Status Determinations, §§ 124.103 (Who is socially disadvantaged?) and 124.104 (Who is economically disadvantaged?).

(aa) *Subcontract.* Any agreement, other than one involving an employer-employee relationship, entered into by an awardee of a funding agreement calling for supplies or services required solely for the performance of the original funding agreement.

(bb) *United States.* Means the 50 states, the territories and possessions of the Federal Government, the Commonwealth of Puerto Rico, the District of Columbia, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

(cc) *Women-Owned SBC.* A SBC that is at least 51 percent owned by one or more women, or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by women, and who also control and operate it. ''Control'' in this context means exercising the power to make policy decisions. ''Operate'' in this context means being actively involved in the day-to-day management.

4. Competitively Phased Structure of the Program

The SBIR Program is a phased process, uniform throughout the Federal Government, of soliciting proposals and awarding funding agreements for R/R&D to meet stated agency needs or missions. To stimulate and foster scientific and technological innovation, including increasing commercialization of Federal R/R&D, the program must follow a uniform competitive process of three phases:

(a) *Phase I.* Phase I involves a solicitation of grant applications or contract proposals (proposals) to conduct feasibility related experimental or theoretical R/R&D related to described agency requirements. These requirements, as defined by agency topics contained in a solicitation, may be general or narrow in scope, depending on the needs of the agency. The object of this phase is to determine the scientific and technical merit and feasibility of the proposed effort and the quality of performance of the SBC with a relatively small agency investment before consideration of further Federal support in Phase II.

(1) Several different proposed solutions to a given problem may be funded.

(2) Proposals will be evaluated on a competitive basis. Agency criteria used to evaluate SBIR proposals shall give primary consideration to the scientific and technical merit of the proposal along with its potential for commercialization. Secondary considerations may include program balance or critical agency requirements.

(3) Agencies may include requirements for submission of a Phase II proposal as a deliverable item under Phase I.

(b) *Phase II.* The object of Phase II is to continue the R/R&D effort from the completed Phase I. Agencies must make efforts to reduce the time frame for

issuing Phase II awards and are encouraged to develop gap-funding methods to address the duration of Phase II award cycles. Only SBIR awardees in Phase I (including those identified via a ''novated'' or ''successor in interest'' or similarly-revised funding agreement, or those that have reorganized with the same key staff, regardless of whether they have been assigned a different tax identification number) are eligible to participate in Phase II.

(1) Awardees of an STTR (Small Business Technology Transfer) Phase I award may submit a proposal for an SBIR Phase II award, which continues the research conducted under the STTR Phase I award. Agencies may then issue an SBIR Phase II award to those awardees using SBIR funds. However, those awardees must meet the requirements of the SBIR Program. For example, the awardee could no longer partner with a non-profit joint ventured within the STTR Phase I award, but could subcontract work to a non-profit. In effect, the award converts from an STTR to an SBIR award.

(2) Awardees of an SBIR Phase I award may submit a proposal for an STTR Phase II award, which continues the research conducted under the SBIR Phase I award. Agencies may then issue an STTR Phase II award to those awardees using STTR funds. However, those awardees must meet the requirements of the STTR Program. Thus, the awardee must partner with a research institution, non-profit organization or Federally Funded Research and Development Center (FFRDC). In effect, the award converts from an SBIR to an STTR award. Agencies must provide to the SBA a written justification with their annual report the rationale for this deviation.

(3) Agencies must provide to the SBA a written justification with their annual report the rationale for this deviation. Funding shall be based upon the results of Phase I and the scientific and technical merit and commercial potential of the Phase II proposal. Phase II awards may not necessarily complete the total research and development that may be required to satisfy commercial or Federal needs beyond the SBIR or STTR Programs. Completion of the research and development may be through a Phase III. The Phase II funding agreement with the awardee may, at the discretion of the agency awarding the agreement, establish the procedures applicable to third phase agreements. The Government is not obligated to fund any specific Phase II proposal. The SBIR or STTR Phase II award decision process requires, among other things, consideration of a proposal's commercial potential. Commercial potential includes the potential to transition the technology to private sector applications, Government applications, or Government contractor applications. Commercial potential in a Phase II proposal may be evidenced by:

(i) the SBC's record of successfully commercializing SBIR, STTR or other research;

(ii) the existence of second phase funding commitments from private sector or other non-SBIR or STTR funding sources;

(iii) the existence of third phase, follow-on commitments for the subject of the research; and

(iv) the presence of other indicators of commercial potential of the idea.

(a) *Phase III.* The term third phase agreement means a follow-on, non-SBIR funded award as described below. A Federal agency may enter into a third phase agreement with the awardee of the second phase for additional work to be performed during or after the second phase period.

(1) The competition for SBIR Phase I and Phase II awards satisfies any competition requirement of the Armed Services Procurement Act and the Federal Property and Administrative Services Act. Therefore, an agency that wishes to fund an SBIR project in Phase III (with non-SBIR funds), or enter into a follow-on procurement with an SBIR concern, is not required to conduct another competition in order to satisfy those statutory provisions.

(2) Where appropriate, there will be a third phase, which is funded by:

(i) non-Federal sources of capital for commercial applications of SBIR funded research or research and development; or

(ii) non-SBIR Federal funding for SBIR derived products or services intended for use by the Federal Government; or

(iii) non-SBIR Federal funding sources for the continuation of research or research and development that has been competitively selected using peer review or scientific review criteria.

(3) The term ''third-phase award'' or ''SBIR Phase III award'' applies to each of the following activities:

(i) commercial application of SBIR-funded research or R&D funded by non-Federal sources of capital;

(ii) products and services intended for use by the Federal Government funded by follow-on non-SBIR Federal funding awards;

(iii) the continuation of R/R&D funded by non-SBIR Federal funding sources.

(4) The third phase work may be for products or production, services, R/R&D, or any combination.

(5) There is no limitation on the number, duration, or dollar value of third phase awards made to a business concern.

(6) As indicated above, the competition for SBIR Phase I and Phase II awards satisfies any competition requirement of the Armed Services Procurement Act and the Federal Property and Administrative Act. Therefore, agencies or their Government-owned, contractor-operated facilities or Federally funded research and development centers or Government prime contractors, that wish to fund an SBIR project in Phase III (with non-SBIR funds) or enter into a follow-on procurement with a business concern, shall not request FAR required Justifications and Approvals in the conduct of contract actions relative to a third phase agreement.

(7) Congress intends that agencies or their Government-owned, contractor-operated facilities or Federally-funded research and development centers or Government prime contractors, pursuing R/R&D, or production developed under the SBIR Program give special acquisition preference, including sole source awards, to the awardee that developed the technology. In fact, the Act requires reporting to SBA of all instances in which an agency fails to issue a Phase III award to a SBC that pursued R/R&D pursuant to the SBIR Program (see Section 9 of this policy directive). SBA, in turn, reports these instances to the Congress. The Phase III awardee does not need to be eligible as a SBC (as defined in this policy directive) to receive the Phase III funding agreement.

(8) Agencies or their Government-owned, contractor-operated facilities or Federally-funded research and development centers, intending to pursue R/R&D, or production developed under the SBIR Program with an entity other than the awardee of the second phase, must notify SBA in writing prior to awarding such a funding agreement. This notification shall include: (a) the reasons why the follow-on funding agreement with the SBC is not practicable; (b) the identity of the entity with which the agency intends to make an award to perform research, development, or production; and (c) a description of the type of funding agreement under which the research, development, or production will be obtained. SBA reviews the justification and may appeal the decision to the head of the contracting activity. If SBA decides to appeal the decision, SBA will

file its notice of intent to appeal to the contracting officer no later than 5 business days after receiving notice of the agency's intent to make an award. Upon receipt of SBA's notice of intent to appeal, the contracting officer should suspend further action regarding the funding agreement until the head of the contracting activity issues a written decision on the appeal. Within 15 business days of SBA's notification of its intent to appeal, SBA must either file its formal appeal with the head of the contracting activity or that agency may consider the appeal withdrawn. The contracting activity must specify in writing to SBA its reasons for a denial of an appeal.

5. Program Solicitation Process

(a) Each agency shall at least annually issue a program solicitation that sets forth a substantial number of R/R&D topics and subtopic areas consistent with stated agency needs or missions. Both the list of topics and the description of the topics and subtopics must be sufficiently comprehensive to provide a wide range of opportunity for SBCs to participate in the agency research or R&D programs. Topics and subtopics must emphasize the need for proposals with advanced concepts to meet specific agency R/R&D needs. Each topic and subtopic must describe the needs in sufficient detail to assist small firms in providing on-target responses, but cannot involve detailed specifications to prescribed solutions of the problems.

(b) The Act requires issuance of SBIR (Phase I) Program solicitations in accordance with a Master Schedule coordinated between SBA and the SBIR agency. The SBA organization responsible for coordination is: Office of Technology, Office of Policy, Planning, and Liaison, Office of Government Contracting/Business Development, U. S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416, Phone: (202) 205–6450, Internet site: www.sba.gov/sbir.

(c) For maximum participation by interested SBCs, it is important that the planning, scheduling and coordination of agency program solicitation release dates be completed as early as practicable in order to be coordinated with the commencement of the fiscal year on October 1. Bunching of agency program solicitation release and closing dates may prohibit SBCs from the preparation and timely submission of proposals for more than one SBIR project. SBA's coordination of agency schedules minimizes the bunching of proposed release and closing dates. Participating agencies may elect to publish multiple program solicitations within a given fiscal year to facilitate in-house agency proposal review and evaluation scheduling.

(d) *Master Schedule*

SBA posts an electronic Master Schedule of release dates of program solicitations with links to Internet web sites of agency solicitations. Agencies must post on their Internet web sites the following information regarding each program solicitation:

(1) The list of topics upon which research or R&D proposals will be sought.

(2) Agency address, phone number, or email address from which SBIR Program solicitations can be requested or obtained, especially through electronic means.

(3) Names, addresses, and phone numbers of agency contact points where SBIR-related inquiries may be directed.

(4) Release date(s) of program solicitation(s).

(5) Closing date(s) for receipt of proposals.

(6) Estimated number and average dollar amounts or level of effort of Phase I awards to be made under the solicitation.

(e) Each agency representative must notify SBA in writing or by e-mail of its proposed program solicitation release and proposal due dates for the next fiscal year on or before August 1. The SBA and the agency representatives will coordinate the resolution of any conflicting agency solicitation dates by the second week of August. In all cases, the SBA will make final decisions.

(f) For those agencies that use both general topic and more specific subtopic designations in their SBIR solicitations, the topic data should accurately describe the research solicited. For example, rather than just announcing topic information characterized as ''Chemistry'' or ''Aerodynamics,'' the SBIR agency could summarize the subtopic statements and, where appropriate, utilize National Critical Technologies.

(g) *Simplified, Standardized, and Timely SBIR Program Solicitations*

(1) The Act requires ''* * * simplified, standardized and timely SBIR solicitations'' and for SBIR agencies to use a ''uniform process'' minimizing the regulatory burden for SBCs. Therefore, the instructions in Appendix I to this policy directive purposely depart from normal Government solicitation format and requirements. SBIR Program solicitations shall be prepared according to Appendix I.

(2) Agencies must provide the SBA's Office of Technology with two hard copies or an e-mail version of each solicitation and any modifications no later than the date of release of the solicitation or modification to the public. Those agencies that issue program solicitations in electronic format only shall provide the Internet site at which the program solicitation may be accessed no later than the date of posting at that site of the program solicitation or modification to the public.

(3) SBA does not intend that the SBIR Program solicitation replace or be used as a substitute for unsolicited proposals for R/R&D awards to SBCs. In addition, the SBIR Program solicitation procedures do not prohibit other agency research or R&D actions with SBCs that are carried on in accordance with applicable statutory/regulatory authorizations.

6. Eligibility and Application (Proposal) Requirements

(a) *Eligibility Requirements:*

(1) Each awardee under the SBIR Program must qualify as a SBC as defined in this policy directive.

(2) For Phase I—a minimum of two-thirds of the research or analytical effort must be performed by the awardee. Deviation from this requirement must be approved in writing by the funding agreement officer.

(3) For Phase II—a minimum of one-half of the research or analytical effort must be performed by the awardee. Deviation from this requirement must be approved in writing by the funding agreement officer.

(4) For both Phase I and II, the primary employment of the principal investigator must be with the SBC at the time of award and during the conduct of the proposed effort. Primary employment means that more than one-half of the principal investigator's time is spent in the employ of the SBC. Primary employment with a SBC precludes full-time employment with another organization. Deviation from this requirement must be approved in writing by the funding agreement officer. (For purposes of the SBIR Program, personnel obtained through a Professional Employer Organization or other similar personnel leasing company may be considered employees of the awardee. This is consistent with 13 CFR § 121.106—Small Business Size Regulations.)

(5) Also, for both Phase I and Phase II, the research or R&D work must be performed in the United States, as defined in this proposed policy directive. However, based on a rare and unique circumstance agencies may approve that particular portion of the

research or R&D work to be performed or obtained in a country outside of the United States. For example, if a supply or material or other item or project requirement is not available in the United States. Approval by the funding agreement officer for each such specific condition(s) must be in writing.

(b) *Proposal Requirements:*

(1) *Documentation of commercialization record of firms with multiple Phase II awards.* A SBC submitting a proposal for a funding agreement for Phase I of an SBIR Program that has received more than 15 Phase II SBIR awards during the preceding 5 fiscal years must document the extent to which it was able to secure third phase funding to develop concepts resulting from previous Phase II SBIR awards.

(2) *Commercialization Plan.* A succinct commercialization plan must be included with each proposal for an SBIR Phase II award moving toward commercialization. Elements of a commercialization plan may include the following:

(i) *Company information:* Focused objectives/core competencies; size; specialization area(s); products with significant sales; and history of previous Federal and non-Federal funding, regulatory experience, and subsequent commercialization.

(ii) *Customer and Competition:* Clear description of key technology objectives, current competition, and advantages compared to competing products or services; description of hurdles to acceptance of the innovation.

(iii) *Market:* Milestones, target dates, market analyses of market size, and estimated market share after first year sales and after 5 years; explanation of plan to obtain market share.

(iv) *Intellectual Property:* Patent status or other demonstration of a plan to achieve sufficient protection to realize the commercialization stage and attain at least a temporal competitive advantage.

(v) *Financing:* Plans of securing necessary funding in Phase III.

(vi) *Data Collection:* Each Phase II applicant will be required to provide information to the Tech-Net Database System (http://technet.sba.gov). See Appendix I, Item III. C., for additional information.

7. SBIR Funding Process

In requiring the establishment of a ''simplified, standardized funding process,'' the SBIR legislation requires that specific attention be given to the following areas of SBIR Program administration:

(a) *Timely Receipt and Review of Proposals.*

(1) Participating agencies must establish firm schedules and review formats for appropriate distribution of the proposals for reviewing recommendations and submission to the SBIR Project Manager for award determinations.

(i) All activities related to Phase I proposal reviews shall normally be completed and awards made within 6 months from the closing date of the program solicitation. However, agencies may extend that period up to 12 months based on agency needs.

(ii) The program solicitations for Phase I must establish proposal submission dates. Related to Phase II activity, an agency may also establish set proposal submission dates. However, agencies may negotiate mutually acceptable proposal submission dates with individual Phase I performers, accomplish proposal reviews expeditiously, and proceed with awards. While recognizing that Phase II arrangements between the agency and applicant may require more detailed negotiation to establish terms acceptable to both parties, agencies must not sacrifice the R/R&D momentum created under Phase I by engaging in unnecessarily protracted Phase II proceedings.

(iii) SBIR participants often submit duplicate or similar proposals to more than one soliciting agency when the work projects appear to involve similar topics or requirements, which are within the expertise and capability levels of the applicant. To the extent reasonably feasible, interagency funding duplications of ''essentially equivalent work'' under the SBIR or other Federal programs should not occur. For this purpose, the standardized program solicitation will require applicants to indicate the name and address of the agencies to which essentially equivalent work proposals were made, or anticipated to be made, and to identify by subject the projects for which the proposal was submitted and the dates submitted. The same information will be required for any previous Federal Government awards. To assist in avoiding duplicate funding, each agency must provide to SBA and to each SBIR agency a listing of Phase I and Phase II awardees including the complete address and title of each SBIR project. This information should be distributed no later than release of the funding agreement award information to the public.

(b) *Review of SBIR Proposals.* SBA encourages SBIR agencies to use their routine review processes for SBIR proposals whether internal or external evaluation is used. A more limited review process may be used for Phase I due to the larger number of proposals anticipated. Where appropriate, ''peer'' reviews external to the agency are authorized by the Act. SBA cautions SBIR agencies that all review procedures must be designed to minimize any possible conflict of interest as it pertains to applicant proprietary data. The standardized SBIR solicitation advises potential applicants that proposals may be subject to an established external review process and that the applicant may include company designated proprietary information in its proposal.

(c) *Selection of Awardees.* Normally, SBIR agencies shall establish a proposal review cycle wherein successful and unsuccessful applicants will be notified of final award decisions within 6-months of the agency's Phase I proposal closing date. However, agencies may extend that period up to 12 months based on agency needs.

(1) The standardized SBIR Program solicitation must:

(i) Advise Phase I applicants that additional information may be requested by the awarding agency to evidence awardee responsibility for project completion.

(ii) Contain information advising applicants of basic proposal evaluation criteria for Phase I and Phase II.

(2) Phase II proposal submissions, reviews, and selections shall be managed by arrangements between the SBIR agency and each Phase I awardee considered for Phase II award.

(d) *Cost Sharing.*

Cost sharing can serve the mutual interests of the SBIR agencies and certain SBIR awardees by assuring the efficient use of available resources. However, cost sharing on SBIR projects is not required, although it may be encouraged. The standardized SBIR Program solicitation (Appendix I) will provide information to prospective SBIR applicants concerning cost sharing.

(e) *Payment Schedules and Cost Principles.*

(1) Under Section 9(g)(7) of the Small Business Act, 15 U.S.C. 638(g)(7), SBIR awardees may be paid under an applicable, authorized progress payment procedure or in accordance with a negotiated/definitized price and payment schedule. Advance payments are optional and may be made under appropriate law. In all cases, agencies must make payment to recipients under SBIR funding agreements in full, subject to audit, on or before the last day of the 12-month period beginning on the date of completion of the award.

(2) All SBIR funding agreements must use, as appropriate, current cost principles and procedures authorized for use by the SBIR agencies. At the time of award, agencies shall inform each SBIR awardee, to the extent possible, of the applicable Federal regulations and procedures that refer to the costs that, generally, are allowable under funding agreements.

(f) *Funding Agreement Types and Fee or Profit.* Statutory requirements for uniformity and standardization require consistency in application of SBIR Program provisions among SBIR agencies. However, consistency must allow for flexibility by the various agencies in missions and needs as well as the wide variance in funds required to be devoted to SBIR Programs in the agencies. The following instructions are for the purpose of meeting these requirements:

(1) *Funding Agreement.* The choice of type of funding agreement (contract, grant, or cooperative agreement) rests with the awarding agency but must be consistent with 31 U.S.C. 6301–6308.

(2) *Fee or Profit.* Unless expressly excluded by statute, awarding agencies must provide for a reasonable fee or profit on SBIR funding agreements, consistent with normal profit margins provided to profit-making firms for R/R&D work.

(g) *Periods of Performance and Extensions.*

(1) In keeping with the legislative intent to make a large number of relatively small awards, modification of funding agreements to extend periods of performance, increase the scope of work, or to increase the dollar amount should be kept to a minimum, except for options in original Phase I or II awards.

(2) *Phase I.* Period of performance should normally not exceed 6 months. However, agencies may provide a longer performance period based on agency needs or research plans.

(3) *Phase II.* Period of performance under Phase II is a subject of negotiation between the awardee and the issuing agency. The duration of Phase II should normally not exceed 2 years. However, agencies may provide a longer performance period based on agency needs or research plans.

(h) *Dollar Value of Awards.*

(1) The Act establishes $100,000 as the maximum amount of funds which an agency may award in the first phase of an SBIR Program, and $750,000 as the maximum amount of funds which an agency may award in the second phase of an SBIR Program. SBA may adjust these amounts once every 5 years to reflect economic adjustments and programmatic considerations.

(2) After award of any funding agreement exceeding $100,000 for Phase I or $750,000 for Phase II, the agency SBIR representative must provide SBA with written justification of such action. This justification must be submitted with the SBIR agency's Annual Report data. Similar justification is required for any dollar increase of a funding agreement that would bring the cumulative dollar amount to a total in excess of the amounts above.

(i) *National Security Exemption.*

The Act provides for exemptions related to the simplified standardized funding process "* * * if national security or intelligence functions clearly would be jeopardized." This exemption should not be interpreted as a blanket exemption or prohibition of SBIR participation related to the acquisition of effort on national security or intelligence functions except as specifically defined under Section 9(e)(2) of the Act, 15 USC 638(e)(2). Agency technology managers directing R/R&D projects under the SBIR Program, where the project subject matter may be affected by this exemption, must first make a determination on which, if any, of the standardized proceedings clearly place national security and intelligence functions in jeopardy, and then proceed with an acceptable modified process to complete the SBIR action. SBA's SBIR Program monitoring activities, except where prohibited by security considerations, shall include a review of nonconforming SBIR actions justified under this public law provision.

8. Terms of Agreement Under SBIR Awards

(a) *Proprietary Information Contained in Proposals.* The standardized SBIR Program solicitation, as described in the Appendix I of this policy directive, will include provisions requiring the confidential treatment of any proprietary information to the extent permitted by law. Agencies will discourage SBCs from submitting information considered proprietary unless the information is deemed essential for proper evaluation of the proposal. The solicitation will require that all proprietary information to be clearly identified and marked with a prescribed legend. Agencies may elect to require SBCs to limit proprietary information to that essential to the proposal and to have such information submitted on a separate page or pages keyed to the text.

(b) *Rights in Data Developed Under SBIR Funding Agreement.* The Act provides for "retention by a SBC of the rights to data generated by the concern in the performance of an SBIR award."

(1) The legislative history states that the law provides authority for the SBIR agency to protect technical data generated under the funding agreement. Each agency should refrain from disclosing such data to competitors of the SBC or from using the information to produce future technical procurement specifications that could harm the SBC that discovered and developed the innovation until the SBC has a reasonable opportunity to seek patent protection, if appropriate.

(2) SBIR agencies shall protect such technical data for a period of not less than 4 years from completion of each phase of the SBIR Program (Phase I, Phase II, and Federally-funded Phase III) from which the data were generated unless the agencies obtain permission to disclose such data from the awardee. The Government shall retain a royalty-free license for Government use of any technical data delivered under an SBIR funding agreement whether patented or not. This section does not apply to program evaluation.

(3) These data rights apply to all funding awards, including subcontracts to such awards, that fall within the statutory definition of first phase, second phase, and third phase of the SBIR Program, as described in Section 4 of this proposed policy directive. The scope and extent of the SBIR data rights applicable to Federally funded third phase awards shall be identical to the SBIR data rights applicable to Phases I or II SBIR awards. That is, for phases one and two SBIR awards, the 4-year period of protection identified in 8(b)(2) immediately above begins with the completion of the Phase I period, and if a Phase II award is made, the 4-year period extends through the completion of the Phase II period. A Phase III award, if made, may not occur for several years beyond completion of the Phase II SBIR award period. Thus, the 4-year period of protection for a Phase III award begins with the completion of the Phase III award period.

(c) *Title Transfer of Agency Provided Property.* Under the Act, title to equipment purchased for project performance with funds provided under SBIR funding agreements may be transferred to the awardee where such transfer would be more cost effective than recovery of the property by the Government.

(d) *Continued Use of Government Equipment.* The Act directs that a SBC participating in the third phase of the SBIR Program be allowed continued use, as a directed bailment, of any property transferred by a Federal agency to the SBC in the second phase of an SBIR Program for a period of not less

than 2 years, beginning on the initial date of the concern's participation in the third phase of such program.

(e) *Grant Authority.* The Act does not, in and of itself, convey grant authority. Each agency must secure grant authority in accordance with its normal procedures.

(f) *Conflicts of Interest.* SBA cautions SBIR agencies that awards made to SBCs owned by or employing current or previous Federal Government employees can create conflicts of interest for those employees in violation of FAR Part 3 and the Ethics in Government Act of 1978, as amended. Each SBIR agency should refer to the standards of conduct review procedures currently in effect for its agency to ensure that such conflicts of interest do not arise.

(g) Congress intends that the awardee of a funding agreement under the SBIR Program should, when purchasing any equipment or a product with funds provided through the funding agreement, purchase only American-made equipment and products, to the extent possible in keeping with the overall purposes of that program. Each SBIR agency must provide to each awardee a notice of this.

9. Responsibilities of SBIR Participating Agencies and Departments

(a) The Act requires each agency participating in the SBIR Program to:

(1) Submit to the SBA, not later than 4 months after the date of enactment of its annual Appropriations Act, a report describing the methodology used for calculating the amount of its extramural budget. The report must also include an itemization of each research program excluded from the calculation of its extramural budget and a brief explanation of why it is excluded.

(2) Unilaterally determine the categories of projects to be included in its SBIR Program, giving special consideration to broad research topics and to topics that further one or more critical technologies, as identified by:

(i) the National Critical Technologies panel (or its successor) in the 1991 report required under section 603 of the National Science and Technology Policy Organization and Priorities Act of 1976, and in subsequent reports issued under that authority, or

(ii) the Secretary of Defense in the 1992 report issued in accordance with 10 U.S.C. 2522 and in subsequent reports issued under that authority.

(3) Release SBIR solicitations in accordance with the SBA master schedule.

(4) Unilaterally receive and evaluate proposals resulting from program solicitations and issue funding agreements.

(5) Provide for the requirement of a succinct commercialization plan with each proposal for a Phase II funding agreement that is moving toward commercialization.

(6) Collect and maintain information from awardees and provide it to SBA to develop and maintain the Tech-Net Database, as identified in Section 11(e) of this proposed policy directive.

(7) Administer its own SBIR funding agreements or delegate such administration to another agency; and inform each awardee under such agreement, to the extent possible, of the costs of the awardee that will be allowable under the funding agreement.

(8) Include provisions in each funding agreement under the SBIR Program setting forth the respective rights of the United States and the SBC with respect to intellectual property rights and with respect to any right to carry out follow-on research.

(9) Ensure that the rights in data developed under each Federally-funded SBIR first phase, second phase, and third phase funding agreement are properly protected.

(10) Make payments to awardees of SBIR funding agreements on the basis of progress toward or completion of the funding agreement requirements and in all cases make payment to awardees under such agreements in full, subject to audit, on or before the last day of the 12-month period beginning on the date of completion of such requirements.

(11) Provide an annual report on the SBIR Program to SBA. *See* Section 10 of this policy directive.

(12) Report at least annually to the SBA's Office of Technology all instances in which an agency pursued research, development, or production of a technology developed by a SBC using an award made under the SBIR Program of that agency, where the agency determined that it was not practicable to enter into a follow-on non-SBIR Program funding agreement with the SBC. The report shall include, at a minimum:

(i) The reasons why the follow-on funding agreement with the SBC was not practicable;

(ii) The identity of the entity with which the agency contracted to perform the research, development, or production; and

(iii) A description of the type of funding agreement under which the research, development, or production was obtained.

(13) Include in its annual performance plan a section on its SBIR Program, and shall submit such section to the Committee on Small Business of the Senate, and the Committee on Science and the Committee on Small Business of the House of Representatives.

(14) Provide data to SBA to be used in SBIR Program evaluation (see Section 11(e) of this policy directive).

(b) The Act allows discretionary technical assistance to SBIR awardees:

(1) Agencies may enter into funding agreements to provide technical assistance to SBIR awardees, which may include:

(i) Assistance in technical decisions;

(ii) Assistance with technical problems; and

(iii) Assistance with all facets of commercialization.

(2) Under Phase I, each agency may provide up to $4,000 of SBIR funds for such technical assistance, for each Phase I award. The amount will be in addition to the award and will count as part of the agency's SBIR funding.

(3) In Phase II, agencies may allow awardees to expend up to $4,000 of SBIR funds per year of the funding agreement for such services.

(c) Interagency actions.

(1) *Joint funding.* An SBIR project may be financed by more than one Federal agency. Joint funding is not required but can be an effective arrangement for some projects.

(2) *Phase II awards.* An SBIR Phase II award may be issued by a Federal agency other than the one that made the Phase I award. The Phase I and Phase II agencies should document their files appropriately, providing clear rationale for the transfer of the Phase II proposal to, and award by, the funding Federal agency.

(3) *Timely notification of awards.* In order to avoid duplicate funding of an SBIR project, agencies shall promptly search the Tech-Net Database System for awards for essentially equivalent work. Discussion among agencies receiving similar proposals is strongly encouraged before an SBIR award is made.

(4) *Participation by women-owned SBCs and socially and economically disadvantaged SBCs in the SBIR Program.* In order to meet statutory requirements for greater inclusion, SBA and the Federal participating agencies must conduct outreach efforts to find and place innovative women-owned SBCs and socially and economically disadvantaged SBCs in the SBIR Program information system. These SBCs will be required to compete for SBIR awards on the same basis as all other SBCs. However, participating agencies are encouraged to work independently and cooperatively with SBA to develop methods to encourage qualified women-owned SBCs and

socially and economically disadvantaged SBCs to participate in the SBIR Program.

(d) Agency limitation of participation and use of funds.

(1) A Federal agency must not use any of its SBIR budget for the purpose of funding administrative costs of the program, including costs associated with program operations, employee salaries, and other associated expenses.

(2) A Federal agency shall not issue an SBIR funding agreement that includes a provision for subcontracting any portion of that agreement back to the issuing agency or to any other Federal Government agency or other units of the Federal Government. However, an agency may deviate from this requirement based on a determination that such subcontracting is vital to its mission. Approval by the funding agreement officer for each such specific condition must be in writing. (SBA expects that agency deviations will not be routine, and will occur only for those special SBIR projects where the use of Federal resources is absolutely essential to the successful conduct of a project that is vital to the mission of the agency, and equivalent resources are not available in the private sector.)

(3) No agency, at its own discretion, may unilaterally cease participation in the SBIR Program. R/R&D agency budgets may cause fluctuations and trends that must be reviewed in light of SBIR program purposes. An agency may be considered by SBA for a phased withdrawal from participation in the SBIR Program over a period of time sufficient in duration to minimize any adverse impact on SBCs. However, the SBA decision concerning such a withdrawal will be made case-by-case basis and will depend on significant changes to extramural R/R&D 3-year forecasts as found in the annual *Budget of the United States Government* and National Science Foundation breakdowns of total R/R&D obligations as published in the *Federal Funds for Research and Development.* Any withdrawal of an SBIR Federal participating agency from the SBIR Program will be accomplished in a standardized and orderly manner in compliance with these statutorily mandated procedures.

(4) Voluntary participation in the SBIR Program by Federal agencies not otherwise qualified for such participation may be permitted under this policy directive. Federal agencies seeking to participate in the SBIR Program must submit their written requests to SBA. Voluntary participation requires the written approval of the SBA after review of the request.

10. Annual Report to the Small Business Administration

The Act requires a ''simplified, standardized and timely annual report'' from the SBIR agencies. The following paragraphs expand on this requirement, providing the due date, the kinds of information to be included, and the number of copies to be submitted to SBA.

(a) Annual Report Due Date and Number of Copies

Reporting shall be on an annual basis and will be for the period ending September 30 of each fiscal year. A single, hard copy report is due to SBA by March 15 of each year. However, if agencies choose to send an e-mail version, it should be sent to technology@sba.gov. Example: The report for FY 2001 (October 1, 2000—September 30, 2001) must be submitted to SBA by March 15, 2002. SBA encourages agencies to submit their annual report before the due date of March 15 of each year.

(b) Annual Report Content

(1) Agency total fiscal year, extramural R/R&D total obligations as reported to the National Science Foundation pursuant to the annual *Budget of the United States Government.*

(2) SBIR Program total fiscal year dollars derived by applying the statutory per centum to the agencies extramural R/R&D total obligations.

(3) SBIR Program fiscal year dollars obligated through SBIR Program funding agreements for Phase I and Phase II.

(4) Number of topics and subtopics contained in each program solicitation.

(5) Number of proposals received by the agency for each topic and subtopic in each program solicitation.

(6) For both Phase I and Phase II, the awardee's name and address, solicitation topic and subtopic, solicitation number, project title, and total dollar amount of funding agreement. Identify women-owned SBCs, economically and socially disadvantaged SBCs, and Phase II awardees with a follow-on funding commitment(s).

(7) Justification for the award of any funding agreement exceeding $125,000 for Phase I or $750,000 for Phase II.

(8) The number of awardees for whom the Phase I process exceeded the 6-month period from the closing date of the SBIR solicitation to award of the funding agreement.

(9) For an agency Phase III award using non-SBIR Federal funds to continue a Phase II project, the agency shall instruct the Phase III awardee to provide the name, address, project title, and dollar amount obligated.

(10) Awards made under a topic or subtopic wherein only one proposal was received shall be reported and justified. Agencies must provide name, address, topic or subtopic and dollar amount of award. Information must be collected quarterly but updated in agencies' annual reports.

(11) An accounting of Phase I awards made to SBCs that have received more than 15 Phase II awards from all agencies in the preceding 5 fiscal years. Agencies to report as a minimum: name of awarding agency, date of award, funding agreement number, topic or subtopic title, amount and date of Phase II funding, and commercialization status for each Phase II award.

(12) If applicable, report the number of National Critical Technology topic or subtopic funding agreements, the percentage by number and dollar amount of total SBIR awards to such National Critical Technologies.

(13) Report at least annually all instances in which an agency pursued research, development, or production of a technology developed by a SBC using an award made under the SBIR Program of that agency, and determined that it was not practicable to enter into a follow-on non-SBIR Program funding agreement with the SBC. *See* Section 9(a)(12). for minimum reporting requirements.

(14) Justification for continuing an STTR Phase I project through the SBIR Program using SBIR funds. Explain in detail the rationale for this deviation.

11. Responsibilities of SBA

(a) The SBA's Office of Technology will annually obtain available information on the current critical technologies from the National Critical Technologies panel (or its successor) and the Secretary of Defense and provide such information to the SBIR agencies.

(b) SBA will request this information in June of each year. The data received will be submitted to each of the participating Federal agencies and will also be published in the September issue of the SBIR Pre-Solicitation Announcement.

(c) Examples of SBIR Areas to be Monitored by SBA.

(1) *SBIR Funding Allocations.* Of major significance to the success of the SBIR Program is the magnitude and nature of the SBIR agencies' funding allocations identified for fiscal year

funding agreements. The Act explicitly relates to both the definition of the SBIR effort, R/R&D (as defined in the Act and OMB Circular A–11), and the mathematical methodology for determining fiscal year participation levels for all work categorized within the statutory definitions. SBA monitors these allocations.

(2) *SBIR Program Solicitation and Award Status.* The accomplishment of scheduled SBIR events, such as SBIR Program solicitation release and the issuance of funding agreements is critical to meeting statutory mandates and to operating an effective, useful program. SBA monitors these and other operational features of the SBIR Program. SBA does not plan to monitor administration of the awards except in instances where SBA assistance is requested and is related to a specific SBIR project or funding agreement.

(3) *Follow-on Funding Commitments.* SBA will monitor whether follow-on non-Federal funding commitments obtained by Phase II awardees for Phase III were considered in the evaluation of Phase II proposals as required by the Act.

(4) *Agency Rules and Regulations.* It is essential that no policy, rule, regulation, or interpretation be promulgated by the SBIR agencies that are inconsistent with the Act or this policy directive. SBA's monitoring activity will include review of policies, rules, regulations, interpretations, and procedures generated to facilitate intra-agency SBIR Program implementation.

(d) The SBA develops, participates in, and, when appropriate and feasible, sponsors seminars for innovative women-owned SBCs and socially and economically disadvantaged SBCs to inform them of the SBIR Program and Federal and commercial assistance and services available for SBIR Program participants.

(e) *Standardized Collection of Data—''Technology Resources Access Network'' (Tech-Net) Database System Overview.*

The SBA's Office of Technology, as functional program manager for the SBIR and the Small Business Technology Transfer (STTR) Programs, is required to collect and report to the Congress, information regarding awards made to SBCs by each Federal agency participating in these programs. The Office of Technology maintains an internal database of awards and uses the system to report on technology and demographical statistics regarding the SBIR and the STTR Programs. The system also stores the 200-word technical abstract for each SBIR and STTR award that is prepared by the awardee summarizing the research effort that has been supported by the Federal Government. The system also provides the Office of Technology with the ability to perform keyword searches in many areas, including any part of the name, address, and technical abstract of the awardee. The system produces many reports that are used in the conduct of audits performed by the General Accounting Office (GAO) and to expose potential duplication of research and development efforts funded by the SBIR agencies. The Office of Technology, in a joint effort with the SBA's Office of the Chief Information Officer, is redesigning the Office of Technology's internal awards database system to operate on the Internet. The Internet system is titled the ''Technology Resources Access Network,'' or Tech-Net. Tech-Net offers a vast array of user friendly capabilities, and is accessible by the public at no charge. Tech-Net allows for the online submission of SBIR/STTR awards data from all SBIR agencies, a process that until now was part manual and part automated. Tech-Net also allows any end-user to perform keyword searches and create formatted reports of SBIR/STTR awards information. Tech-Net will allow for potential research partners to view research and development efforts that are ongoing in the SBIR and the STTR Programs, increasing the investment opportunities of the SBIR/STTR SBCs in the high tech arena. Tech-Net serves as an excellent marketing tool for the small high tech business community, allowing investors to view first hand the technical capabilities of SBIR/STTR awardees, which will ultimately produce investments, partnerships, and strategic alliances resulting in commercialization of SBIR/STTR research. Tech-Net also houses legislatively mandated information on all SBIR and STTR awards, as well as outcome and output information that will be relevant to measuring the effectiveness and success of the programs. Agencies can update awardee information and add project commercialization and sales data with user names and passwords. This can be done via the ''Procurement Marketing and Access Network'' or Pro-Net database. Pro-Net is the single source client database for all internal and external SBA database systems and contains information regarding SBIR and STTR awardees. Username and passwords will be assigned only to awardees to provide access to their respective awards information maintained in the Pro-Net system. Award data maintained in the Tech-Net database can be changed only by the awardee, SBA, or the awarding SBIR /STTR Federal agency. Project commercialization and sales data can only be viewed by Congress, the Government Accounting Office (GAO), agencies participating in the SBIR and the STTR Programs, Office of Management and Budget (OMB), Office of Science and Technology Policy (OSTP), Office of Federal Procurement Policy (OFPP), and other authorized persons (e.g., authorized contractors) who are subject to a use and nondisclosure agreement with the Federal Government covering the use of the database. To use the Tech-Net or Pro-Net database systems, visit the website http://tech-net.sba.gov. Online help is available.

(1) Public Tech-Net Database (See Appendix II for Data Fields)

SBA, in consultation with the Federal agencies participating in the SBIR and the STTR Programs, develops and maintains a searchable, up-to-date, electronic database that includes:

(i) the name, size, location, funding agreement number, and tax identification number of each SBC that has received an SBIR or STTR Phase I or Phase II award from a Federal agency;

(ii) a description of each SBIR or STTR Phase I or Phase II award received by the SBC including:

(A) an abstract of the project funded by the award, excluding any proprietary information so identified by the awardee;

(B) the Federal agency making the award; and

(C) the date and amount of the award.

(iii) an identification of any business concern or subsidiary established for the commercial application of a product or service for which an SBIR or STTR award is made; and

(iv) information regarding mentors and Mentoring Networks, as required in the Federal and State Technology (FAST) Partnership Program described in Section 12 of this proposed policy directive.

(2) Government Tech-Net Database

SBA, in consultation with the Federal agencies participating in the SBIR and the STTR Programs, develops and maintains a secure database that:

(i) contains, for each Phase II award:

(A) revenue from the sale of new products or services resulting from the research conducted under each Phase II award;

(B) additional investment from any source, other than Phase I or Phase II SBIR or STTR awards, to further the

research and development conducted under each Phase II award; and

(C) any other information received in connection with the award that the Administrator, in conjunction with the SBIR program managers of the participating agencies, considers relevant and appropriate;

(ii) includes any narrative information that a Phase II awardee voluntarily submits to further describe the outputs and outcomes of its awards;

(iii) includes for each applicant that does not receive a Phase I or Phase II award: (1) The name, size, location, identifying number assigned by the agency, and tax identification number; (2) an abstract of the project; and (3) the Federal agency to which the application was made;

(iv) includes any other data collected by or available to any Federal agency that such agency considers to be useful for SBIR program evaluation; and

(v) is available for use solely for program evaluation purposes by the Federal Government or, in accordance with policy directives issued by SBA, or by other authorized persons who are subject to a use and nondisclosure agreement with the Federal Government covering the use of the database.

(3) Data Collection for Government Tech-Net Database

(i) Each SBC applying for a Phase II award is required to update the appropriate information in the Tech-Net database for any prior Phase II award received by that SBC. In meeting this requirement, the SBC may apportion sales or additional investment information relating to more than one Phase II award among those awards, if it notes the apportionment for each award.

(ii) Each Phase II awardee is required to update the appropriate information in the Tech-Net database on that award at the expiration of the award period. In addition, the awardee is requested to voluntarily update the appropriate information on that award in the Tech-Net database annually thereafter for a minimum period of 5 years.

(iii) Under 15 U.S.C. 638(k)(4) information provided to the Government Tech-Net Database is privileged and confidential and not subject to disclosure pursuant to 5 U.S.C. 552 (Government Organization and Employees); nor shall it be considered to be publication for purposes of 35 U.S.C. 102 (a) or (b).

(iv) SBA will minimize the data reporting requirements of SBCs, make updating available electronically, and provide standardized procedures.

12. Federal and State Technology (FAST) Partnership Program and Rural Outreach Program

(a) Federal and State Technology Partnership Program

The Small Business Innovation Research Program Reauthorization Act of 2000 (Pub. L. 106–554) established the Federal and State Technology (FAST) Partnership Program to strengthen the technological competitiveness of SBCs in the United States. Congress found that programs that foster economic development among small high-technology firms vary widely among the States. Thus, the purpose of the FAST Program is to improve the participation of small technology firms in the innovation and commercialization of new technology, thereby ensuring that the United States remains on the cutting edge of research and development in the highly competitive arena of science and technology. SBA administers the FAST Program. Additional and detailed information regarding this program is available electronically at www.sba.gov/SBIR.

(b) Rural Outreach Program

The Rural Outreach Program is authorized by section 9(s) of the Small Business Act, 15 U.S.C. 638 (s). The Small Business Innovation Research Program Reauthorization Act of 2000, Public Law 106–554, which was signed by the President on December 21, 2000, extends the program through fiscal year 2005 (September 30, 2005).

Historically, SBCs located in a relatively small number of States have been highly successful in securing awards under the SBIR Program. To expand competition under the SBIR and STTR Programs, and to encourage the maximum number of SBCs to submit proposals and succeed in winning awards, SBA provides Federal assistance to support statewide outreach to small high-technology businesses located in States that are underrepresented in SBIR/STTR awards. Cooperative Agreements to ''Eligible States'' are made on a matching funds basis. The awards will be made in a ratio of Federal dollars to non-Federal dollars of 2:1, with a maximum Federal contribution of $100,000. Assistance provided to an Eligible State under this program announcement shall be used by the State, in consultation with State and local departments and agencies, for programs and activities to increase the participation of SBCs located in the State in the SBIR and STTR Programs. Only ''Eligible States'' may submit proposals for the Rural Outreach Program. An ''Eligible State'' is defined in section 9(s)(1) of the Small Business Act (15 U.S.C. 638(s)(1)): ''Eligible State'' means a State-(A) if the total value of SBIR/STTR awards made to recipient businesses in the State during fiscal year 1995 under this section [i.e., under SBIR and STTR Programs], was less than $5,000,000 (as reflected in SBA's database of fiscal year 1995 awards); and (B) that certifies to the Administration that the State will, upon receipt of assistance under this subsection, provide matching funds from non-Federal sources in an amount that is not less than 50 percent of the amount provided under this subsection.

The 25 States for which the total value of awards issued under the SBIR and STTR Programs in fiscal year 1995 was less than $5,000,000 are: Alaska, Arkansas, Delaware, District of Columbia, Hawaii, Idaho, Indiana, Iowa, Kentucky, Louisiana, Maine, Mississippi, Missouri, Montana, Nebraska, Nevada, North Dakota, Oklahoma, Puerto Rico, Rhode Island, South Carolina, South Dakota, Vermont, West Virginia, and Wyoming.

Appendix I: Instructions for SBIR Program Solicitation Preparation

1. General

Section 9(j) of the Small Business Act (15 U.S.C. 638(j)) requires ''***simplified, standardized and timely SBIR solicitations'' and for SBIR agencies to utilize a ''uniform process'' minimizing the regulatory burden of participation. Therefore, the following instructions purposely depart from normal Government solicitation formats and requirements. SBIR solicitations must be prepared and issued as program solicitations in accordance with the following instructions.

2. Limitation in Size of Solicitation

In the interest of meeting the requirement for simplified and standardized solicitations, while also recognizing that the Internet has become the main vehicle for distribution, each agency should structure its entire SBIR solicitation to produce the least number of pages (electronic and printed), consistent with the procurement/assistance standard operating procedures and statutory requirements of the participating Federal agencies.

3. Format

SBIR Program solicitations must be prepared in a simplified, standardized, easy-to-read, easy-to-understand format including a cover sheet, a table of contents and the following sections in the order listed (content of each section is discussed below):

1. Program Description.
2. Definitions.
3. Proposal Preparation Instructions and Requirements.
4. Method of Selection and Evaluation Criteria.

5. Considerations.
6. Submission of Proposals.
7. Scientific and Technical Information Sources.
8. Submission Forms and Certifications.
9. Research Topics.

4. Cover Sheet

The cover sheet or title page of an SBIR Program solicitation must clearly identify the solicitation as a SBIR solicitation, identify the agency releasing the solicitation, specify date(s) on which proposals (contract proposals/grant applications) are due under the solicitation, and state the solicitation number or year.

Instructions for Preparation of SBIR Program Solicitation Sections 1 Through 9

1. Program Description

(a) Summarize in narrative form the invitation to submit proposals and the objectives of the SBIR Program.

(b) Describe in narrative form the agency's SBIR Program including a description of the three phases. Note in your description that the solicitation is for Phase I proposals only.

(c) Describe program eligibility, as follows:

Eligibility. Each concern submitting a proposal must qualify as a SBC for research or R&D purposes at the time of award. In addition, the primary employment of the principal investigator must be with the SBC at the time of award and during the conduct of the proposed research, unless otherwise approved in writing by the funding agreement officer. Also, for both Phase I and Phase II, the research or R&D work must be performed in the United States. However, based on a rare and unique circumstance, for example, a supply or material or other item or project requirement that is not available in the United States, agencies may allow that particular portion of the research or R&D work to be performed or obtained in a country outside of the United States. Approval by the funding agreement officer for such specific condition(s) must be in writing.

(d) List name, address and telephone number of agency contacts for general information on the SBIR Program solicitation.

2. Definitions

Whenever terms are used that are unique to the SBIR Program, a specific SBIR solicitation or a portion of a solicitation, they will be defined in a separate section entitled ''Definitions.'' At a minimum, the definitions of ''SBC,'' ''socially and economically disadvantaged SBC,'' ''women-owned SBC,'' ''funding agreement,'' and ''subcontract'' as stated in this proposed policy directive shall be included.

3. Proposal Preparation Instructions and Requirements

The purpose of this section is to inform the applicant on what to include in his or her proposal and to set forth limits on what may be included. It should also provide guidance to assist applicants in improving the quality and acceptance of proposals particularly to firms that may not have previous Government experience.

(a) *Limitations on Length of Proposal.* Include at least the following information: (1) SBIR Phase I proposals must not exceed a total of 25 pages, including cover page, budget, and all enclosures or attachments, unless stated otherwise in the agency solicitation. Pages should be of standard size (8 1/2'' × 11''; 21.6 cm × 27.9 cm) and should conform to the standard formatting instructions; in particular, 2.5 cm margins and type no smaller than 10 point font size.

(2) A notice that no additional attachments, appendices, or references beyond the 25-page limitation shall be considered in proposal evaluation (unless specifically solicited by an agency) and that proposals in excess of the page limitation shall not be considered for review or award.

(b) *Proposal Cover Sheet.* Every applicant will be required to include at least the following information on the first page of proposals. Items 8 and 9 are for statistical purposes only.

(1) Agency and solicitation number or year.
(2) Topic Number or Letter.
(3) Subtopic Number or Letter.
(4) Topic Area.
(5) Project Title.
(6) Name and Complete Address of Firm.
(7) Small Business Certification (by statement or checkbox) as follows:

''The above concern certifies that it is a SBC and meets the definition as stated in this solicitation or that it will meet that definition at time of award.''

(8) Socially and Economically Disadvantaged SBC Certification (by statement or checkbox) as follows:

''The above concern certifies that it __ does __ does not qualify as a socially and economically disadvantaged SBC and meets the definition as stated in this solicitation.''

(9) Women-owned SBC Certification (by statement or checkbox) as follows:

''The above concern certifies that it does does not qualify as a women-owned SBC and meets the definition as stated in this solicitation.''

(10) An information statement regarding duplicate research as follows:

''The applicant and/or Principal Investigator __ has __ has not submitted proposals for essentially equivalent work under other Federal program solicitations or __ has __ has not received other Federal awards for essentially equivalent work.'' (Identify proposals/awards in section III.D.10, ''Similar Proposals and Awards'')

(11) Disclosure permission (by statement or checkbox), such as follows, may be included at the discretion of the funding agency: ''Will you permit the Government to disclose the title and technical abstract page of your proposed project, plus the name, address, and telephone number of the corporate official of your concern, if your proposal does not result in an award, to concerns that may be interested in contacting you for further information? Yes __ No__''

(12) Signature of a company official of the proposing SBC and that individual's typed name, title, address, telephone number, and date of signature.

(13) Signature of Principal Investigator or Project Manager within the proposing SBC and that individual's typed name, title, address, telephone number, and date of signature.

(14) Legend for proprietary information as described in the ''Considerations'' section of this program solicitation if appropriate. May also be noted by asterisks in the margins on proposal pages.

(c) *Data Collection Requirement.*

(1) Each Phase II applicant will be required to provide information for the Tech-Net Database System (http://technet.sba.gov). Following are examples of the data to be entered by applicants into Tech-Net:

(i) Any business concern or subsidiary established for the commercial application of a product or service for which an SBIR award is made.

(ii) Revenue from the sale of new products or services resulting from the research conducted under each Phase II award;

(iii) Additional investment from any source, other than Phase I or Phase II awards, to further the research and development conducted under each Phase II award.

(iv) Update the information in the Tech-Net database for any prior Phase II award received by the SBC. The SBC may apportion sales or additional investment information relating to more than one Phase II award among those awards, if it notes the apportionment for each award.

(2) Each Phase II awardee is required to update the appropriate information on the award in the Tech-Net database at the expiration of the award period and is requested to voluntarily update the information in the Tech-Net database annually thereafter for a minimum period of 5 years.

(d) *Abstract or Summary.* Applicants will be required to include a one-page project summary of the proposed research or R&D including at least the following:

(1) Name and address of SBC.
(2) Name and title of principal investigator or project manager.
(3) Agency name, solicitation number, solicitation topic, and subtopic.
(4) Title of project.
(5) Technical abstract limited to two hundred words.
(6) Summary of the anticipated results and implications of the approach (both Phases I and II) and the potential commercial applications of the research.

(e) *Technical Content.* SBIR Program solicitations must require as a minimum the following to be included in proposals submitted thereunder:

(1) *Identification and Significance of the Problem or Opportunity.* A clear statement of the specific technical problem or opportunity addressed.

(2) *Phase I Technical Objectives.* State the specific objectives of the Phase I research and development effort, including the technical questions it will try to answer to determine the feasibility of the proposed approach.

(3) *Phase I Work Plan.* Include a detailed description of the Phase I R/R&D plan. The plan should indicate what will be done, where it will be done, and how the R/R&D will be carried out. Phase I R/R&D should address the objectives and the questions cited in D.2. above. The methods planned to achieve each objective or task should be discussed in detail.

(4) *Related R/R&D.* Describe significant R/R&D that is directly related to the proposal

including any conducted by the project manager/principal investigator or by the proposing SBC. Describe how it relates to the proposed effort, and any planned coordination with outside sources. The applicant must persuade reviewers of his or her awareness of key recent R/R&D conducted by others in the specific topic area.

(5) *Key Personnel and Bibliography of Directly Related Work.* Identify key personnel involved in Phase I including their directly related education, experience, and bibliographic information. Where vitae are extensive, summaries that focus on the most relevant experience or publications are desired and may be necessary to meet proposal size limitation.

(6) *Relationship with Future R/R&D.*

(i) State the anticipated results of the proposed approach if the project is successful (Phase I and II).

(ii) Discuss the significance of the Phase I effort in providing a foundation for the Phase II R/R&D effort.

(7) *Facilities.* A detailed description, availability and location of instrumentation and physical facilities proposed for Phase I should be provided.

(8) *Consultants.* Involvement of consultants in the planning and research stages of the project is permitted.

If such involvement is intended, it should be described in detail.

(9) *Potential Post Applications.* Briefly describe:

(i) Whether and by what means the proposed project appears to have potential commercial application.

(ii) Whether and by what means the proposed project appears to have potential use by the Federal Government.

(10) *Similar Proposals or Awards.* WARNING—While it is permissible with proposal notification to submit identical proposals or proposals containing a significant amount of essentially equivalent work for consideration under numerous Federal program solicitations, it is unlawful to enter into funding agreements requiring essentially equivalent effort. If there is any question concerning this, it must be disclosed to the soliciting agency or agencies before award. If an applicant elects to submit identical proposals or proposals containing a significant amount of essentially equivalent work under other Federal program solicitations, a statement must be included in each such proposal indicating:

(i) The name and address of the agencies to which proposals were submitted or from which awards were received.

(ii) Date of proposal submission or date of award.

(iii) Title, number, and date of solicitations under which proposals were submitted or awards received.

(iv) The specific applicable research topics for each proposal submitted or award received.

(v) Titles of research projects.

(vi) Name and title of principal investigator or project manager for each proposal submitted or award received.

(11) *Prior SBIR Phase II Awards.* If the SBC has received more than 15 Phase II awards in the prior 5 fiscal years, submit name of awarding agency, date of award, funding agreement number, amount, topic or subtopic title, follow-on agreement amount, source, and date of commitment and current commercialization status for each Phase II. (This required proposal information will not be counted toward proposal pages count limitation.)

(f) *Cost Breakdown/Proposed Budget.* The solicitation will require the submission of simplified cost or budget data.

4. Method of Selection and Evaluation Criteria

(a) *Standard Statement.* Essentially the following statement shall be included in all SBIR Program solicitations:

''All Phase I and II proposals will be evaluated and judged on a competitive basis. Proposals will be initially screened to determine responsiveness. Proposals passing this initial screening will be technically evaluated by engineers or scientists to determine the most promising technical and scientific approaches. Each proposal will be judged on its own merit. The Agency is under no obligation to fund any proposal or any specific number of proposals in a given topic. It also may elect to fund several or none of the proposed approaches to the same topic or subtopic.''

(b) *Evaluation Criteria.*

(1) The Agency in its evaluation process shall develop a standardized method that will consider as a minimum the following factors:

(i) The technical approach and the anticipated agency and commercial benefits that may be derived from the research.

(ii) The adequacy of the proposed effort and its relationship to the fulfillment of requirements of the research topic or subtopics.

(iii) The soundness and technical merit of the proposed approach and its incremental progress toward topic or subtopic solution.

(iv) Qualifications of the proposed principal/key investigators, supporting staff, and consultants.

(v) In Phase II, evaluations of proposals require, among other things, consideration of a proposal's commercial potential as evidenced by:

(A) the SBC's record of commercializing SBIR or other research,

(B) the existence of second phase funding commitments from private sector or non-SBIR funding sources,

(C) the existence of third phase follow-on commitments for the subject of the research, and,

(D) the presence of other indicators of commercial potential of the idea.

Phase II proposals may only be submitted by Phase I award winners.

(2) The factors in B.1. above and other appropriate evaluation criteria, if any, shall be specified in the ''Method of Selection'' section of SBIR Program solicitations.

(c) *Peer Review.* The program solicitation must indicate if the SBIR agency contemplates that as a part of the SBIR proposal evaluation it will use external peer review.

(d) *Release of Proposal Review Information.* After final award decisions have been announced, the technical evaluations of the applicant's proposal may be provided to the applicant. The identity of the reviewer must not be disclosed.

5. Considerations

This section must include, as a minimum, the following information:

(a) *Awards.* Indicate the estimated number and type of awards anticipated under the particular SBIR Program solicitation in question, including:

(i) Approximate number of Phase I awards expected to be made.

(ii) Type of funding agreement, i.e., contract, grant or cooperative agreement.

(iii) Whether fee or profit will be allowed.

(iv) Cost basis of funding agreement, for example, firm-fixed-price, cost reimbursement, or cost-plus-fixed fee.

(v) Information on the approximate average dollar value of awards for Phase I and Phase II.

(b) *Reports.* Describe the frequency and nature of reports that will be required under Phase I funding agreements. Interim reports should be brief letter reports.

(c) *Payment Schedule.* Specify the method and frequency of progress and final payment under Phase I and II agreements.

(d) *Innovations, Inventions and Patents.*

(1) *Limited Rights Information and Data.*

(i) *Proprietary Information.* Essentially the following statement shall be included in all SBIR solicitations: ''Information contained in unsuccessful proposals will remain the property of the applicant. The Government may, however, retain copies of all proposals. Public release of information in any proposal submitted will be subject to existing statutory and regulatory requirements. If proprietary information is provided by an applicant in a proposal, which constitutes a trade secret, proprietary commercial or financial information, confidential personal information or data affecting the national security, it will be treated in confidence, to the extent permitted by law. This information must be clearly marked by the applicant with the term ''confidential proprietary information'' and the following legend must appear on the title page of the proposal:

''For any purpose other than to evaluate the proposal, this data shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed in whole or in part, provided that if a funding agreement is awarded to this applicant as a result of or in connection with the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the funding agreement and pursuant to applicable law. This restriction does not limit the Government's right to use information contained in the data if it is obtained from another source without restriction. The data subject to this restriction are contained on pages ____of this proposal.'' Any other legend may be unacceptable to the Government and may constitute grounds for removing the proposal from further consideration, without assuming any liability for inadvertent disclosure. The Government will limit dissemination of such information to within official channels.''

(ii) *Alternative To Minimize Proprietary Information.* Agencies may elect to instruct applicants to:

(A) Limit proprietary information to only that absolutely essential to their proposal.

(B) Provide proprietary information on a separate page with a numbering system to key it to the appropriate place in the proposal.

(iii) *Rights in Data Developed Under SBIR Funding Agreements.* To notify the SBC of the policy stated in Section 8(b) of this proposed policy directive, the following statement will be included in all SBIR Program solicitations: ''These SBIR data are furnished with SBIR rights under Funding Agreement No. __ (and subcontract __ if appropriate). For a period of 4 years after acceptance of all items to be delivered under this funding agreement, the Government agrees to use this data for Government purposes only, and it shall not be disclosed outside the Government (including disclosure for procurement purposes) during such period without permission of the awardee, except that, subject to the foregoing use and disclosure prohibitions, such data may be disclosed for use by support contractors. After the 4-year period, the Government has a royalty-free license to use, and to authorize others to use on its behalf, this data for Government purposes, but is relieved of all disclosure prohibitions and assumes no liability for unauthorized use of this data by third parties. This Notice shall be affixed to any reproductions of this data, in whole or in part.''

(iv) *Copyrights.* Include an appropriate statement concerning copyrights and publications; for example: ''With prior written permission of the contracting officer, the awardee normally may copyright and publish (consistent with appropriate national security considerations, if any) material developed with (agency name) support. (Agency name) receives a royalty-free license for the Federal Government and requires that each publication contain an appropriate acknowledgement and disclaimer statement.''

(v) *Patents.* Include an appropriate statement concerning patents. For example: ''Small business concerns normally may retain the principal worldwide patent rights to any invention developed with Government support. The Government receives a royalty-free license for Federal Government use, reserves the right to require the patent holder to license others in certain circumstances, and requires that anyone exclusively licensed to sell the invention in the United States must normally manufacture it domestically. To the extent authorized by 35 U.S.C. 205, the Government will not make public any information disclosing a Government-supported invention for a 4-year period to allow the awardee a reasonable time to pursue a patent.''

(vi) *Invention Reporting.* Include requirements for reporting invention Include appropriate information concerning the reporting of inventions, for example: ''SBIR awardees must report inventions to the awarding agency within 2 months of the inventor's report to the awardee. The reporting of inventions may be accomplished by submitting paper documentation, including fax.''

Note: Some agencies provide electronic reporting of inventions through the NIH Edison Invention Reporting System. Use of the Edison system satisfies all invention reporting requirements mandated by the Code of Federal Regulations, Title 37 CFR Part 401, with particular emphasis on the Standard Patent Rights Clauses, Section 401.14. Access to the system is through a secure interactive Internet site, http://www.iedison.gov, to ensure that all information submitted is protected. All agencies are encouraged to use the Edison System. In addition to fulfilling reporting requirements, Edison notifies the user of future time sensitive deadlines with enough lead-time to avoid the possibility of loss of patent rights due to administrative oversight.

(e) *Cost-Sharing.* Include a statement essentially as follows: ''Cost-sharing is permitted for proposals under this program solicitation; however, cost-sharing is not required. Cost-sharing will not be an evaluation factor in consideration of your Phase I proposal.''

(f) *Profit or Fee.* Include a statement on the payment of profit or fee on awards made under the SBIR Program solicitation.

(g) *Joint Ventures or Limited Partnerships.* Include essentially the following language: ''Joint ventures and limited partnerships are eligible provided the entity created qualifies as a small business concern as defined in this program solicitation.''

(h) *Research and Analytical Work.* Include essentially the following statement:

(1) ''For *Phase I* a minimum of *two-thirds* of the research and/or analytical effort must be performed by the proposing small business concern unless otherwise approved in writing by the funding agreement officer.

(2) For *Phase II* a minimum of *one-half* of the research and/or analytical effort must be performed by the proposing small business concern unless otherwise approved in writing by the funding agreement officer.''

(i) *Awardee Commitments.* To meet the legislative requirement that SBIR solicitations be simplified, standardized and uniform, clauses expected to be in or required to be included in SBIR funding agreements shall not be included in full or by reference in SBIR Program solicitations. Rather, applicants shall be advised that they will be required to make certain legal commitments at the time of execution of funding agreements resulting from SBIR Program solicitations. Essentially, the following statement shall be included in the ''Consideration'' section of SBIR Program solicitations: ''Upon award of a funding agreement, the awardee will be required to make certain legal commitments through acceptance of numerous clauses in Phase I funding agreements. The outline that follows is illustrative of the types of clauses to which the contractor would be committed. This list should not be understood to represent a complete list of clauses to be included in Phase I funding agreements, or to be specific wording of such clauses. Copies of complete terms and conditions are available upon request.''

(j) *Summary Statements.* The following are illustrative of the type of summary statements to be included immediately following the statement in the subparagraph I. These statements are examples only and may vary depending upon type of funding agreement.

(1) *Standards of Work.* Work performed under the funding agreement must conform to high professional standards.

(2) *Inspection.* Work performed under the funding agreement is subject to Government inspection and evaluation at all times.

(3) *Examination of Records.* The Comptroller General (or a duly authorized representative) shall have the right to examine any directly pertinent records of the awardee involving transactions related to this funding agreement.

(4) *Default.* The Government may terminate the funding agreement if the contractor fails to perform the work contracted.

(5) *Termination for Convenience.* The funding agreement may be terminated at any time by the Government if it deems termination to be in its best interest, in which case the awardee will be compensated for work performed and for reasonable termination costs.

(6) *Disputes.* Any dispute concerning the funding agreement that cannot be resolved by agreement shall be decided by the contracting officer with right of appeal.

(7) *Contract Work Hours.* The awardee may not require an employee to work more than 8 hours a day or 40 hours a week unless the employee is compensated accordingly (e.g., overtime pay).

(8) *Equal Opportunity.* The awardee will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

(9) *Affirmative Action for Veterans.* The awardee will not discriminate against any employee or application for employment because he or she is a disabled veteran or veteran of the Vietnam era.

(10) *Affirmative Action for Handicapped.* The awardee will not discriminate against any employee or applicant for employment because he or she is physically or mentally handicapped.

(11) *Officials Not To Benefit.* No Government official shall benefit personally from the SBIR funding agreement.

(12) *Covenant Against Contingent Fees.* No person or agency has been employed to solicit or secure the funding agreement upon an understanding for compensation except bonafide employees or commercial agencies maintained by the awardee for the purpose of securing business.

(13) *Gratuities.* The funding agreement may be terminated by the Government if any gratuities have been offered to any representative of the Government to secure the contract.

(14) *Patent Infringement.* The awardee shall report each notice or claim of patent infringement based on the performance of the funding agreement.

(15) *American Made Equipment and Products.* When purchasing equipment or a product under the SBIR funding agreement, purchase only American-made items whenever possible.

(k) *Additional Information.* Information pertinent to an understanding of the

administration requirements of SBIR proposals and funding agreements not included elsewhere shall be included in this section. As a minimum, statements essentially as follows shall be included under ''Additional Information'' in SBIR Program solicitations:

(1) This program solicitation is intended for informational purposes and reflects current planning. If there is any inconsistency between the information contained herein and the terms of any resulting SBIR funding agreement, the terms of the funding agreement are controlling.

(2) Before award of an SBIR funding agreement, the Government may request the applicant to submit certain organizational, management, personnel, and financial information to assure responsibility of the applicant.

(3) The Government is not responsible for any monies expended by the applicant before award of any funding agreement.

(4) This program solicitation is not an offer by the Government and does not obligate the Government to make any specific number of awards. Also, awards under the SBIR Program are contingent upon the availability of funds.

(5) The SBIR Program is not a substitute for existing unsolicited proposal mechanisms. Unsolicited proposals shall not be accepted under the SBIR Program in either Phase I or Phase II.

(6) If an award is made pursuant to a proposal submitted under this SBIR Program solicitation, the contractor or grantee or party to a cooperative agreement will be required to certify that he or she has not previously been, nor is currently being, paid for essentially equivalent work by any agency of the Federal Government.

6. Submission of Proposals

(a) This section shall clearly specify the closing date on which all proposals are due to be received.

(b) This section shall specify the number of copies of the proposal that are to be submitted.

(c) This section shall clearly set forth the complete mailing and/or delivery address(es) where proposals are to be submitted.

(d) This section may include other instructions such as the following:

(1) *Bindings.* Please do not use special bindings or covers. Staple the pages in the upper left corner of the cover sheet of each proposal.

(2) *Packaging.* All copies of a proposal should be sent in the same package.

7. Scientific and Technical Information Sources

Wherever descriptions of research topics or subtopics include reference to publications, information on where such publications will normally be available shall be included in a separate section of the solicitation entitled ''Scientific and Technical Information Sources.''

8. Research Topics

Describe the research or R&D topics and subtopics for which proposals are being solicited sufficiently to inform the applicant of technical details of what is desired while leaving sufficient flexibility in order to obtain the greatest degree of creativity and innovation consistent with the overall objectives of the SBIR Programs.

9. Submission Forms and Certifications

Multiple copies of proposal preparation forms necessary to the contracting and granting process may be required. This section may include Proposal Summary, Proposal Cover, Budget, Checklist, and other forms the sole purpose of which is to meet the mandate of law or regulation and simplify the submission of proposals. This section may also include certifying forms required by legislation, regulation or standard operating procedures, to be submitted by the applicant to the contracting or granting agency. This would include certifying forms such as those for the protection of human and animal subjects.

Appendix II: Tech-Net Data Fields For Public Database

Following are the data fields pertaining to the Public Tech-Net DataBase described in Section 11.e.1. of this proposed policy directive.

(a) *For all Agency SBIR/STTR Annual Data Submissions to the SBA*

Field name	Type	Width	Description
Program Identification	Numeric	1	SBIR/STTR Award Program Identifier* (see below)
Company	Char	80	Company Name.*
Street1	Char	80	Street Address 1.*
Street2	Char	80	Street Address 2.
City	Char	40	City.*
State	Char	2	State.*
Zip	Numeric	5	Zip.*
Zip4	Numeric	4	Zip + 4.
Minority Code	Numeric	1	Minority code indicator 0 = yes 1 = no. *
Women	Numeric	1	Women-owned company indicator 0=yes 1=no.*
Contact First	Char	40	Company Official contact first name.
Contact Last	Char	40	Contact last name.
Contact Middle Init	Char	1	Contact middle initial.
Contact Title	Char	40	Contact Official title.
Contact Phone	Char	10	Contact Official phone.
Contact Email Address	Char	50	Contact email address.
Employees	Numeric	5	Number of employees.
Agency Code	Numeric	2	Awarding agency name (ex. DOD) * (see below).
Branch	Number	1	Awarding DOD branch name (ex. Navy) (see below).
Phase	Numeric	1	Phase number 1 or 2.*
Award Year	Numeric	4	Phase award year.*
Award Amount	Numeric	10	Phase award amount.*
PI First	Char	40	Principal Investigator First Name.*
PI Last	Char	40	Principal Investigator Last Name.*
PI Middle Init	Char	1	Principal Investigator middle initial.
PI Title	Char	40	Principal Investigator Title.
PI Phone	Char	10	Principal Investigator phone.
PI Email Address	Char	50	Principal Investigator email address.
Topic Code	Char	15	Agency Solicitation Topic Number.*
RI TYPE	Numeric	1	Type of research institution(see below).
RI Name	Char	80	Research institution.
RI Street 1	Char	80	Research institution address.
RI Street 2	Char	80	Research institution address.
RI City	Char	40	Research institution city.
RI State	Char	2	Research institution State.
RI Zip	Numeric	5	Research institution Zip.
RI Zip4	Numeric	4	Research institution Zip + 4.

Field name	Type	Width	Description
RI Official First	Char	40	Research institution Official First Name.
RI Official Last	Char	40	Research institution Official Last Name.
RI Official Initial	Char	1	Research institution Official Middle Initial.
RI Official Phone	Char	10	
Tracking Number	Char	20	Agency key identifier (Internal number scheme).*
TIN/EIN	Char	10	Taxpayer/Employer Identification number, * Prefix with 1 for EIN 2 for Social Security Number.
Contract/Grant Number	Char	20	Agency award contract/grant number.
Solicitation Number	Char	20	Solicitation Number.
Solicitation Year	Numeric	4 Year of the	Solicitation.
Title	Char	800	Title of research project. *
Tracking Number	Char	20	Agency key identifier (Internal number scheme).*
Abstract	Char	1500	Technical abstract (500 words).
Tracking Number	Char	20	Agency key identifier (Internal number scheme).*
Abstract SeqNmb	Numeric	1	
Results	Char	1000	—Project anticipated results.
Tracking Number	Char	20	Agency key identifier (Internal number scheme).*
Comments	Char	1000	—Project comments.
Tracking Number	Char	20	Agency key identifier (Internal number scheme).*
Industry Share Amount	Numeric	10	ATP Program Cost Share Amount.
Cost Share Tracking #	Char	20	ATP Cost Share Tracking Number.

Note: Those fields denoted with an asterisk are deemed mandatory in all agency submissions. It is understood that all agencies will not have data for each data field listed above. Each agency must ensure that data submissions to the SBA include all of the data fields above, even if they are empty.

Code	Research Institution Types
1	Nonprofit college or university.
2	Domestic nonprofit research organization.
3	Federally funded research and development center (FFDRC).

(b) Codes

(1) Program Identification Code

0–STTR (Small Business Technology Transfer)
1–SBIR (Small Business Innovation Research)
2–ATP (Advanced Technology Program)

(2) Agency Codes 1 DOD (Department of Defense)

2–DOE (Department of Energy)
3–NASA (National Aeronautics and Space Administration)
4–HHS (Health and Human Services)
5–NSF (National Science Foundation)
6–DOT (Department of Transportation)
7–EPA (Environmental Protection Agency)
8–ED (Department of Education)
9–DOA (Department of Agriculture)
10–DOC (Department of Commerce)
11–NIST (National Institute of Standards and Technology)

(3) Branch Codes

1–AF (Department of the Air Force)
2–ARMY (Department of the Army)
3–BMDO (Ballistic Missile Defense Organization)
4–DARP (Defense Advanced Research Projects Agency)
5–DSWA (Defense Special Weapons Agency)
6–NAVY (Department of the Navy)
7–OSD (Office of the Secretary of Defense)
8–SOCO (Special Operations Command)
9–NIMA (National Imaging and Mapping Agency)

(4) If any new codes, please advise the Office of Technology.

[FR Doc. 01–12583 Filed 5–17–01; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions of Delegations of Authority

This statement amends Part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Chapter S4 covers the Deputy Commissioner for Systems. Notice is given that Subchapter S4H, the Office of Systems Requirements (OSR), is being deleted. Notice is further given that a new Subchapter S4P, the Office of Systems Analysis (OSA), is being established. The new material and changes are as follows:

Section S4.10 *The Office of the Deputy Commissioner, Systems*— (Organization)

Delete

F. The Office of Systems Requirements (S4H).

Establish

F. The Office of Systems Analysis (S4P).

Section S4.20 *The Office of the Deputy Commissioner, Systems*— (Functions)

Delete In Its Entirety

F. The Office of Systems Requirements (OSR) (S4H).

Establish

F. The Office of Systems Analysis (OSA) (S4P) directs, develops and coordinates information technology requirements for new systems and modifications to existing systems in direct support of SSA programs. It is responsible for long-range planning and analyses to define new and improved systems processes in support of agency requirements and maintains a comprehensive, updated and integrated set of system requirement specifications. The office directs validation of computer programs against user-defined requirements and performance criteria, and approves the resulting system for operational acceptance. It directs the development of procedures and instructions to support user needs in effective implementation of all systems. It determines automation solutions for user needs, develops software systems specifications, analyzes existing computer applications, prepares recommendations including costs and benefits of alternatives, tests and validates systems, documenting systems, accepting systems on behalf of SSA's user community and conducting post-installation evaluation. The office develops security standards and ensures implementation of the standards within OSA. It provides system support of the Agency's programmatic systems

interactive validation environment, project management and control, resource management, ITS Budget/Five-Year Plan coordination, Agency Strategic Plan and workload scheduling.

Delete

Subchapter S4H, The Office of Systems Requirements in its entirety.

Establish

Subchapter S4P—Office of Systems Analysis

S4P.00 Mission
S4P.10 Organization
S4P.20 Functions

Section S4P.00 *The Office of Systems Analysis*—(Mission)

The Office of Systems Analysis (OSA) directs, develops and coordinates information technology requirements for new systems and modifications to existing systems in direct support of SSA programs. It is responsible for long-range planning and analyses to define new and improved systems processes in support of agency requirements and maintains a comprehensive, updated and integrated set of system requirement specifications. OSA directs validation of computer programs, which are part of SSA's large, integrated, programmatic systems against user-defined requirements and performance criteria, and approves the resulting system for operational acceptance. It directs the development of procedures and instructions to support user needs in effective implementation of all systems. OSA is responsible for several phases in the systems development life cycle. The responsibilities include determining automation solutions for user needs, developing software systems specifications, analyzing existing computer applications, preparing recommendations including costs and benefits of alternatives, testing and validating systems, documenting systems, accepting systems on behalf of SSA's user community and conducting post-installation evaluation. It develops security standards and ensures implementation of the standards within OSA. It directs the evaluation of the effect of proposed legislation, policies or regulations to determine the impact on SSA systems and develops information requirements and procedures as they relate to such legislation, regulations and SSA policy directives. It directs the coordination of user requirements with SSA central and regional operations to ensure the efficiency and effectiveness of program information needs and overall systems support. Based on input from users, OSA translates organizational information requirements and priorities into plans and, in coordination with other Office of Systems organizational components, develops SSA's annual automated data processing plans (and directs development and maintenance of the plans). OSA serves as primary contact and advocate for the SSA user community on issues concerning the development of systems requirements, functional specifications and supporting operational procedures and instructions. OSA provides system support for the Agency's programmatic systems interactive validation environment, project management and control, resource management, ITS Budget/Five-Year Plan coordination, Agency Strategic Plan and workload scheduling.

Section S4P.10 *The Office of Systems Analysis*—(Organization)

The Office of Systems Analysis (S4P), under the leadership of the Associate Commissioner for Systems Analysis, includes:

A. The Associate Commissioner for Systems Analysis (S4P).

B. The Deputy Associate Commissioner for Systems Analysis (S4P).

C. The Immediate Office of the Associate Commissioner for Systems Analysis (S4P).

D. The Division of Client, Enumeration and Exchanges (S4PA).

E. The Division of Disability (S4PB).

F. The Division of Earnings (S4PC).

G. The Division of Notices (S4PE).

H. The Division of Payments (S4PG).

I. The Division of Planning and Configuration Management (S4PH).

J. The Division of Retirement and Survivors Insurance (RSI) (S4PJ).

K. The Division of Security and Requirements Automation (S4PK).

L. The Division of Supplemental Security Income (SSI) (S4PL).

M. The Division of Validation Technology (S4PM).

Section S4P.20 *The Office of Systems Analysis*—(Functions)

A. The Associate Commissioner for Systems Analysis (S4P) is directly responsible to the Deputy Commissioner, Systems, for carrying out the OSA mission and providing general supervision to the major components of OSA.

B. The Deputy Associate Commissioner for Systems Analysis (S4P) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associated Commissioner my prescribe.

C. The Immediate Office of the Associate Commissioner for Systems Analysis (S4P) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

D. Division of Client, Enumeration and Exchanges (S4PA).

1. Plans, analyzes, develops, tests, validates, implements and evaluates program data requirements, functional specifications, procedures, instructions and standards (including security and fraud detection) for data exchanges, enumeration and client records.

2. With the technical assistance of DVT, plans and conducts unit and system-wide functional validation tests of newly-developed systems and modifications of existing systems against user-defined requirements and performance criteria. Certifies that the changes are in conformance with functional specifications and with Agency regulations, policies, and procedures.

3. Participates in the development, maintenance and co-ordination of the overall approved SSA plans for fulfilling short-term and long-range programmatic system development (the Five-Year Plans) as they relate to Client, Enumeration and Data Exchanges. This includes determining, classifying and ranking systems needs of all SSA components, and recommending final priorities for approval.

4. Develops and maintains a comprehensive, updated and integrated set of system documentation and requirements specifications and validation tests of systems changes against user requirements and performance criteria and certifies that changes are in conformance with specifications for assigned areas of responsibility.

5. Performs requirement analyses, defining SSA-approved user needs and requirements for automated data processing services for Client, Enumeration and Data Exchanges.

6. Evaluates legislative proposals, regulations and policy changes affecting Client, Enumeration and Data Exchanges. Reports on the impact to those processes as well as on the short- and long-range plans.

7. Intercedes on behalf of users in resolving system discrepancies and errors relating to the existing Client, Enumeration and Data Exchange process with other Office of Systems components. Establishes, corrects, maintains and verifies Social Security numbers and issues new or replacement cards.

8. Process death, prisoner and fugitive felon data, the Death Master File; the Integrated Client Database system; and programmatic queries and other

software that access and display data from the SSA master files.

9. Provides database access to programmatic information, access to SSA main and sub menus, and telecommunications support.

E. Division of Disability (S4PB).

1. Plans, analyzes, develops, tests, validates, implements and evaluates programmatic information and data requirements, functional specifications, procedures, instructions and standards (including security and fraud detection) for the Disability program, including service to the State Disability Determination Service (DDS) offices.

2. With the technical assistance of DVT, plans and conducts unit and system-wide functional validation tests of newly-developed systems and modifications to existing systems against user-defined requirements and performance criteria. Certifies that the changes are in conformance with functional specifications and with Agency regulations, policies, and procedures.

3. Participates in the development, maintenance and co-ordination of the overall approved SSA plans for fulfilling short-term and long-range programmatic system development (the Five-year Plans) as they relate to Disability. This includes determining, classifying and ranking systems needs of all SSA components, and recommending final priorities for approval.

4. Develops and maintains a comprehensive, updated and integrated set of system documentation and requirements specifications and validation tests of systems changes against user requirements and performance criteria and certifies that changes are in conformance with specifications for assigned areas of responsibility.

5. Performs requirement analyses, defining SSA-approved user needs and requirements for automated data processing services for Disability.

6. Evaluates legislative proposals, regulations and policy changes affecting Disability. Reports on the impact to those processes as well as on the short- and long-range plans.

7. Intercedes on behalf of users in resolving system discrepancies and errors relating to the existing Disability process with representatives of other Office of Systems components.

8. Coordinates user requirements with SSA central and field offices and Federal and State agencies to ensure the efficiency and effectiveness of program information needs and overall systems support.

9. Supports Individual State Disability Determination Service offices automated systems development by establishing national practices and contracts and optional local area software. The Division evaluates State Disability Determination Systems developing requests with the objective of integrating State efforts into overall SSA automation plans.

10. Resolves systems discrepancies and performance issues for all DDS offices, Federal and State. The State DDS systems interface with SSA central systems. The division is responsible for testing applications software that exchanges the required disability data between the offices involved.

F. Division of Earnings (S4PC).

1. Plans, analyzes, develops, tests, validates, implements and evaluates programmatic data requirements, functional specifications, procedures instructions and standards (including security and fraud detection) for reporting earnings data and for establishment, correction, maintenance and use of earnings and employer data. These functions include trust fund accounting information provided to the Department of the Treasury; reconciling disagreements and discrepancies related to earnings data; the establishment and maintenance of employer identification, classification and control information and the SSA/IRS reconciliation process. Functions also include providing certified earnings data to support other agency processes and reinstating earnings data from suspense.

2. With the technical assistance of DVT, plans and conducts unit and system-wide functional validation tests of newly-developed systems and modifications to existing systems against user-defined requirements and performance criteria. Certifies that the changes are in conformance with functional specifications and with Agency regulations, policies, and procedures.

3. Participates in the development, maintenance and co-ordination of the overall approved SSA plans for fulfilling short-term and long-range programmatic system development (the Five-year Plans) as they relate to Earnings. This includes determining, classifying and ranking systems needs of all SSA components, and recommending final priorities for approval.

4. Develops and maintains a comprehensive, updated and integrated set of system documentation and requirements specifications and validation tests of systems changes against user requirements and performance criteria and certifies that changes are in conformance with specifications for assigned areas of responsibility.

5. Performs requirement analyses, defining SSA-approved user needs and requirements for systems' services for Earnings.

6. Evaluates legislative proposals, regulations and policy changes affecting Earnings. Reports on the impact to those processes as well as on the short- and long-range plans.

7. Intercedes on behalf of users in resolving system discrepancies and errors relating to the existing Earnings process with representatives of other Office of Systems components.

8. Coordinates user requirements with SSA central and field offices and Federal and State agencies to ensure the efficiency and effectiveness of program information needs and overall systems support.

G. Division of Notices (S4PE).

1. Plans, analyzes, develops, tests, validates, implements and evaluates programmatic data requirements, functional specifications, procedures, instructions and standards (including security and fraud detection) in conformance with SSA's software engineering environment, for title II (RSDI), XVI (SSI), and VIII Notices.

2. With the technical assistance of DVT, plans and conducts unit and system-wide functional validation tests of newly-developed systems and modifications to existing systems against user-defined requirements and performance criteria. Certifies that the changes are in conformance with functional specifications and with Agency regulations, policies, and procedures.

3. Participate in the development, maintenance and co-ordination of the overall approved SSA plans for fulfilling short-term and long-range programmatic system development (the Five-year Plans) as they relate to Notices. This includes determining, classifying and ranking systems needs of all SSA components, and recommending final priorities for approval.

4. Develops and maintains a comprehensive, updated and integrated set of system documentation and requirements specifications and validation tests of systems changes against user requirements and performance criteria and certifies that changes are in conformance with specifications for assigned areas of responsibility.

5. Performs requirement analyses, defining SSA-approved user needs and requirements for automated data processing services for Notices.

6. Evaluates legislative proposals, regulations and policy changes affecting Notices. Reports on the impact to those processes as well as on the short- and long-range plans.

7. Intercedes on behalf of users in resolving system discrepancies and errors relating to the existing Notice process with representatives of other Office of Systems components.

8. Coordinates user requirements with SSA central and field offices and Federal and State agencies to ensure the efficiency and effectiveness of program information needs and overall systems support.

9. Provides systems expertise and leadership in agency initiatives related to Plain Language, Non-English Speaking notices and Target Notice Architecture.

H. Division of Payments (S4PG).

1. Plans, analyzes, develops, tests, validates, implements and evaluates programmatic data requirements, functional specifications, procedures, instructions and standards (including security and fraud detection) for titles II, VIII and XVI Payments. This includes both direct deposits and checks; Debt Management (including overpayment, underpayment, misuse, fraud and civil suit actions); Representative Payee Processing and Accounting; Workload Controls (including the paperless process, claims, folders, and transactions); and benefit-related accounting operations.

2. With the technical assistance of DVT, plans and conducts unit and system-wide functional validation tests of newly-developed systems and modifications to existing systems against user-defined requirements and performance criteria. Certifies that the changes are in conformance with functional specifications and with Agency regulations, policies, and procedures.

3. Participates in the development, maintenance and coordination of the overall approved SSA plans for fulfilling short-term and long-range programmatic system development (the Five-year Plans) as they relate to payments. This includes determining, classifying and ranking systems needs of all SSA components, and recommending final priorities for approval.

4. Develops and maintains a comprehensive, updated and integrated set of system documentation and requirements specifications and validation tests of systems changes against user requirements and performance criteria and certifies that changes are in conformance with specifications for assigned areas of responsibility.

5. Performs requirement analyses, defining SSA-approved user needs and requirements for automated data processing services for payments.

6. Evaluates legislative proposals, regulations and policy changes affecting payments. Reports on the impact to those processes as well as on the short- and long-range plans.

7. Intercedes on behalf of users in resolving system discrepancies and errors relating to the existing Payment, Debt Management, Representative Payee and Workload Control processes with representatives of other Office of Systems components.

8. Coordinates user requirements with SSA central and field offices and Federal and State agencies to ensure the efficiency and effectiveness of program information needs and overall systems support.

I. Division of Planning and Configuration Management (S4PH).

1. Coordinates on Software Process Improvement (SPI) and metrics activities. Participates in developing DCS policy, procedures and training for SPI and metrics. Provides training and guidance to project managers to implement process improvement practices.

2. Works with the customer community and Systems components to produce the 5-Year Plan that prioritizes workloads and developmental efforts that the Systems component works on. This division is responsible for coordinating this activity for SSA, including the support activity for the Customer Targeted Workload. In addition, this Division is responsible for coordinating the development of requirements, validation and data storage for the DCS 5-Year data in the 5-Year System.

3. Provides standards, procedures, systems support and technical assistance to OSA project managers to facilitate preparation of work plans. Directs review of project work plans to ensure completeness, compatibility with standards and managerial directives, and requirements and conformity to the 5-Year Plan, Configuration Control Board (CCB) recommendations and other management decisions. Coordinates systems-wide approval of new and modified plans, and ensures that the differences and conflicts among components are resolved. Provides for monitoring progress of work projects against work plans and reporting status to systems management.

4. With approval of systems management, sets standards for developing, maintaining and implementing configuration control and systems change control processes. Directs review and control of requests for modification of SSA systems and functional requirements. Ensures that all systems change requests are in accordance with the 5-Year Plan process, conform to CCB decisions and correspond with the approved project work plans. For each change, ensures that all necessary concurrence and approvals are obtained through the Systems Life Cycle.

5. Develops, analyzes, operates, validates and maintains the Management Support System (MSS). The MSS provides automated support to OSA and DCS planning, monitoring, project and resource management functions. Analyzes management requirements and needs of other OSA components, and develops appropriate systems support capability. Works with OSPI, OIM and contractors (as well as other involved components) to develop, maintain and implement systems' management support and control processes. Ensures that the OSA management support systems and processes are integrated systems-wide. Participates in the development, design and validation effort of the Systems Release Certification online System (SRCOL) on the Intranet WEB. This division ensures that all required Systems lifecycle documentation (from requirements through systems certification) is maintained and available.

6. Monitors DCS workloads, resource estimates and resource usage and provides comprehensive resource information to DCS management to support workload priority decisions. Directs resource estimation and reporting processes for OSA.

7. Coordinates Modernized Systems Operations Manual (MSOM) activities including Version Directory Management, Indexing, Scheduling and Transmittal release and the preparation of MSOM on CD–ROM. Also, analyzes, develops requirements and validates software changes for the MSOM ORACLE-based authoring system.

8. This division is responsible for coordinating the evaluation of legislative proposals affecting SSA programs for their impact on SSA's programmatic and administrative systems. Monitors systems changes required to implement legislation. Acts as the DCS liaison with other SSA components on legislation. Coordinates the evaluation of legislative proposals to assess impact on DCS resources and scheduled activities. Establishes project management activities for enacted legislation, and monitors the

developmental activity through implementation.

9. Responsible for the development of policies, procedures and standards for specific OSA phases of the life cycle development process and development of methods to assure the quality of these products.

10. Serves as the focal point for coordinating the development of all OSA standards and procedures.

11. Responsible for providing program expertise and process management direction and oversight for cross-cutting segments for all OSA systems initiatives, legislative initiatives or projects involving the initiation, interpretation and/or the implementation of programmatic systems.

J. Division of Retirement and Survivors Insurance (RSI) (S4PJ).

1. Plans, analyzes, develops, tests, validates, implements and evaluates programmatic data requirements, functional specifications, procedures, instructions and standards (including security and fraud detection), for title II (RSDI) Initial Claims and Post-entitlement systems processing and for title XVIII, Medicare enrollment, withdrawal and termination actions. Coordinates such processes with the Health Care Financing Administration. This includes work on the Master Beneficiary Record (MBR) update operations, including the annual cost-of-living adjustment (BRI), and benefit taxation records.

2. With the technical assistance of DVT, plans and conducts unit and system-wide functional validation tests of newly-developed systems and modifications to existing systems against user-defined requirements and performance criteria. Certifies that the changes are in conformance with functional specifications and with Agency regulations, policies, and procedures.

3. Participates in the development, maintenance and co-ordination of the overall approved SSA plans for fulfilling short-term and long-range programmatic system development (the Five-year Plans) as they relate to title II Initial Claims and Post-entitlement/Medicare systems. This includes determining, classifying and ranking systems needs of all SSA components, and recommending final priorities for approval.

4. Develops and maintains a comprehensive, updated and integrated set of system documentation and requirements specifications and validation tests of systems changes against user requirements and performance criteria and certifies that changes are in conformance with specifications for assigned areas of responsibility.

5. Performs requirement analyses, defining SSA-approved user needs and requirements for automated data processing services for title II Initial Claims and Post-entitlement systems and Medicare systems.

6. Evaluates legislative proposals, regulations, and policy changes affecting the title II Initial Claims and Post-entitlement systems processes, and title XVIII Medicare systems processes. Reports on the impact to those processes as well as on short-term and long-range plans.

7. Intercedes on behalf of users in resolving system discrepancies and errors relating to the existing title II Initial Claims and Post-entitlement process, or Medicare systems processes, with representatives of other Office of Systems components.

8. Coordinates user requirements with SSA central and field offices and Federal and State agencies to ensure the efficiency and effectiveness of program information needs and overall systems support.

K. Division of Security and Requirements Automation (S4PK).

1. Provides consultations and makes recommendations on security, audit, internal control and integrity review issues for all SSA programmatic systems, and ensures the implementation of security standards within all areas of OSA's functional responsibilities. Also, develops methods to improve control and security features based on established standards and cost/benefit considerations.

2. Leads and/or coordinates reviews of programmatic processes and systems to identify weaknesses in control, auditability and security features, makes recommendations for improvement, and coordinates activities with other SSA components to ensure that approved recommendations are implemented.

3. Provides the capability for and performs static testing of all programmatic systems in support of SSA and oversight Agency requirements, as well as in support of OSA control and audit process reviews.

4. Develops, executes and validates software to provide information to security officers and investigators throughout the Agency in support of investigations of fraud, waste and abuse.

5. Manages the security access control process to access and interface with SSA's programmatic systems.

6. Performs requirements analyses and definition, conveys SSA approved user needs in the form of specifications in the area of integrity review and audit data collection, conversion and reporting to OSDD for the development of systems designs for integration of SSA programmatic systems.

7. Performs requirement analyses and definition of SSA approved security access control requirements and conveys the specifications to the appropriate component for an update of the access control apparatus.

8. Performs security, functional security, access control, Individuals of Extraordinary National Prominence and Social Security Number Block validations, and integrity review and audit trail data collection, conversion and reporting validations to ensure that the requirements have been properly integrated within SSA's programmatic systems.

9. Develops requirements for and validates software changes to the TOP–SECRET Administration process.

10. Manages the Security 5-Year Plan.

11. Implements and supports the appropriate standards and procedures for functional requirements definition and analysis stages through the use of Computer-Aided Software Engineering (CASE) tools.

12. Supports the procurement, training, use and integration of automated tools and equipment in support of OSA's development and maintenance of FRs, documents and data models for SSA's programmatic systems.

13. Defines, designs, develops, validates and implements computer, programs and automated processes which support the development and maintenance of integrated programmatic data processing systems.

14. Develops, maintains, and provides technical support of hardware, software and all networking functions within OSA and provides technical assistance to other components within DCS that interface with OSA.

15. Supports various platforms OSA uses in the development and validation of software that run on SSA's Intelligent Work Station/Local Area Network (IWS/LAN) to support its field offices nationwide.

16. Develops strategies and guidelines for base lining automated functional requirement databases.

17. Responsible for the development of proposals and recommendations for new software engineering methods for use at OSA, based on extensive research into various methodologies utilized by other data processing installations.

L. Division of Supplemental Security Income (SSI) (S4PL).

1. Plans, analyzes, develops, tests, validates, implements and evaluates programmatic data requirements,

functional specifications, procedures, instructions and standards (including security and fraud detection) for title XVI (SSI) processes, title VIII and redetermination operations. This includes updates to the Supplemental Security Income Record (SSR) and the annual cost-of-living adjustment (COLA).

2. With the technical assistance of DVT, plans and conducts unit and system-wide functional validation tests of newly-developed systems and modifications to existing systems against user-defined requirements and performance criteria. Certifies that the changes are in conformance with functional specifications and with Agency regulations, policies, and procedures.

3. Participates in the development, maintenance and coordination of the overall approved SSA plans for fulfilling short-term and long-range programmatic systems documentation and requirement specifications and validation tests of systems changes against user requirements and performance criteria and certifies that changes are in conformance with specifications for assigned areas of responsibility.

4. Develops and maintains a comprehensive, updated and integrated set of system documentation and requirements specifications and validation tests of systems changes against user requirements and performance criteria and certifies that changes are in conformance with specifications for assigned areas of responsibility.

5. Performs requirement analyses, defining SSA-approved user needs and requirements for automated data processing services for SSI initial claims and post-eligibility operations, computation and record balancing operations, and redeterminations.

6. Evaluates legislative proposals, regulations and policy changes affecting SSI processes. Reports on the impact to those processes as well as on the short- and long-range plans.

7. Intercedes on behalf of users in resolving system discrepancies and errors relating to the existing SSI process with representatives of other Office of Systems components.

8. Coordinates user requirements with SSA central and field offices and Federal and State agencies to ensure the efficiency and effectiveness of program information needs and overall systems support.

M. Division of Validation Technology (S4PM).

1. Provides test-engineering services for systems-level functional testing in the Office of Systems. The Division:

2. Designs, develops, implements, and maintains test automation software, automated test methods and techniques, and procedures, test files, test databases, and tester productivity tools used in the systems-level functional, integration, acceptance and usability testing of SSA's programmatic, administrative, and management information systems.

3. Builds test systems that simulate the target production system within the parameters of SSA's Software Engineering Facility using in-house and commercially available software development tools and products.

4. Controls and executes systems-level functional tests of programmatic, administrative, and management information systems; ensures that the correct software versions are under test and provides appropriate test output for evaluation and systems acceptance and certification.

5. Develops test procedure specifications and test design specifications for use in systems-level functional testing.

6. Performs test case design for regression testing of programmatic systems.

7. Performs software quality assurance and quality control regarding test coverage and test risk analysis as they relate to management decisions to release new or modified software to the production environment.

8. Develops standards of functional testing and software validation for the Office of Systems.

9. Develops and manages the environment in which functional testing occurs.

10. Defines standards for test planning and participates, along with other Office of Systems components, in the development of test plans for systems-level functional testing.

11. Serves as the Stage Manager for the Software Evaluation Stage of SSA's Software Engineering Environment and Systems Development Life Cycle.

Dated: May 7, 2001.

Larry G. Massanari,

Acting Commissioner of Social Security.

[FR Doc. 01–12608 Filed 5–17–01; 8:45 am]

BILLING CODE 4191–02–M

DEPARTMENT OF TRANSPORTATION

Office of The Secretary

Aviation Proceedings, Agreements Filed During the Week Ending May 4, 2001

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2001–9583.
Date Filed: April 30, 2001.
Parties: Members of the International Air Transport Association.
Subject:
PSC/Reso/106 dated November 14, 2000
Expedited Resolutions/Recommended Practices r1–10
PSC/Reso/107 dated December 5, 2000
Book of Finally Adopted Resolutions/RPs r11–30
Minutes—PSC/MINS/004 dated December 5, 2000
Intended effective date: January 1/June 1, 2001

Docket Number: OST–2001–9606.
Date Filed: May 1, 2001.
Parties: Members of the International Air Transport Association.
Subject:
PTC COMP 0801 dated 1 May 2001
Mail Vote 122—Resolution 011
Mileages and Routes for Tariffs Purposes (Amending)
Intended effective date: 1 June 2001

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 01–12549 Filed 5–17–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) during the Week Ending May 4, 2001

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such

procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2001–9589.

Date Filed: April 30, 2001.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 21, 2001.

Description: Application of Gulf & Caribbean Cargo, Inc. d/b/a Gulf & Caribbean Air, pursuant to 49 U.S.C. 41102(a)(3), Parts 201 and 204 and Subpart B, requesting a fitness determination and for issuance of a certificate of public convenience and necessity to engage in foreign charter air transportation of persons, property and mail between points in the United States and points in Canada, Mexico, the Caribbean and Central and South America.

Docket Number: OST–2001–9590.

Date Filed: April 30, 2001.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 21, 2001.

Description: Application of Gulf & Caribbean Cargo, Inc. d/b/a Gulf & Caribbean Air, pursuant to 49 U.S.C. 41102(a)(3), Parts 201 and 204 and Subpart B, requesting a fitness determination and issuance of a certificate of public convenience and necessity to engage in interstate charter air transportation of persons, property and mail, as follows: between any point in any state, territory or possession of the United States or the District of Columbia, and any other point in any of those entities.

Docket Number: OST–2001–9622.

Date Filed: May 4, 2001.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 25, 2001.

Description: Application of Continental Airlines, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart B, requesting renewal of its Route 699 certificate authorizing Continental to provide scheduled air transportation of persons, property and mail between Houston, Texas and Lima, Peru, and to combine this authority with its other certificate and exemption authority.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 01–12550 Filed 5–17–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Springfield-Branson Regional Airport, Springfield, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at the Springfield-Branson Regional Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before June 18, 2001.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, ACE–600, 901 Locust, Kansas City, Missouri 64106–2325.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert D. Hancik, A.A.E., Director of Aviation, Springfield-Branson Regional Airport, 5000 West Kearney, Suite 15, Springfield, Missouri 65803.

FOR FURTHER INFORMATION CONTACT: Mrs. Nicoletta S. Oliver, Airports Compliance Specialist, Federal Aviation Administration, Central Region, Airports Division, ACE–615C, 901 Locust, Kansas City, Missouri 64106–2325. The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Springfield-Branson Regional Airport under the provisions of AIR21.

On April 25, 2001, the FAA determined that the request to release property at the Springfield-Branson Regional Airport submitted by the Airport Board of the City of Springfield met the procedural requirements of the Federal Aviation Administration. The FAA will approve or disapprove the request, in whole or in part, no later than June 30, 2001.

The following is a brief overview of the request.

The Springfield-Branson Regional Airport requests the release of approximately 169 acres of airport property. The land is currently not being used for aeronautical purposes. The release of the property will allow for its incorporation into an industrial park that will bring both sewers and natural gas to the southern boundaries of the airport. With utilities and access to those utilities in place, the airport would have the opportunity to develop, for aeronautical uses, land west of the industrial center and north of the southern boundary.

It is estimated that the sale of the property would provide $1,352,000. The proceeds, less $75,000, would be used for future FAA-Airport Improvement Program (AIP) eligible projects at the Springfield-Branson Regional Airport within the next five years. The $75,000 would be applied to an aeronautical project at the airport administered by the Missouri Department of Transportation (MoDOT).

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may inspect the request, notice and other documents germane to the request in person at the Springfield-Branson Regional Airport.

Issued in Kansas City, Missouri, on April 25, 2001.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 01–12553 Filed 5–17–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Request for Review of Noise Compatibility Program for Hilo International Airport, Hilo, HI

AGENCY: Federal Aviation Administration, Transportation.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted by the State of Hawaii, Department of Transportation for the Hilo International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150, and that this program will be approved or disapproved on or before October 24, 2001.

EFFECTIVE DATE: The effective date of the FAA's start of its review of the noise compatibility program is April 27, 2001. The public comment period ends June 29, 2000.

FOR FURTHER INFORMATION CONTACT: David J. Welhouse, Project Engineer, Honolulu Airports District Office,

Federal Aviation Administration, P.O. Box 50244, Honolulu, Hawaii 96850, Telephone: (808) 541–1243. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for Hilo International Airport which will be approved or disapproved on or before October 24, 2001. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for Hilo International Airport, effective on April 27, 2001. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before October 24, 2001.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Western-Pacific Region, Airports Division, AWP–600, 15000 Aviation Blvd., Room 3012, Hawthorne, California 90261

Federal Aviation Administration, Honolulu Airports District Office, 300 Ala Moana Boulevard, Room 7–128, Honolulu, Hawaii 96813

State of Hawaii, Department of Transportation, Airports Division, Honolulu International Airport, 400 Rodgers Boulevard, Suite 700, Honolulu, Hawaii 96819

State of Hawaii, Department of Transportation, Airports Division, District Office Manager, Kona International Airport, Kailua-Kona, Hawaii 96740

State of Hawaii, Department of Transportation, Airports Division, District Office Manager, Hilo International Airport, Hilo, Hawaii 96720

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California, on April 27, 2001.

Herman C. Bliss,

Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 01–12554 Filed 5–17–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Lebanon Municipal Airport, Lebanon, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge at Lebanon Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 18, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Priscilla A. Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Timothy J. Edwards, at the following address: Airport Manager, Lebanon Municipal Airport, 5 Airpark Road, West Lebanon, New Hampshire 03784.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Lebanon under section 158.23 of part 158 of the Federal Aviation Regulations.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (781) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge (PFC) at Lebanon Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 1, 2001, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Lebanon was substantially complete within the requirements of section 158.25 of Part 158 of the Federal Aviation Regulations. The FAA will approve or disapprove the application, in whole or in part, no later than July 30, 2001.

The following is a brief overview of the impose and use application.

PFC Project #: 01–04–C–00–LEB.

Level of the proposed PFC: $3.00.

Proposed charge effective date: August 1, 2001.

Proposed estimated charge expiration date: February 1, 2002.

Estimated total net PFC revenue: $77,330.

Brief description of project:

• Reconstruct north ramp including adjacent taxiways, reconstruct emergency access road, construct ARFF vehicle ramp, install airfield control and power cables, and groove runway 7–25.

- Airport master plan update.
- PFC administration.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Lebanon Municipal Airport, 5 Airpark Road, West Lebanon, New Hampshire.

Issued in Burlington, Massachusetts on May 4, 2001.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 01–12552 Filed 5–17–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Monterey Peninsula Airport, Monterey, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Monterey Peninsula Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before June 18, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Susan Kovalenko, Manager, Support Services, Monterey Peninsula Airport District, at the following address: 200 Fred Kane Drive, Suite 200, Monterey, CA 93940. Air carriers and foreign air carriers may submit copies of written comments previously provided to the Monterey Peninsula Airport District under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Monterey Peninsula Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 27, 2001, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Monterey Peninsula Airport District was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 27, 2001.

The following is a brief overview of the impose and use application No. 01–07–C–00–MRY:

Level of proposed PFC: $4.50.

Charge effective date: October 1, 2001.

Proposed charge expiration date: March 1, 2002.

Total estimated PFC revenue: $381,935.

Brief description of the proposed projects: Acquire Airport Rescue and firefighting (ARFF) Equipment, Modify ARFF Vehicle Cooling System, Lower Obstruction to Runway 10R Obstacle-Free Zone, Reconstruct Portion of Entrance Road to North Side, Purchase Runway Sweeper, Soundproofing, Phases 6 and 7, Replace Terminal Fire Doors, Realign and Improve Sky Park/Fred Kane Drive Connection, and Environmental Impact Report/Environmental Assessment for Sky Park Drive Extension to North Side of Airport.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Unscheduled Part 135 Air Taxi Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 1500 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Monterey Peninsula Airport District.

Issued in Hawthorne, California, on May 3, 2001.

Ellsworth L. Chan,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. 01–12555 Filed 5–17–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Shelby, Tipton, Lauderdale, and Dyer Counties, TN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed section of Interstate Highway 69 (I–69) in Shelby, Tipton, Lauderdale, and Dyer Counties, Tennessee beginning at State Route 385 (Paul Barrett Parkway) north of Memphis and extending to Dyersburg, Tennessee.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Doctor, Field Operations Team Leader, Federal Highway Administration, 640 Grassmere Park Road, Suite 112, Nashville, Tennessee 37211, Telephone: (615) 781–5788.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Tennessee Department of Transportation will prepare an Environmental Impact Statement (EIS) on a proposal for the construction of a four-lane freeway facility from State Route 385 (Paul Barrett Parkway) north of Memphis, Tennessee to Interstate 155 (I–155) near Dyersburg, Tennessee. The distance of this proposed project is approximately 104 kilometers (65 miles).

This proposed facility is identified as Segment of Independent Utility #8 of the Congressionally-designated High Priority Corridor 18 or Interstate 69. The overall purpose for this project is to improve international and interstate trade in accordance with national and state goals and to facilitate economic development in accordance with state, regional, and local policies, plans, and surface transportation consistent with national, state, regional, local needs and with Congressional designation of the corridor.

Alternatives under consideration include: (1) Taking no action (no-build);

(2) reconstructing U.S. 51; (3) constructing a new facility east or west of existing U.S. 51; or (4) some combination of alternatives (2) and (3). Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Public meetings will be held in each of the four counties included in this project to provide input into the development of this project. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. A formal scoping meeting is also planned.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding Intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: May 10, 2001.

Charles S. Boyd,

Division Administrator, Nashville, Tennessee.

[FR Doc. 01–12506 Filed 5–17–01; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Applications for TIFIA Credit Assistance

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of availability of funds (NOFA) inviting applications for credit assistance for major surface transportation projects.

SUMMARY: The DOT's Transportation Infrastructure Finance and Innovation Act (TIFIA) Joint Program Office (JPO) announces the availability of funds to provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees to public and private sponsors of eligible surface transportation projects. Funding for this program is limited, and the TIFIA Joint Program Office will lead DOT multi-modal teams in evaluating applications based on project merits and satisfaction of the TIFIA statutory criteria. This notice announces the availability of funds and outlines the process that applicants must follow when applying for TIFIA credit assistance.

DATES: This notice institutes a ''rolling'' application process replacing the practice of setting fixed application dates. See a further discussion under the caption ''Application and Selection Process'' in this notice.

ADDRESSES: Both the letters of interest and completed applications should be submitted to the attention of Ms. Stephanie Kaufman, TIFIA Joint Program Office, Department of Transportation, Room 4301, HABF–50, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: TIFIA Joint Program Office staff: Mr. Duane Callender, (202) 366–9644; Mr. Bryan Grote, (202) 366–9656; Ms. Stephanie Kaufman, (202) 366–9649; and Mr. Mark Sullivan, (202) 366–5785. TIFIA Joint Program Office Staff can be contacted at the above address. Hearing- and speech-impaired persons may use TTY by calling the Federal Information Relay Service at 1–800–877–8339. Additional information, including the current edition of the TIFIA Program Guide and application materials, can be obtained from the TIFIA web site at http://tifia.fhwa.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

The Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat.107, 241, created the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA), authorizing the Department of Transportation (DOT) to provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees to public and private sponsors of eligible surface transportation projects. TIFIA regulations (49 CFR Part 80) provide specific guidance on the program requirements.

On January 5, 2001, at 65 FR 2827, the Secretary of Transportation (Secretary) delegated to the Federal Highway Administration (FHWA) the authority to act as the Executive Agent for the TIFIA program (49 CFR 1.48(nn)). The TIFIA Joint Program Office (TIFIA JPO), within the FHWA, has responsibility for coordinating program implementation.

Funding for this program is limited, and a project requesting assistance will be evaluated and selected based on the project merits and satisfaction of the TIFIA statutory criteria. Upon selection, a term sheet will be issued and subsequently a definitive credit agreement will be developed through negotiations between the project sponsor and the DOT.

Types of Credit Assistance Available

The Secretary may provide credit assistance in the form of secured (direct) loans, loan guarantees, and lines of credit. These types of credit assistance are defined in 23 U.S.C. 181 and 49 CFR 80.3.

Program Funding and Limitations on Assistance

TIFIA provides annual funding levels for both total credit amounts (i.e., the total principal amounts that may be committed in the form of direct loans, loan guarantees, or lines of credit) and subsidy amounts (i.e., the amounts of budget authority available to cover the estimated present value of the Government's expected losses associated with the provision of credit instruments, net of any fee income). Funding for the subsidy amounts is provided in the form of budget authority funded from the Highway Trust Fund (other than the Mass Transit Account). As a result of prior project selections in FY 2001 and several additional factors, including carry-over funds from prior years and an annual obligation limitation, the TIFIA JPO estimates that approximately $1.3 billion in credit amounts and $43.2 million in subsidy amounts remain available through September 30, 2001.

Total Federal credit amounts authorized for the TIFIA program beyond FY 2001 are $2.4 billion in FY 2002 and $2.6 billion in FY 2003. To support these credit amounts, TIFIA provides budget authority to fund subsidy amounts of up to $120 million in FY 2002 and $130 million in FY 2003. Of these amounts, the TIFIA JPO may use up to $2 million each fiscal year for expenses associated with program implementation, including the procurement of external financial consultants and legal counsel. Any budget authority not obligated in the fiscal year for which it is initially authorized remains available for obligation in subsequent years. Unused credit amounts lapse at the end of the year for which it is authorized.

The amount of credit assistance that may be provided to a project under TIFIA is limited to not more than 33 percent of eligible project costs.

Eligible Projects

Highway, passenger rail, transit, and intermodal projects (including intelligent transportation systems) may receive credit assistance under TIFIA. See the definition of ''project'' in 23 U.S.C. 181(9). For a description of eligible projects, see 49 CFR 80.3.

Threshold Criteria

Projects seeking TIFIA assistance must meet certain threshold criteria. These eligibility criteria are detailed in 23 U.S.C. 182(a) and 49 CFR 80.13.

Rating Opinions

A project sponsor must submit, with its application, a preliminary rating opinion letter from at least one nationally recognized credit rating agency, as detailed in 23 U.S.C. 182(b)(2)(B) and 49 CFR 80.11. The letter must be current, must address the creditworthiness of both the senior debt obligations funding the project (i.e., those which have a lien senior to that of the TIFIA credit instrument on the pledged security) and the TIFIA credit instrument, and must conclude that there is a reasonable probability for the senior debt obligations to receive an investment grade rating. This preliminary rating opinion letter will be based on the financing structure proposed by the project sponsor. A project that does not demonstrate the potential for its senior obligations to receive an investment grade rating will not be considered for TIFIA credit assistance.

The TIFIA JPO will use the preliminary rating opinion letter to assess the default risk on the requested TIFIA instrument. Therefore, the letter should provide a preliminary assessment of the financial strength of either the overall project or the requested TIFIA instrument; whichever assessment best reflects the rating agency's preliminary evaluation of the default risk on the requested TIFIA instrument.

Each project selected for TIFIA credit assistance must obtain an investment grade rating on its senior debt obligations (which may be the TIFIA credit facility) and a revised opinion on the default risk of its TIFIA credit instrument before the FHWA will execute a credit agreement and disburse funds. More detailed information about these TIFIA credit opinions and ratings may be found in the TIFIA Program Guide. The most current version of the TIFIA Program Guide and application materials can be obtained from the TIFIA web site provided under the caption **FOR FURTHER INFORMATION CONTACT.**

Application and Selection Process

With this notice, the FHWA is instituting a change to the application process of previous years. Previously, DOT accepted letters of interest and applications on a fixed date each year. Experience with the program suggests that project sponsors may be applying for TIFIA assistance prematurely, perhaps in response to the limited time during which the application window has been open.

Beginning immediately, the TIFIA JPO will accept, at any time, letters of interest from potential applicants. Subsequently, for projects that meet all threshold criteria, applications will be accepted. Under a rolling application process, potential applicants can better time their TIFIA submissions with their project development activities. Potential TIFIA applicants must follow the process outlined below to be considered by the TIFIA JPO for credit assistance:

1. Letter of Interest. Initially, any potential applicant for TIFIA credit assistance should first submit a detailed letter of interest to the TIFIA JPO. The letter of interest should include a brief project description (including the project's purpose, design features, and estimated capital cost), information about the proposed financing for the project (including a preliminary summary of sources and uses of funds and the type and amount of credit assistance requested), a description of the proposed project participants, and an assessment of the benefit the project sponsor seeks to achieve through use of a TIFIA credit instrument. The letter also should summarize the status of the project's environmental review (i.e., whether the project has received a Categorical Exclusion, Finding of No Significant Impact, or Record of Decision, or, at a minimum, whether a draft Environmental Impact Statement has been circulated). The letter of interest should not exceed ten pages. The TIFIA JPO will lead a review of this preliminary submission to ensure that the project meets the basic requirements for participation in the TIFIA program. The TIFIA JPO will then designate an evaluation team for the project (drawing from the DOT's various offices and operating administrations, as necessary). The DOT evaluation team will contact the project sponsor within approximately two to four weeks to review the readiness of the project.

2. Application. The project sponsor may not submit an application until it has received preliminary confirmation of eligibility from the TIFIA JPO. The project sponsor applicant may then submit its formal application including all required materials (generally described in 49 CFR 80.7 and detailed in the TIFIA application form) to the TIFIA JPO. The TIFIA JPO and the DOT evaluation teams will not review incomplete applications or applications for projects that do not fully satisfy the TIFIA program requirements.

The most current version of the application form can be obtained from the TIFIA web site provided under the caption **FOR FURTHER INFORMATION CONTACT.**

3. Sponsor Presentation. Each applicant that passes an initial screening of the submitted application for completeness and compliance with the TIFIA program requirements will be invited to make an oral presentation to the TIFIA JPO and the DOT evaluation team on behalf of its project. The TIFIA JPO will discuss the structure and content of the presentation with the applicant at the time of the invitation.

4. Project Selection. Based upon the application, the oral presentation, and any supplemental submission of information, the TIFIA JPO and the DOT evaluation teams will score each project according to specific weights assigned to each of the eight statutory selection criteria described in 23 U.S.C. 182(b) and 49 CFR 80.15 as follows: National or regional significance, 20 percent; creditworthiness, 12.5 percent; private participation, 20 percent; project acceleration, 12.5 percent; use of new technologies, 5 percent; consumption of budget authority, 5 percent; environmental benefits, 20 percent; and reduced Federal grant assistance, 5 percent.

The DOT will not select any project before a record of decision (ROD) (if required, or the equivalent final agency decision) has been issued for that project.

5. Fees. Unless otherwise notified in a subsequent NOFA published in the **Federal Register**, the TIFIA JPO will require each TIFIA applicant to pay a non-refundable application fee of $30,000. This fee is based upon historical costs associated with the DOT's evaluation of TIFIA applications. Checks should be made payable to the Federal Highway Administration. The project sponsor must submit this payment with the application. Applicants may not include application fees or any other expenses associated with the application process (such as charges associated with obtaining the required preliminary rating opinion letter) among eligible project costs for the purpose of calculating the maximum 33 percent credit amount.

In addition, consistent with 23 U.S.C. 183(b)(7), 183(e)(2), 184(b)(9) and with

49 CFR 80.17, the TIFIA JPO will charge each borrower a credit processing fee equal to a portion of the costs incurred by the TIFIA JPO in negotiating the credit agreement. The term sheet for each selected will require the borrower to pay at closing, or, in the event no credit agreement is consummated, upon invoicing by the TIFIA JPO, an amount equal to the actual costs incurred by the TIFIA JPO in procuring the assistance of financial advisors and outside legal counsel through execution of the credit agreement(s) and satisfaction of all funding requirements of those agreements. The TIFIA JPO anticipates that the amount of this fee will typically range from $100,000 to $300,000 depending on the complexity of the financial structure and the length of negotiations. The borrower may not include the credit processing fee among eligible project costs for the purpose of calculating the maximum 33 percent.

Finally, the TIFIA JPO will continue to charge borrowers a fee of not less than $10,000 per year, which may be adjusted annually, for loan servicing activities associated with each of their TIFIA credit instruments. The borrower may not include the loan servicing fee among eligible project costs for the purpose of calculating the maximum 33 percent credit amount.

The FHWA will publish in the **Federal Register**, at least once each fiscal year through FY 2003, a NOFA inviting applications for credit assistance for major surface transportation projects through the TIFIA program. Such notices will advise potential applicants of the estimated amount of funding available for TIFIA credit instruments as well as any changes to the application process, including the nature and amount of any required fees.

(Authority: 23 U.S.C. 181–189; 49 CFR 1.48(nn))

Issued on: May 9, 2001.

Vincent F. Schimmoller,

Deputy Executive Director, Federal Highway Administration.

[FR Doc. 01–12546 Filed 5–17–01; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Applications for TIFIA Credit Assistance

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability of funds inviting applications for credit assistance for major surface transportation projects.

SUMMARY: Elsewhere in today's **Federal Register**, the Federal Highway Administration (FHWA) published a notice announcing the availability of Transportation Infrastructure Finance and Innovation Act (TIFIA) assistance and inviting applicants to submit applications for credit assistance for major surface transportation projects. The TIFIA authorizes the Department of Transportation (DOT) to provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees to public and private sponsors of eligible surface transportation projects. Highway, passenger rail, transit, and ''intermodal'' projects (including intelligent transportation systems) may receive credit assistance under the TIFIA. Interested persons should review the FHWA Notice in today's **Federal Register** for further information.

FOR FURTHER INFORMATION CONTACT: Ms. Joanne McGowan, Office of Passenger and Freight Services, Freight Program Division, (202) 493–6390.

(Authority: 23 U.S.C. 181–189; 49 CFR 1.49)

Issued on: May 8, 2001.

S. Mark Lindsey,

Acting Deputy Administrator.

[FR Doc. 01–12547 Filed 5–17–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Applications for TIFIA Credit Assistance

AGENCY: Federal Transit Adminstration (FTA), Department of Transportation (DOT).

ACTION: Notice of availability of funds inviting applications for credit assistance for major surface transportation projects.

SUMMARY: Elsewhere in today's **Federal Register** the Federal Highway Administration (FHWA) published a notice announcing the availability of Transportation Infrastructure Finance and Innovation Act (TIFIA) assistance and inviting applicants to submit applications for credit assistance for major surface transportation project. The TIFIA authorizes the Department of Transportation (DOT) to provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees to public and private sponsors of eligible surface transportation projects. Highway, passenger rail, transit, and ''intermodal'' projects (including intelligent transportation systems) may receive credit assistance under the TIFIA. Interested persons should review the FHWA Notice in today's **Federal Register** for further information.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Marx, Office of Policy Development (202) 366–1675, or Ms. Paula Schwach, Office of the Chief Counsel, (816) 523–0204.

(Authority: 23 U.S.C. 181–189; 49 CFR 1.51)

Dated: Issued on May 14, 2001.

Hiram J. Walker,

Acting Deputy Administrator, Federal Transit Administration.

[FR Doc. 01–12548 Filed 5–17–01; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 98–32

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 98–32, Electronic Federal Tax Payments System (EFTPS) Programs for Reporting Agents.

DATES: Written comments should be received on or before July 17, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Electronic Federal Tax Payment System (EFTPS) Programs for Reporting Agents.

OMB Number: 1545–1601.

Revenue Procedure Number: Revenue Procedure 98–32.

Abstract: This revenue procedure provides information about the Electronic Federal Tax Payment System (EFTPS) programs for Batch Filers and Bulk Filers (Filers). EFTPS is an electronic remittance processing system for making federal tax deposits (FTDs) and federal tax payments (FTPs). The Batch Filer and Bulk Filer programs are used by Filers for electronically submitting enrollments, FTDs, and FTPs on behalf of multiple taxpayers.

Current Actions: The number of Bulk and Batch filers participating in the EFTPS has increased due to two factors. First, the Service eliminated its magnetic tape program for the reporting of federal tax deposits and certain estimated income tax payments effective with respect to deposits or payments made after January 31, 2000. Secondly, the number of taxpayers required by the regulations issued under § 6302(h) of the Code to make FTDs using EFTPS has increased.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,500.

Estimated Time Per Respondent: 82 hours, 23 minutes.

Estimated Total Annual Burden Hours: 123,567.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 11, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–12601 Filed 5–17–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Electronic Tax Administration Advisory Committee; Open Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of open meeting of the Electronic Tax Administration Advisory Committee (ETAAC).

SUMMARY: In 1998 the IRS established the Electronic Tax Administration Advisory Committee (ETAAC). The primary purpose of ETAAC is to provide an organized public forum for discussion of electronic tax administration issues in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC offers constructive observations about current or proposed policies, programs, and procedures, and suggests improvements.

There will be a meeting of ETAAC on Thursday, May 31, 2001. The meeting will be held in the Ritz Carlton Pentagon City, 1250 South Hayes Street, Arlington, VA. A summarized version of the agenda along with a list of topics that are planned to be discussed are listed below.

Summarized Agenda for Meeting Thursday, May 31, 2001

9:00 Meeting Opens
11:30 Break for Lunch
1:00 Meeting Resumes
3:00 Meeting Adjourns

The topics that are planned to be covered are as follows:

(1) Small Business Plans
(2) e-Services 2002 Releases
(3) Lessons Learned—2001 Filing Season
(4) Preview of Report to Congress

Note: Last minute changes to these topics are possible and could prevent advance notice.

DATES: The meeting will be open to the public, and will be in a room that accommodates approximately 100 people, including members of ETAAC and IRS officials. Seats are available to members of the public on a first-come, first-served basis. To get your name on the access list, notification of intent to attend the meeting should be made with Ms. Robin Marusin by May 25, 2001. Ms. Marusin can be reached at 202–622–8184. Notification of intent should include your name, organization and phone number. If you leave this information for Ms. Marusin in a voice-mail message, please spell out all names. A draft of the agenda will be available via facsimile transmission the week prior to the meeting. Please call Ms. Robin Marusin on or after Thursday May 24 to have a copy of the agenda faxed to you. Please note that a draft agenda will not be available until that date.

FOR FURTHER INFORMATION CONTACT: To get on the access list to attend this meeting, to have a copy of the agenda faxed to you, or to get general information about ETAAC, call Robin Marusin at 202–622–8184.

SUPPLEMENTARY INFORMATION: ETAAC reports to the Director, Electronic Tax Administration, who is the executive responsible for the electronic tax administration program. Increasing participation by external stakeholders in the development and implementation of the Internal Revenue Service' (IRS'') strategy for electronic tax administration will help achieve the goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC members are not paid for their time or services, but consistent with Federal regulations, they are reimbursed for their travel and lodging expenses to attend the public meetings, working sessions, and an orientation each year.

Terence H. Lutes,

Director, Electronic Tax Administration.

[FR Doc. 01–12602 Filed 5–17–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW–ALS]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs

ACTION: Notice

SUMMARY: The Veterans Health Administration (VHA), Department of

Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to conduct a study of amyotrophic lateral sclerosis among Gulf War veterans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 17, 2001.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *ann.bickoff@mail.va.gov.* Please refer to ''OMB Control No. 2900–NEW–ALS'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff (202) 273–8310 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: A Study of Amoytrophic Lateral Sclerosis Among Gulf War Veterans.

OMB Control Number: 2900–NEW–ALS.

Type of Review: New collection.

Abstract: This study is designed to investigate the occurrence and to identify the causes of Amoytrophic Lateral Sclerosis (ALS) among Gulf War veterans. The study will further define the epidemiology of the neurological disease among veterans under the age of 45, and will determine whether there is a higher than expected occurrence. ALS is a rare disease in patients under the age of 45, which is the group of the majority of veterans on active duty during the Gulf War. The study will also ascertain the probable (possible) etiology of ALS. The result of the data collection will have importance for both the VA in achieving its mission to provide for the health of veterans and for the larger society in understanding ALS. The study will indicate whether veterans deployed to the Persian Gulf during the Gulf War are at elevated risk of ALS.

Affected Public: Individuals or households.

Estimated Annual Burden: 756 hours.

Estimated Average Burden Per Respondent: 6 hours.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 126.

Dated: March 30, 2001.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 01–12526 Filed 5–17–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0325]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 18, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0325.''

SUPPLEMENTARY INFORMATION:

Title: Certificate of Delivery of Advance Payment and Enrollment, VA Form 22–1999V.

OMB Control Number: 2900–0325.

Type of Review: Extension of a currently approved collection.

Abstract: VA is authorized to pay educational assistance to veterans and other eligible individuals pursuing approved programs of education. If certain requirements are met, VA is authorized to issue payments in advance of the beginning date of training. The schools or training establishments deliver advance payments and are required to certify the deliveries to VA. The schools or training establishments are also required to report the following to VA: (1) The failure of the student to enroll; (2) an interruption or termination of attendance; or, (3) a finding of unsatisfactory attendance conduct or progress. VA Form 22–1999V serves as the certificate of delivery of the advance payment and also the report of any changes in training status.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 6, 2001 at page 13632.

Affected Public: State, Local or Tribal Government, business or other for-profit, and Not-for-profit institutions.

Estimated Annual Burden: 1,779 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 21,353.

Send comments and recommendations concerning any aspect of the information collection to VA's Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0325'' in any correspondence.

Dated: May 10, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–12524 Filed 5–17–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Voluntary Service National Advisory Committee, Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that the annual meeting of the Department of Veterans Affairs Voluntary Service National Advisory Committee (NAC) will be held at the Doubletree Hotel at Reid Park, 445 South Alvernon Way, Tucson, Arizona, from May 30 through June 2, 2001. The meeting begins with participant registration from 12 noon–5 p.m. on Tuesday, May 29, and from 8 a.m.–5 p.m. on Wednesday, May 30, through Friday, June 1, in the Ballroom Foyer.

The committee, comprised of 60 national voluntary organizations, advises the Under Secretary for Health and other members of the Department of Veterans Affairs Central Office staff on how to coordinate and promote volunteer activities within VA facilities. The primary purposes of this meeting are to provide for committee review of volunteer policies and procedures; to accommodate full and open communications between the organizations, representatives and the Voluntary Service Office and field staff; to provide educational opportunities geared toward improving volunteer programs with special emphasis on methods to recruit, retain, motivate, and recognize volunteers; and to approve committee recommendations. This year's meeting will serve as an opportunity to promote and celebrate ''International Year of Volunteers-2001.''

On Tuesday, May 29, pre-meeting activities include a VAVS Field Staff meeting from 4–6 p.m. in the Boojum Room. The session on Wednesday, May 30, includes the following events: The Executive Committee to the NAC will meet from 8 a.m.–12 noon in the Bonsai/Boojum Room; Southern Arizona Health Care System will provide a Health Exhibit from 10 a.m.–3 p.m. in the Ballroom Foyer; New Member Orientation will be from 1–2:30 p.m. in Ballroom A–D; and an Open Forum will be from 3–4:30 p.m. in Ballroom A–D. Opening ceremonies will begin at 6 p.m. featuring Thomas L. Garthwaite, M.D., Under Secretary for Health, as keynote speaker.

On Thursday, May 31, there will be a Business Session from 8:30–11:30 a.m. in Ballroom A–E, where the Honorable Anthony J. Principi, Secretary of Veterans Affairs, will be the keynote speaker. The workshops include the following topics. (The locations of the workshops are also noted.) Volunteer In Home Respite Care Program, in Salons A–C; It's All About CHANGE—What Fits and What Doesn't, in Salons F–H; Community Based Volunteers and the Advanced Illness Coordinated Care Programs, in Salon E; and Closing the Digital Divide for Our Nation's Veterans, in Salon D.

On Friday, June 1, a NAC Business Session will be held from 8:30–10 a.m. in Ballrooms A–E. The educational workshops will be repeated from 10:30 a.m.–12:30 p.m. and from 3–4:30 p.m. in the same rooms as on Thursday. The James H. Parke Memorial Scholarship Luncheon will be held from 12:30–2 p.m. in Ballrooms D–E, honoring the 2001 recipient of the James H. Parke Scholarship.

On the morning of Saturday, June 2, the NAC will hold a Business Session from 8:30–11:30 a.m. in Ballrooms A–E. A critique of the meeting will be held from 11:30 a.m.–12:30 p.m. in Bonsai/Boojum. A closing celebration honoring the NAC Volunteers of the Year, Parke Scholarship Award recipient and the Voluntary Service Award for Excellence recipient will be held in Ballrooms A–D, beginning at 6 p.m.

The meeting is open to the public. Individuals interested in attending are encouraged to contact Ms. Laura Balun, Administrative Officer, Voluntary Service Office (10C2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC, 20420, at (202) 273–8392.

Dated: May 10, 2001.

By Direction of the Secretary.

Ventris C. Gibson,

Committee Management Officer.

[FR Doc. 01–12528 Filed 5–17–01; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of Amendment of Systems of Records Notice ''Healthcare Eligibility Records—VA''.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records currently entitled as ''Healthcare Eligibility Records—VA'' (89VA19) as established in **Federal Register** 59 FR 8677 dated 2/23/94 and amended in **Federal Register** 64 FR 13049 dated 3/16/99. VA is amending the system by revising the System Location; Categories of Records in the System; Routine Use Disclosure Statements; and Policies and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records in the System, including Storage, Retrievability and Safeguards. VA is republishing the system notice in its entirety at this time.

Title 38 U.S.C. Section 1705, requires the Veterans Health Administration (VHA) to establish a system of annual patient enrollment. VHA determined that the Health Eligibility Center (HEC) database would be expanded to serve as the central enrollment database, thereby adding veteran eligibility and enrollment information in the database. Veterans' eligibility and enrollment information maintained in this database is shared with VA health care facilities involved in the veterans' care. The National Enrollment Database (NED) located at VA's Austin Automation Center (AAC), Austin, Texas, supports the national enrollment system. The NED is populated via nightly batch updates from the HEC. The extracts do not contain federal tax information.

In an effort to facilitate patient education about VA enrollment, VHA established a call center operated by contractors. The HEC shares certain veteran data with the contractor, to facilitate the contractor's ability to accurately respond to veteran inquiries relating to enrollment and eligibility information, and to assist in fulfilling requests for enrollment-related materials (brochures, application forms, etc.). Specific data shared with the contractor include veterans' names, social security numbers, addresses, phone numbers, dates of birth, enrollment priority groups and primary health care facilities. The contractor asks the veteran caller for his or her social security number (SSN) and date of birth when it is necessary to transfer the call to a VA Medical Center or HEC for further assistance. SSN and Date of Birth information assists VA Medical Center and HEC staffs in locating the veteran's records. Other data elements provided to the contractor are utilized to assist in advising the veteran on enrollment-related matters and to mail enrollment information to the caller. Veterans also contact the call center to provide change of address information. Any updated demographic data obtained from the caller by the contractor is submitted to the HEC through electronic mail. Information is secured through use of a dedicated T–1 line, which contains a firewall to secure the data.

DATES: Comments on the amendment of this system of records must be received no later than June 18, 2001. If no public comment is received, the new system will become effective June 18, 2001.

ADDRESSES: Written comments concerning the amendment of this system of records may be submitted to the Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Act Officer, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, D.C. 20420, telephone (727) 320–1839.

SUPPLEMENTARY INFORMATION: The purpose for this system of records amendment is to expand the categories of individuals covered; to add a new routine use for the data contained in the system of records and to cover records to be maintained in the NED. The system location has been amended to reflect additional locations of certain data contained in the system of records, e.g., with or by contractor and records maintained at the AAC. The individuals covered by this system have been increased to include all enrolled veterans who have applied for VA health care services under Title 38, United States Code, Chapter 17, and their spouses and dependents as provided for in other provisions of Title 38, United States Code. Under the previous notice only, VA collected data on only non-service connected veterans and noncompensable, zero percent service-connected veterans.

The safeguards portion of the notice has been amended to describe the security provisions for information contained in the system of records for the NED and contractor sites.

A new routine use of the data is added to reflect that certain data contained in the system of records is shared with a contractor or subcontractor.

A supplementary statement has been added under retention and disposal of the records to reflect that records are disposed of in accordance with the records retention standards approved by the Archivist of the United States, National Archives and Records Administration, and published in VHA Records Control Schedule 10–1.

The HEC in Atlanta, Georgia, was originally established as the Income Verification Match Center (IVMC) to verify the income of non-service connected veterans with Internal Revenue Service (IRS) and Social Security Administration (SSA) information to verify the veteran's eligibility for VA health care benefits, as authorized by section 8051, Public Law 101–508. Section 8014 of Public Law 105–33 extended VA's matching authority through September 30, 2002.

Title 38, United States Code, Section 1705, requires VA to design, establish and operate a system of annual patient enrollment. As a matter of policy, VA has determined that the HEC database will be expanded to serve as the central repository for eligibility and enrollment data of veterans applying for, or receiving VA health care benefits. Veterans' enrollment information, such as the beginning and ending date of the enrollment period, enrollment status and primary health care facility, will be maintained in this database and provided to VA health care facilities involved in the veterans' care. This increases the types of records and individuals covered under the system.

To carry out the HEC programs, the Center receives electronic transmissions of eligibility and enrollment information on a nightly basis from VA health care facilities via the Department's electronic communications system (wide area network). These transmissions include personal, income and eligibility information, such as name, social security number, address, health insurance coverage, and other information concerning veteran's household income and eligibility status. Where relevant to the means test, these transmissions include information necessary to make such determination that is provided by the veteran. Compensation and pension award information contained in claims records administered by the Veterans Benefit Administration (VBA) is also sent to the HEC database by the AAC. This transmission is accomplished by using the Department's wide area network, ensuring consistency of eligibility information contained in records covered by this system. The HEC automatically sends this information over the VA's wide area network to VA medical facilities where the veteran received care within the past three years. VA medical facilities can query the HEC database to obtain information on veteran applicants who have not previously received health care at that facility. If available, updated information is transmitted to the requesting facility and loaded into the facility's database. Once in the facility database, this information is covered by another system of records.

The HEC submits record identifying information (name, social security number, data of birth, and sex) to SSA for social security number validation on the veteran, spouse or dependent. This data exchange is restricted to validation of SSN data that the VHA submits to SSA. SSA does not disclose SSN information. The validated social security number assists in matching a veteran's record maintained at one VA health care facility with records maintained at another and with records maintained on the individual by the VBA.

For certain veterans whose eligibility for VA health care is based on income, the validated social security number is also used to match VA records with SSA and IRS for income verification purposes. For veterans whose eligibility for VA health care is based on income, the HEC database contains earned and unearned income data received from IRS and SSA. However, no Federal Tax Information (FTI) data that the VA has obtained from IRS or SSA will be disclosed outside of the HEC or to a contractor or subcontractor. FTI information is tax information and tax return information obtained from the IRS or SSA, such as taxpayer's identity, source or amount of income, payment deductions, exemptions, assets, net worth, tax liability, tax withheld, deficiencies, over assessments or tax payments.

Routine use number 15 states relevant information from this system may be disclosed to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA in order for the contractor or subcontractor to perform the services of the contract or agreement. This routine use is being added to reflect that certain information contained in the system of records is shared with a contractor, and subcontractor as appropriate to perform the contracted services.

The notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: April 25, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

89VA19

SYSTEM NAME:

Health Eligibility Records—VA.

SYSTEM LOCATION:

Records are maintained at the Health Eligibility Center (HEC), 1644 Tullie Circle, Atlanta, Georgia 30329; the contractor of record's site; and the National Enrollment Database (NED) VA Austin Automation Center (AAC), Austin, Texas.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

Veterans who have applied for health care services under Title 38, United States Code, Chapter 17; their spouses and dependents as provided for, in other provisions of Title 38, United States Code; and non-veterans inquiring about VA health care benefits.

CATEGORIES OF RECORDS IN THE SYSTEM:

The category of records in the system include:

National Enrollment Database (NED) records including: Medical benefit application and eligibility information; identifying information including name, address, date of birth, social security number, claim number, family information including spouse and dependent(s) name, address and social security number; employment information on veteran and spouse, including occupation, employer(s) name(s) and address(es); financial information concerning the veteran and the veteran's spouse including family income, assets, expenses, debts; third party health plan contract information, including health insurance carrier name and address, policy number and time period covered by policy; facility location(s) where treatment is provided; type of treatment provided, i.e., inpatient or outpatient; and dates of visits.

Health Eligibility Center (HEC) records including [formerly the Income Verification Match (IVM) record]: Federal Tax Information (FTI) generated as a result of income verification computer match with records from Internal Revenue Service (IRS) and the Social Security Administration (SSA); documents obtained during the notification, verification and due process periods, such as initial verification letters, income verification forms, final confirmation letters, due process letters, clarification letters and subpoena documentation. FTI is tax information and tax return information obtained from the IRS or SSA, such as taxpayer's identity, source or amount of income, payment deductions, exemptions, assets, net worth, tax liability, tax withheld, deficiencies, over assessments or tax payments. Individual correspondence provided to the HEC by veterans or family members including, but not limited to, copies of death certificates; DD 214, Notice of Separation; disability award letters; IRS documents (i.e., Form 1040's, W–2's, etc.); state welfare and food stamp applications; VA and other pension applications; VA Form 10–10EZ, Application for Medical Benefits; workers compensation forms; and various annual earnings statements, as well as pay stubs. VA may not disclose to any person in any manner FTI received from IRS and SSA except as necessary to determine eligibility for benefits in accordance with the Internal Revenue Code (IRC) 26 U.S.C. 6103 (l)(7). VA may not allow access to FTI by any contractor or subcontractor.

Call Center Records including: Veteran's name, social security number, address, date of birth, phone number, enrollment priority group and primary health care facility.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, Sections 501 (a), 1705, 1722, and 5317.

PURPOSE(S):

Information in the system of records is used to update, verify and validate veteran eligibility, conduct income testing and verification activities; to validate social security numbers of veterans and spouses of those veterans receiving VA health care benefits; to ensure accuracy of veterans' eligibility information for medical care benefits; to operate an annual enrollment system; to update veteran eligibility; provide enrollment materials to educate veterans on enrollment; respond to veteran and non veteran inquiries on enrollment and eligibility; and to compile management reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 26 U.S.C. 6103(p)(4), i.e., the nature, source and amount of income, that information cannot be disclosed under a Routine Use set forth absent specific authorization from the IRS or the VA Office of General Counsel (024).

1. The record of an individual who is covered by this system may be disclosed to a member of Congress or staff person acting for the member when the member or staff person requests the record on behalf of, and at the written request of, that individual.

2. Disclosure of HEC (formerly IVM) records, as deemed necessary and proper to named individuals serving as accredited service organization representatives and other individuals named as approved agents or attorneys for a documented purpose and period of time, to aid beneficiaries in the preparation and presentation of their cases during the verification and/or due process procedures and in the presentation and prosecution of claims under laws administered by the Department of Veterans Affairs (VA).

3. In the event that information in this system of records maintained by this agency to carry out its functions, indicates a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or a particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be referred at VA's initiative, 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, or rule, regulation or order issued pursuant thereto. However, names and addresses of veterans and their dependents will be released only to Federal entities.

4. Relevant information from this system of records may be disclosed as a routine use: in the course of presenting evidence to a court, magistrate or administrative tribunal, in matters of guardianship, inquests and commitments; to private attorneys representing veterans rated incompetent in conjunction with issuance of Certificates of Incompetency; and to probation and parole officers in connection with Court required duties.

5. Any information in this system may be disclosed to a VA Federal fiduciary or a guardian ad litem in relation to his or her representation of a veteran only to the extent necessary to fulfill the duties of the VA Federal fiduciary or the guardian ad litem.

6. Relevant information may be disclosed to attorneys, insurance companies, employers, third parties liable or potentially liable under health plan contracts, and to courts, boards, or commissions only to the extent necessary to aid VA in the preparation, presentation, and prosecution of claims authorized under Federal, State, or local laws, and regulations promulgated thereunder.

7. Relevant information may be disclosed to the Department of Justice and United States Attorneys in defense or prosecution of litigation involving the United States, and to Federal Agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672.

8. Disclosure may be made to National Archives and Records Administration (NARA) and General Services Administration (GSA) in records management inspections conducted under authority of Title 44 United States Code.

9. Information in this system of records may be disclosed for the purposes identified below to a third party, except consumer reporting agencies, in connection with any proceeding for the collection of an amount owed to the United States by virtue of a person's participation in any benefit program administered by VA. Information may be disclosed under this routine use only to the extent that it is reasonably necessary for the following purposes: (a) To assist the VA in the collection of costs of services provided individuals not entitled to such services; and (b) to initiate civil or criminal legal actions for collecting amounts owed to the United States and/or for prosecuting individuals who willfully or fraudulently obtained or seek to obtain title 38 medical benefits. This disclosure is consistent with 38 U.S.C. 5701(b)(6).

10. The name and address of a veteran, other information as is reasonably necessary to identify such veteran, including personal information obtained from other Federal agencies through computer matching programs, and any information concerning the veteran's indebtedness to the United States by virtue of the person's participation in a benefits program administered by the VA may be disclosed to a consumer reporting agency for purposes of assisting in the collection of such indebtedness, provided that the provisions of 38 U.S.C. 5701(g)(4) have been met.

11. For computer matching program and Automated Data Processing (ADP) security review purposes, record information may be disclosed to teams from other source Federal agencies who are parties to computer matching agreements involving the information maintained in this system, but only to the extent that the information is necessary and relevant to the review.

12. The name and identifying information on a veteran and/or spouse may be provided to reported payers of earned and/or unearned income in order to verify the identifier provided, address, income paid, period of employment, and health insurance information provided on the means test and to confirm income and demographic data provided by other Federal agencies during income verification computer matching.

13. Identifying information, including Social Security Numbers, concerning veterans, their spouses, and the dependents of veterans may be disclosed to other Federal agencies for purposes of conducting computer matches to obtain valid identifying, demographic and income information to determine or verify eligibility of certain veterans who are receiving VA medical care under Title 38, United States Code.

14. The name and social security number of a veteran, spouse and dependents, and other identifying information as is reasonably necessary may be disclosed to the Social Security Administration, Department of Health and Human Services, for the purpose of conducting a computer match to obtain information to validate the social security numbers maintained in VA records.

15. Relevant information from this system may be disclosed to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA in order for the contractor or subcontractor to perform the services of the contract or agreement.

Note: This routine use does not authorize disclosure of FTI received from the Internal Revenue Service or the Social Security Administration to contractors or subcontractors.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic tape, magnetic disk, optical disk and paper.

RETRIEVABILITY:

Records (or information contained in records) maintained on paper documents are indexed and accessed by the veteran's name, social security number or case number and filed in case order number. Automated veterans' health eligibility records are indexed and retrieved by the veteran's name, social security number or case number. Automated health eligibility record information on spouses may be retrieved by the spouse's name or social security number.

SAFEGUARDS:

1. Data transmissions between VA health care facilities and the HEC and VA databases housed at VA's AAC are accomplished using the Department's wide area network. The software programs at the respective facilities automatically flag records or events for transmission based upon functionality requirements. VA health care facilities and the HEC control access to data by using VHA's Veterans Health Information System and Technology Architecture (VISTA), (formerly known as Decentralized Hospital Computer Program (DHCP) software modules), specifically Kernel and MailMan. Kernel utility programs provide the interface between operating systems, application packages and users. Once data are identified for transmission, records are stored in electronic mail messages, which are then transmitted via the Department's electronic communications system (wide area network) to specific facilities on the Department's wide area network. Server jobs at each facility run continuously to check for data to be transmitted and/or incoming data which needs to be parsed to files on the receiving end. All mail messages containing data transmissions include header information that is used for validation purposes. Consistency checks in the software are used to validate the transmission, and electronic acknowledgment messages are returned to the sending application. The Department's Telecommunications Support Service has oversight responsibility for planning security.

2. Working spaces and record storage areas at the HEC are secured during all business hours, as well as during non-business hours. All entrance doors require an electronic passcard for entry when unlocked, and entry doors are locked outside normal business hours. Electronic passcards are issued by the HEC Security Officer. HEC staff controls visitor entry by door release or escort. The building is equipped with an intrusion alarm system for non-business hours, and this system is monitored by a security service vendor. The office space occupied by employees with access to veteran records is secured with an electronic locking system, which requires a card for entry and exit of that office space. Access to the VA AAC is generally restricted to AAC staff, VA Headquarters employees, custodial personnel, Federal Protective Service and authorized operational personnel through electronic locking devices. All other persons gaining access to the computer rooms are escorted.

3. Strict control measures are enforced to ensure that access to and disclosure from all records, including electronic files and veteran specific data elements, stored in the HEC veteran database is limited to VA employees whose official duties warrant access to those files. The HEC automated record system recognizes authorized users by keyboard entry of a series of unique passwords. Once the employee is logged onto the system, access to the files is controlled by discrete menus which are assigned by the HEC computer system administration staff, upon request from the employee's supervisor and employee's demonstrated need to access the data to perform the employee's assigned duties. A number of other security measures are implemented to enhance security of electronic records (automatic timeout after short period of inactivity, device locking after pre-set number of invalid logon attempts, etc.). Employees are required to sign a user access agreement acknowledging their knowledge of confidentiality requirements, and all employees receive annual training on information security. Access is deactivated when no longer required for official duties. Recurring monitors are in place to ensure compliance with nationally and locally established security measures.

4. Veteran data is transmitted from the HEC to VA health care facilities and National Enrollment Database (NED) over the Department's computerized electronic communications system. Access to data in these files is controlled at the health care facility and NED level in accordance with nationally and locally established data security procedures. The NED is a database developed to support a national enrollment system. VA employees at these facilities are granted access to patient data on a ''need-to-know'' basis. All employees receive information security training and are issued unique access and verify codes. Employees are assigned computer menus that allow them to view and edit records as authorized by the supervisor. While employees at the health care facility may edit data which was initially input at the facility level, employees at the facility do not have edit access to income tests which originated at the HEC.

5. In addition to passcards, the HEC computer room requires manual entry of a security code prior to entry. Only the Automated Information System (AIS) staff and the HEC security officer are issued the security code to this area. Programmer access to the HEC database is restricted only to those AIS staff whose official duties require that level of access.

6. On-line data reside on magnetic media in the HEC computer room that is highly secured. Backup media are stored in a combination lock safe in a secured room within the same building; only information system staff has access to the safe. On a weekly basis, backup media are stored in off-site storage by a media storage vendor. The vendor picks up and returns the media in a locked storage container; vendor personnel do not have key access to the locked container.

7. Any sensitive information that may be downloaded to personal computer files in the HEC or printed to hard copy format is provided the same level of security as the electronic records. All paper documents and informal notations containing sensitive data are shredded prior to disposal. All magnetic media (primary computer system) and personal computer disks are degaussed prior to disposal or release off site for repair.

8. The IVM program of the HEC requires that HEC obtain veteran and spouse earned and unearned income data from IRS and SSA. The HEC complies fully with the Tax Information Security Guidelines for Federal, State and Local Agencies (Department of the Treasury IRS Publication 1075) as it relates to access and protection of such data. These guidelines define the management of magnetic media, paper and electronic records, and physical and electronic security of the data.

9. All new HEC employees receive initial information security training with refresher training provided to all employees on an annual basis. An annual information security audit is performed by the VA Regional Information Security Officer. This annual audit includes the primary computer information system, the telecommunication system, and local area networks. Additionally, the IRS performs periodic on-site inspections to ensure the appropriate level of security is maintained for Federal tax data. The HEC Information Security Officer and AIS administrator additionally perform periodic reviews to ensure security of the system and databases.

10. Identification codes and codes used to access HEC automated communications systems and records systems, as well as security profiles and possible security violations, are maintained on magnetic media in a secure environment at the Center. For contingency purposes, database back-ups on removable magnetic media are stored off-site by a licensed and bonded media storage vendor.

11. Neither field offices, the contractor administering the Call Center for VHA, nor the NED will receive FTI from HEC.

12. Contractor working spaces and record storage areas are secured during all business hours, as well as during non-business hours. All entrance doors require an electronic passcard for entry when unlocked, and entry doors are locked outside normal business hours. Electronic passcards are issued by the contractor's Security Officer. Visitor entry is controlled by the contractor's staff by door release and/or door escort. The building is equipped with an intrusion alarm system for non-business hours, and this system is monitored by a security service vendor.

13. Strict control measures are enforced to ensure that access to and disclosure from all records including electronic files and veteran specific data elements in the contractor veteran call tracking database are limited to contractor's employees whose official duties warrant access to those files. The automated record system recognizes authorized users by keyboard entry of a series of unique passwords. Once the employee is logged onto the system, access to files is controlled by discrete menus, assigned by the contractor computer system administration staff upon request from the employee's supervisor and the employee's demonstrated need to access the data to perform assigned duties. A number of other security measures are implemented to enhance security of electronic records (automatic timeout after short period of inactivity, device locking after pre-set number of invalid logon attempts, etc.). Employees are required to sign a user security policy agreement acknowledging their understanding of confidentiality requirements, and all employees receive annual training on information security. Access is deactivated when no longer required for official duties.

14. Contractors and subcontractors will adhere to the same safeguards and security requirements as the HEC is held to.

RETENTION AND DISPOSAL:

Depending on the record medium, records are destroyed by either shredding or degaussing. Paper records are destroyed after they have been accurately scanned on optical disks. Optical disks or other electronic medium are deleted when all phases of the veteran's appeal rights have ended (ten years after the income year for which the means test verification was conducted). Tapes received from SSA and IRS are destroyed 30 days after the

data have been validated as being a true copy of the original data. Summary reports and other output reports are destroyed when no longer needed for current operation. Records are disposed of in accordance with the records retention standards approved by the Archivist of the United States, National Archives and Records Administration, and published in the VHA Records Control Schedule 10–1. Regardless of the record medium, no records will be retired to a Federal records center.

SYSTEM MANAGER(S) AND ADDRESSES:

Official responsible for policies and procedures: Chief Information Officer (19), VA Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. Official maintaining the system: Director, Health Eligibility Center, 1644 Tullie Circle, Atlanta, Georgia 30329.

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier or wants to determine the contents of such record, should submit a written request or apply in person to the Health Eligibility Center. All inquiries must reasonably identify the records requested. Inquiries should include the individual's full name, social security number and return address.

RECORD ACCESS PROCEDURES:

Individuals seeking information regarding access to and contesting of HEC records may write to the Director, HEC, 1644 Tullie Circle, Atlanta, Georgia 30329.

CONTESTING RECORD PROCEDURES:

(See Record Access procedures above).

RECORD SOURCE CATEGORIES:

Information in the systems of records may be provided by the veteran; veteran's spouse or other family members or accredited representatives or friends; employers and other payers of earned income; financial institutions and other payers of unearned income; health insurance carriers; other Federal agencies; ''Patient Medical Records—VA'' (24VA136) system of records; Veterans Benefits Administration automated record systems (including Veterans and Beneficiaries Identification and Records Location Subsystem—VA (38VA23); and the ''Compensation, Pension, Education and Rehabilitation Records—VA'' (58VA21/22).

[FR Doc. 01–12527 Filed 5–17–01; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 66, No. 97
Friday, May 18, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Forest Service

County Line–Fourmile Project, McKean and Warren Counties, PA

Correction

In notice document 01–11866, beginning on page 24095, in the issue of Friday, May 11, 2001, make the following correction:

On page 24096, in the first column, under the heading **DATES**, beginning in the third line ''June 4, 2001'' should read ''June 11, 2001''.

[FR Doc. C1–11866 Filed 5–17–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR01–12–000]

Arkansas Western Gas Company: Notice of Application for Rate Approval

Correction

In notice document 01–11780 beginning on page 23903 in the issue of Thursday, May 10, 2001, the docket number should read as set forth above.

[FR Doc. C1–11780 Filed 5–17–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–95–012]

Notice of Initiation of Proceeding and Refund Effective Date

Correction

In notice document 01–11053 appearing on page 22223 in the issue of Thursday, May 3, 2001, the docket number should read as set forth above.

[FR Doc. C1–11053 Filed 5–17–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1571–001]

Florida Power and Light Company; Notice of Filing

Correction

In notice document 01–10330 beginning on page 20973 in the issue of Thursday, April 26, 2001, the docket number is corrected to read as set forth above.

[FR Doc. C1–10330 Filed 5–17–01; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
May 18, 2001

Part II

Securities and Exchange Commission

17 CFR Parts 200 and 240

Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934; Interim Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200 and 240

[Release No. 34–44291; File No. S7–12–01]

RIN 3235–AI19

Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Interim final rules with request for comments.

SUMMARY: The Securities and Exchange Commission is adopting, as interim final rules, new Rules 3a4–2, 3a4–3, 3a4–4, 3a4–5, 3a4–6, 3a5–1, 3b–17, 3b–18, 15a–7, 15a–8, and 15a–9 under the Securities Exchange Act of 1934 (''Exchange Act''), and amending Rule 30–3 of our Rules of Organization and Program Management. These new rules address the functional exceptions for banks from the definitions of ''broker'' and ''dealer'' that were added to the Exchange Act by the Gramm-Leach-Bliley Act and will become effective May 12, 2001.

We are promulgating these rules on an interim final basis, effective May 11, 2001, to clarify the terms of the functional exceptions from the definitions of broker and dealer as well as to provide additional exemptions, which will aid banks in complying with the provisions of the Gramm-Leach-Bliley Act when they become effective. We are soliciting comments on all aspects of the interim final rules and will amend these rules as appropriate in response to comments received.

DATES: *Effective Date:* May 11, 2001.

Comment Date: Comments on the interim final rules should be submitted by July 17, 2001.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549–0609. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–12–01; this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, N.W., Washington, D.C. 20549–0102. Electronically submitted comment letters will be posted on the Commission's Internet site (http://www.sec.gov).[1]

FOR FURTHER INFORMATION CONTACT: Catherine McGuire, Chief Counsel; Lourdes Gonzalez, Assistant Chief Counsel; Linda Stamp Sundberg, Banking Fellow; Patricia Albrecht, Special Counsel; or Joseph P. Corcoran, Attorney, (202) 942–0073, Office of the Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') is adopting Rules 3a4–2 [17 CFR 240.3a4–2], 3a4–3 [17 CFR 240.3a4–3], 3a4–4 [17 CFR 240.3a4–4], 3a4–5 [17 CFR 240.3a4–5], 3a4–6 [17 CFR 240.3a4–6], 3a5–1 [17 CFR 240.3a5–1], 3b–17 [17 CFR 240.3b–17], 3b–18 [17 CFR 240.3b–18], 15a–7 [17 CFR 240.15a–7], 15a–8 [17 CFR 240.15a–8], and 15a–9 [17 CFR 240.15a–9] under the Exchange Act as interim final rules clarifying certain terms in Sections 3(a)(4) and 3(a)(5) of the Exchange Act [15 U.S.C. 78c(a)(4) and 78c(a)(5)] and providing exemptions for banks from broker-dealer registration. The Commission is delegating authority to the Division of Market Regulation through an amendment to Rule 30–3 of its Rules of Organization and Program Management [17 CFR 200.30–3] to issue to banks, savings associations, and savings banks additional exemptions from registration and regulation.

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[1] We do not edit personal, identifying information, such as names or e-mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

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XII. Text of Rules and Rule Amendments

I. Introduction

A. Background

On November 12, 1999, the President signed the Gramm-Leach-Bliley Act (''GLBA'') into law.[2] The GLBA represents the culmination of more than 30 years of Congressional efforts aimed at reforming the regulation of financial services.[3] The GLBA changed federal statutes governing the scope of permissible activities and the supervision of banks, bank holding companies, and their affiliates. The GLBA lowers (although does not altogether eliminate) barriers between the banking and securities industries erected by the Banking Act of 1933 (popularly known as the ''Glass-Steagall Act'')[4] and between the banking and the insurance industries erected by the 1982 amendments to the Bank Holding Company Act of 1956 (the ''Bank Holding Company Act'').[5] Some have described the GLBA as the most important piece of federal banking legislation since the Depression.[6]

When Congress enacted the Exchange Act in l934, it completely exempted banks from the regulatory scheme provided for brokers and dealers. Over the past 60 years, however, evolution of the financial markets driven by competition and technology eroded the separation that previously existed between banks, insurance companies, and securities firms. Regulators responded to these changes with interpretations that increasingly sought to accommodate the market changes. The Board of Governors of the Federal Reserve System (''Federal Reserve''), the Office of the Comptroller of the Currency (''OCC''), and the Federal Deposit Insurance Corporation (''FDIC'') have long permitted banks and bank holding companies to engage in retail and institutional securities brokerage and private placement activities.

Beginning in the 1980s, these developments, coupled with arguments for competitive equality both domestically and internationally, spurred Congressional action. Congress considered major restructuring of legal restrictions preventing financial services firms from offering a full array of products, while at the same time maintaining the successful system of functional regulation of securities, insurance, and banking that existed under that framework.[7]

The Commission long supported modernizing the legal framework governing financial services, so long as it was consistent with a system of functional regulation to ensure that investors purchasing securities through banks received the same protections as those when they purchased securities from registered broker-dealers.[8] The GLBA is the product of many years of Congressional deliberation and reflects a careful balance between providing investors with the same protections wherever they purchase securities, while not unnecessarily disturbing certain bank securities activities.

Sections 201 and 202 of the GLBA substantially amended the Exchange Act's definitions of ''broker'' and ''dealer,'' respectively.[9] The amended definitions become effective on May 12,

[2] Pub. L. No. 106–102, 113 Stat. 1338 (1999).

[3] Jaworski, Robert M., ''Financial Modernization: The Federal Government Plays Catch-up,'' 54 Consumer Fin. L.Q. Rep. 2 (Winter, 2000).

[4] Pub. L. No. 73–66, ch. 89, 48 Stat. 162 (1933) (as codified in various sections of 12 U.S.C.).

[5] The Garn-St. Germain Depository Institutions Act of 1982, Pub. L. No. 97–320, 96 Stat. 1469 (1982) (as codified in various sections of 12 U.S.C.), amending section 4(c)(8) of the Bank Holding Company Act, 12 U.S.C. 1841–1850 (1994).

[6] *See* Jaworski, Robert M., *supra* note 3.

[7] During recent years, the Senate, the House, and Congressional committees acted on several versions of Glass-Steagall reform bills. In 1988, the Senate passed S. 1886, the ''Financial Modernization Act of 1988,'' which would have repealed the provisions of the Glass-Steagall Act that prohibit affiliations between commercial banks and investment banks. That same year the House Banking Committee reported H.R. 5094, the ''Depository Institutions Act of 1988.'' This legislation never reached the House floor. In 1991, in response to the Administration's call for financial services reform, the Senate passed S. 543, the ''Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991.'' The House Banking Committee voted to report favorably H.R. 6, the ''Financial Institutions Safety and Consumer Choice Act of 1991,'' which would have allowed banks to affiliate with securities firms, insurance companies, and commercial entities under a diversified holding company structure. The Glass-Steagall provisions of those bills were dropped, however. In 1995, the House Banking Committee approved H.R. 1062, the ''Financial Services Competitiveness Act of 1995,'' which would have allowed banks to affiliate with securities firms and engage in activities that were financial in nature. Later that same year, the House Banking Committee ordered reported another version as part of H.R. 1858, the ''Financial Institutions Regulatory Relief Act of 1995.'' Significantly, in 1997, the Administration supported, through the Treasury Department, a different version of financial services modernization legislation. The House Banking Committee also approved financial services modernization legislation in the form of H.R. 10, the ''Financial Services Competitiveness Act of 1997.'' Administration support for some version of financial services legislation, together with strong lobbying and negotiating efforts involving the affected industries, led to the passage by the House of H.R. 10 on May 13, 1998, by a one-vote margin of 214 to 213. On September 11, 1998, the Senate Banking Committee also approved its version of H.R. 10. That legislation did not reach the Senate floor.

Five comprehensive financial services reform bills were introduced in the first session of the 106th Congress in 1999. Two bills, H.R. 10 and S. 900, were reported out of committee, passed by the House and Senate, and resulted in a compromise version of S. 900 that was enacted. There was no activity on the other three bills, S. 753, H.R. 665, and H.R. 823; however, some policies in those bills, for example, in the areas of financial privacy and treatment of bank subsidiaries, were reflected to some extent in the legislation that eventually passed.

[8] *See* Letter from Arthur Levitt, Chairman, U.S. Securities and Exchange Commission, to Senator Phil Gram, Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate (Oct. 14, 1999) (stating that ''the Securities and Exchange Commission has long supported financial modernization legislation that provides the protections of the securities laws to all investors.''); *see, also* Testimony of Arthur Levitt, Chairman, U.S. Securities and Exchange Commission, Concerning H.R. 10, the ''Financial Services Act of 1999,'' Before the Subcomm. On Finance and Hazardous Materials of the House Comm. On Commerce (May 5, 1999); Testimony of Arthur Levitt, Chairman, U.S. Securities and Exchange Commission, Concerning Financial Modernization Legislation Before the Senate Comm. On Banking, Housing, and Urban Affairs (Feb. 24, 1999); Testimony of Harvey J. Goldschmid, General Counsel, U.S. Securities and Exchange Commission, Concerning H.R. 10, the ''Financial Services Act of 1999,'' Before the House Comm. On Banking and Financial Services, U.S. House of Representatives (Feb. 12, 1999); Testimony of Arthur Levitt, Chairman, U.S. Securities and Exchange Commission, Concerning H.R. 10, The ''Financial Services Act of 1998,'' Before the Senate Comm. On Banking, Housing, and Urban Affairs (June 25, 1998); Testimony of Arthur Levitt, Chairman, U.S. Securities and Exchange Commission, Concerning Financial Modernization and H.R. 10, the ''Financial Services Competition Act of 1997,'' Before the Subcomm. On Finance and Hazardous Materials of the House Comm. On Commerce (July 17, 1997); Testimony of Arthur Levitt, Chairman, U.S. Securities and Exchange Commission, Concerning Financial Modernization, Before House Comm. On Banking and Financial Services (May 22, 1997); Testimony of Arthur Levitt, Chairman, U.S. Securities and Exchange Commission, Regarding H.R. 1062, the ''Financial Services Competitiveness Act of 1995,'' Before the Subcomm. On Telecommunications and Finance and the Subcomm. On Commerce, Trade and Hazardous Materials of the House Comm. On Commerce (June 6, 1995); Testimony of Arthur Levitt, Chairman, U.S. Securities and Exchange Commission, Concerning the ''Financial Services Competitiveness Act of 1995'' and Related Issues, Before the House Comm. On Banking and Financial Services (Mar. 15, 1995); Testimony of Arthur Levitt, Chairman, U.S. Securities and Exchange Commission, Concerning H.R. 3447 and Related Functional Regulation Issues, Before the Subcomm. On Telecommunications and Finance of the House Comm. On Energy and Commerce (Apr. 14, 1994); Testimony of Richard C. Breeden, Chairman, U.S. Securities and Exchange Commission, Concerning Financial Modernization, Before the Subcomm. On Telecommunications and Finance of the House Comm. On Energy and Commerce (July 11, 1990); Memorandum of the Securities and Exchange Commission (under Chairman David Ruder) to the Subcomm. On Telecommunications and Finance of the House Comm. On Energy and Commerce, Concerning Financial Services Deregulation and Repeal of the Glass-Steagall Act (Apr. 11, 1988); Testimony of David S. Ruder, Chairman, U.S. Securities and Exchange Commission, Concerning the Structure and Regulation of the Financial Services Industry, Before the Subcomm. On Telecommunications and Finance of the House Comm. On Energy and Commerce (Oct. 5, 1987).

[9] Exchange Act Sections 3(a)(4) and 3(a)(5) [15 U.S.C. 78c(a)(4) and 78c(a)(5)].

2001. Before the amendment, Sections 3(a)(4) and 3(a)(5) of the Exchange Act provided that the terms ''broker'' and ''dealer'' did not include a ''bank.''[10] Accordingly, banks [11] that engaged in securities activities were excepted from the requirement to register as broker-dealers under the Exchange Act.[12] The amended definitions replace this general exception for banks with specific functional exceptions from broker-dealer registration for certain bank securities activities.

In particular, the amended definitions create 11 ''broker'' and 4 ''dealer'' exceptions for banks. Three of these exceptions are similar for both ''broker'' and ''dealer.'' The exceptions are outlined briefly below:[13]

1. Exceptions From Both ''Broker'' And ''Dealer'' Definitions

• *Trust and fiduciary activities:* permits banks to act as brokers and dealers in securities so long as they act as ''trustees'' or ''fiduciaries'' and meet other conditions.

• *Permissible securities transactions:* permits banks to act as brokers and dealers with respect to exempted securities, Canadian government obligations, and Brady bonds.

• *Identified banking products:* permits banks to act as brokers and dealers for certain ''identified banking products,'' as defined in Section 206 of the GLBA.

2. Other Exceptions From ''Broker'' Definition

• *Third party brokerage arrangements:* permits banks to enter into contractual arrangements with registered broker-dealers to sell securities to bank customers under specified conditions.

• *Certain stock purchase plans:* permits banks, as a part of their transfer agent activities, to effect certain securities transactions in employee benefit plans, dividend reinvestment plans, and issuer plans under specified conditions.

• *Sweep accounts:* permits banks to sweep customer funds into no-load money market funds.

• *Affiliate transactions:* permits banks to effect transactions for affiliates, other than affiliates that are registered broker-dealers or affiliates engaged in merchant banking.

• *Private securities offerings:* permits banks that are not affiliated with broker-dealers to privately place securities under specified conditions.

• *Safekeeping and custody activities:* permits banks to hold securities, pledge securities, lend securities held in custody, and reinvest collateral.

• *Municipal securities:* permits banks to act as brokers in municipal securities.

• *De minimis exception:* permits banks to engage in 500 securities transactions annually without registering as brokers.

3. Other Exception From ''Dealer'' Definition

• *Asset-backed products:* permits banks to underwrite and sell asset-backed securities representing obligations predominantly originated by a bank, an affiliate of the bank other than a broker-dealer, or a syndicate in which the bank is a member, for some types of products.

In recent weeks, we have received an increasing number of inquiries regarding how we will interpret some of the terms in the new specific functional exceptions.[14] Because the exceptions from the definitions of broker and dealer are exceptions to the Exchange Act, we are statutorily charged with interpreting these exceptions. In response to interpretive questions that have arisen, we are adopting, as interim final rules,[15] new Exchange Act Rules 3b–17 and 3b–18.[16]

New Rule 3b–17 defines terms applicable to three exceptions from the definition of broker: (1) Networking arrangements; (2) trust and fiduciary activities; and (3) sweep accounts. Rule 3b–17 also provides legal certainty to banks regarding the availability of the fiduciary activities exception when they act as indenture trustees or as trustees for tax-deferred accounts. New Rule 3b–18 defines terms for the exception from the definition of dealer for banks that sell asset-backed securities.

To alleviate concerns that have been expressed to us in recent months, we also grant five exemptions under which banks may effect transactions in

[10] Current Exchange Act Section 3(a)(4) defines the term ''broker'' as ''any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank.'' Current Exchange Act Section 3(a)(5) defines the term ''dealer'' as ''any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank * * * .''

[11] Exchange Act Section 3(a)(6) [15 U.S.C. 78c(a)(6)] defines the term ''bank'' as:

(A) a banking institution organized under the laws of the United States, (B) a member bank of the Federal Reserve System, (C) any other banking institution, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency * * * and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

[12] Exchange Act Section 15(a) [15 U.S.C. 78o(a)] generally provides that:

[i]t shall be unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer which is a person other than a natural person (other than such a broker or dealer whose business is exclusively intrastate and who does not make use of any facility of a national securities exchange) to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer is registered in accordance with [the provisions] of this section.

[13] This outline is a summary. It does not describe the exceptions in full.

[14] Letter from Melanie L. Fein to Robert L. D. Colby, Deputy Director, and Catherine McGuire, Associate Director and Chief Counsel, Division of Market Regulation, Commission (Mar. 30, 2001); Letter from Scott M. Albinson, Managing Director, OTS, to Annette L. Nazareth, Director, Division of Market Regulation, Commission, and Paul F. Roye, Director, Division of Investment Management, Commission (Mar. 20, 2001); Letter from Lawrence R. Uhlick, Executive Director and General Counsel, Institute of International Bankers, to Robert L. D. Colby, Deputy Director, and Catherine McGuire, Associate Director and Chief Counsel, Division of Market Regulation, Commission (Mar. 15, 2001); Letter from Barry Harris, Chair, Bank Retail Broker-Dealer Committee, Securities Industry Association, to Laura Unger, Acting Chairman, Commission (Mar. 13, 2001); Letter from Melanie L. Fein to Robert L. D. Colby, Deputy Director, and Catherine McGuire, Associate Director and Chief Counsel, Division of Market Regulation, Commission (Mar. 13, 2001); Letter from Melanie L. Fein to Robert L. D. Colby, Deputy Director, and Catherine McGuire, Associate Director and Chief Counsel, Division of Market Regulation, Commission (Mar. 7, 2001); Letter from Sarah A. Miller, Director, Center for Securities, Trust and Investments, American Bankers Association, to Laura Unger, Acting Chairman, Commission (Feb. 28, 2001).

[15] Several of the banking agencies promulgated interim final rules implementing various provisions of the GLBA and solicited comments to implement the bank activity sections of the GLBA. *See* Interim Final Rule with Request for Comments, Repurchases of Stock by Recently Converted Savings Associations, Mutual Holding Company Dividend Waivers, 65 Fed Reg. 43088 (July 12, 2000), comment period extended, 65 FR 60095 (Oct. 10, 2000) (Office of Thrift Supervision (''OTS'')); Joint Interim Final Rule with Request for Comments, Bank Holding Companies and Changes in Bank Control, 65 FR 16460 (Mar. 28, 2000) (Board of Governors of the Federal Reserve System (''Federal Reserve'') and Department of Treasury (''Treasury'')); Interim Final Rules with Request for Comment, Activities and Investments of Insured State Banks, 65 FR 15526 (Mar. 23, 2000), Final Rule, 66 FR 1018 (Jan. 5, 2001) (Federal Deposit Insurance Corporation (''FDIC'')); Interim Final Rule with Request for Comments, Financial Subsidiaries, 65 FR 14819 (Mar. 20, 2000) (Federal Reserve); Joint Interim Final Rule with Request for Comments, Financial Subsidiaries, 65 FR 15050 (Mar. 20, 2000) (Treasury and Federal Reserve); Interim Final Rule with Request for Comments, Application of Sections 23A and 23B of the Federal Reserve Act to Derivative Transactions with Affiliates and Intraday Extensions of Credit to Affiliates, 66 FR 24229 (May 11, 2001) (Federal Reserve).

[16] Exchange Act Section 3(b) [15 U.S.C. 78c(b)] authorizes us to define terms in the Exchange Act.

securities without being registered as broker-dealers. New Rule 3a4–2 responds to concerns banks have expressed about calculating the compensation condition in the trust and fiduciary activities exception. This rule permits banks to compute their compensation, for purposes of the compensation condition, based on their total amount of trust and fiduciary activities, subject to a 10% limit and internal maintenance procedures. New Rule 3a4–3 allows banks to effect transactions as indenture trustees in no-load money market funds without meeting the ''chiefly compensated'' condition in the trust and fiduciary activities exception.

New Rule 3a4–4 provides a conditional exemption to allow small banks to effect transactions in investment company securities held in tax-deferred custody accounts and to be compensated for this brokerage activity. We define small banks as banks that had less than $100 million in assets as of December 31 in both of the prior two calendar years, and have not been, since December 31 of the third prior calendar year, an affiliate of a bank holding company or financial holding company that, as of December 31 of both of the prior two calendar years, had total assets of $1 billion or more. Small banks may not rely this exemption if they are affiliated with, or have networking arrangements with, registered broker-dealers. New Rule 3a4–5 conditionally exempts all banks that effect transactions in securities for custody accounts without, directly or indirectly, receiving compensation for providing this service. A bank relying on this exemption may pass on to the customer the broker-dealer's charge for executing the transactions. Like Rule 3a4–4, this exemption imposes conditions on banks' solicitation of transactions.

New Rule 3a4–6 provides a conditional exemption that allows banks to continue to execute transactions in investment company securities through the National Securities Clearing Corporation's (''NSCC'') Mutual Fund Services, including Fund/SERV, instead of through a registered broker-dealer as required by Exchange Act Section 3(a)(4)(C). This exemption is available only to banks that otherwise meet the conditions of another exception or exemption.

New Rule 3a5–1 conditionally exempts from the definition of ''dealer'' banks engaged in riskless principal transactions if they do not exceed the *de minimis* transactions exception limit in Exchange Act Section 3(a)(4)(B)(xi).

We understand that banks will need time to determine whether any securities activities must be conducted through registered broker-dealers after May 11, 2001. In addition, some banks may not have completed the process of ensuring that securities transactions are conducted through registered broker-dealers, where required. Accordingly, new Rule 15a–7 exempts banks that are engaging in securities activities from the definitions of broker and dealer until October 1, 2001.[17] In addition, Rule 15a–7 exempts banks whose compensation arrangements do not meet the compensation conditions of a particular exception or exemption from the definition of broker until January 1, 2002, if they meet the other conditions for an exception or exemption.

New Rule 15a–8 exempts banks from the potential voiding under Exchange Act Section 29(b) of contracts entered into before January 1, 2003, because the bank violated the broker-dealer registration requirements or any applicable provision of the Exchange Act and rules thereunder based solely on the bank's status as a broker or dealer at the time the bank entered into the contract. Finally, new Rule 15a–9 exempts savings associations and savings banks[18] from the definitions of ''broker'' and ''dealer'' under Exchange Act Sections 3(a)(4) and 3(a)(5) on the same terms and conditions that apply to banks.

We recognize that banks have developed their particular securities activities under the general exception from broker-dealer registration that existed prior to the passage of the GLBA. Because particular banks may have individual considerations that may be appropriate for additional relief, we are authorizing the Director of the Division of Market Regulation to consider, on a case-by-case basis, individual requests for exemptive relief from banks. We also are directing the staff to consider requests from savings associations and savings banks for additional exemptive relief.[19] To facilitate the processing of these requests, we have delegated exemptive authority to the staff of the Division of Market Regulation through an amendment to Rule 30–3 of our Rules of Organization and Program Management. We expect the staff to submit novel and complex requests for exemption to us.

As a general matter, under the federal securities laws, parties relying on an exception or exemption have the burden of demonstrating that they qualify for such exception or exemption. We would therefore expect banks, as a matter of good business practice, to be able to demonstrate that they meet the terms of a particular exemption. We solicit comment regarding whether the requirements that the bank regulators are required to adopt under Section 18(t) of the FDIA[20] will be sufficient for this purpose or whether the Commission itself should adopt record keeping rules relating to these exemptions. We solicit comment on what records banks have or can develop to demonstrate to the Commission that they meet the terms of a particular exemption. We also solicit comment on whether it is necessary for savings association and savings bank regulators to adopt record keeping requirements for savings associations and savings banks analogous to those adopted for banks.

We request comment on all aspects of the interim final rules as well as comment on the specific provisions and issues highlighted below.

B. The Gramm-Leach-Bliley Act

As highlighted above, the GLBA repealed certain provisions of the Glass-Steagall Act[21] and other restrictions applicable to banks and bank holding companies. As a result, banks are able to affiliate with securities firms and insurance companies within the same financial holding company.

The GLBA codified the concept of functional regulation—that is, regulation of the same functions, or activities, by the same expert regulator, regardless of the type of entity engaging in those activities. Congress believed that, given the expansion of the activities and affiliations in the financial marketplace, functional regulation was important to building a coherent financial regulatory scheme.[22] Accordingly, Title II of the GLBA amended the federal securities laws to provide for functional regulation of securities activities by eliminating the complete exception for banks from the definitions of ''broker'' and ''dealer.'' As the legislative history noted, prior to the passage of the GLBA, the exception for banks from broker-dealer registration

[17] Exchange Act Section 36 [15 U.S.C. 78mm] authorizes us to exempt any person, security, or transaction from the provisions of the Exchange Act, to the extent that such exemption is necessary or appropriate in the public interest, and consistent with the protection of investors.

[18] This exemption is limited to savings associations and savings banks that have deposits insured by the FDIC under the Federal Deposit Insurance Act (''FDIA''). 12 U.S.C. 1811 *et seq.*

[19] *See id.* The same limitation applies to this delegation.

[20] 12 U.S.C. 1828(t).

[21] *Supra* note 4.

[22] H.R. Rep. No. 106–74, pt. 3, at 106th Cong., 1st Sess. at 113 (1999).

created a competitive disparity by permitting banks to engage in securities activities without being subject to the same regulatory requirements as broker-dealers. In the legislative history, Congress specifically expressed concern that the complete exception had permitted banks to engage in securities activities without being subject to the provisions of the federal securities laws that were designed to protect investors.[23]

The federal securities laws provide a comprehensive and coordinated system of regulation of securities activities. They are specifically and uniquely designed to assure the protection of investors through full disclosure concerning securities and the prevention of unfair and inequitable practices in the securities markets. The securities laws also have as a goal fair competition among all participants in the securities markets. Broker-dealer registration is an important element of this regulatory system. Absent broker-dealer registration, bank securities activities generally are regulated only under banking law, which has as its primary purposes the protection of depositors and the preservation of the financial soundness of banks.[24] Thus, bank securities activities take place outside of the coordinated system of securities regulation that is designed to protect investors, leading to regulatory disparities.

For example, to become licensed to sell securities, all persons associated with a broker-dealer are required to pass a qualifications test covering substantive aspects of the securities business.[25] Commission and self-regulatory organization (''SRO'') rules also assure that those persons associated with broker-dealers who have committed abuses that would make them subject to a statutory disqualification are prohibited from working in the securities industry or are subject to conditions such as enhanced supervision.[26] The SROs also require that persons involved in the management of the broker-dealer pass additional examinations relating to supervisory procedures and requirements.[27] These qualification requirements are supplemented by continuing education requirements, the broker-dealer's duty to supervise its employees to prevent violations of the federal securities laws, and the specific supervisory procedures imposed by the SROs.[28] In addition, our rules and those of the SROs specifically address sales practice abuses.[29] By contrast, bank personnel generally are not subject to licensing or other regulations designed to test their knowledge of the securities business.

Another area in which banking and securities regulation differ is communications with the public, including advertising. Broker-dealers must comply with specific guidelines concerning the content and review of communications with the public, including advertisements.[30] With certain limited exceptions, there are no equivalent rules governing the advertisement of bank securities activities.[31]

Broker-dealers are subject to inspections and examinations not only by our staff but also by the SROs with our supervision. SRO examinations are designed to assure compliance with the federal securities laws, in particular sales practices and financial responsibility regulations. Banks, on the other hand, are not members of SROs. While bank examiners may review for violations of the banking agencies' securities guidelines, the primary focus is on ensuring the safety and soundness of the bank rather than the protection of investors.

Congress considered the different purposes of bank and securities regulation when it eliminated the blanket exception from broker-dealer registration for banks' securities activities.[32] The GLBA replaced the general exception with eleven specific functional exceptions to the definition of broker and four specific functional exceptions to the definition of dealer. In replacing the general exception with more narrowly tailored exceptions, the GLBA sought to apply broker-dealer regulation to bank securities activities where appropriate to strengthen investor protection, taking into account the nature of the securities activities being conducted. This approach resulted in the specific exceptions enumerated in the amended definitions of broker and dealer in the Exchange Act that will continue to allow banks to engage directly in many securities activities without conducting those activities through a registered broker or dealer. The new exceptions go into effect on May 12, 2001.

II. Rule 3b–17—Definitions Related to Exception From ''Broker''

Exchange Act Section 3(a)(4) generally defines a ''broker'' to be ''any person engaged in the business of effecting transactions in securities for the account of others.''[33] Prior to the passage of the GLBA, this definition was modified by the words ''but does not include a bank'' (emphasis added).[34] The GLBA repealed this exception and replaced it with eleven specific exceptions for certain securities activities that a bank may engage in without being considered a broker.[35]

We are adopting Rule 3b–17[36] to clarify some of the exceptions enumerated in amended Exchange Act Section 3(a)(4).[37] Rule 3b–17 defines certain terms that are used in the exceptions regarding third-party brokerage arrangements, trust and fiduciary activities, and sweep accounts. In addition, both in this Part and in Part III of this Release below, we discuss exceptions in Exchange Act Section 3(a)(4) related to safekeeping and custody activities, affiliate transactions, and a *de minimis* number of securities transactions.

A. Networking Exception

Section 3(a)(4)(B)(i) of the Exchange Act provides an exception from the

[23] *Id.* at 113–14.

[24] *See Board of Governors of Federal Reserve System* v. *Investment Co. Institute,* 450 U.S. 46, 61, 101 S. Ct. 973, 984, 67 L. Ed. 2d 36 (1981); 75 Cong. Rec. 9913–9914 (1932) (remarks of Sen. Bulkley). Employees that perform purely cerical and ministerial duties are not required to pass a qualifications test.

[25] *See, e.g.,* NASD Rules 1031 and 1032, relating to the registration of representatives of member firms; and New York Stock Exchange (''NYSE'') Rule 345, relating to employee registration, approval, and records.

[26] *See, e.g.,* Exchange Act Section 19(h)(3) [15 U.S.C. 78s(h)(3)].

[27] *See, e.g.,* NASD Rules 1021 and 1022, relating to the registration of principals of member firms.

[28] *See, e.g.,* Exchange Act Section 15(b)(7) [15 U.S.C. 78o(b)(7)]; NASD Rules 1120 (''Continuing Education Requirements'') and 3010 (''Supervision''); NYSE Rules 345A (''Continuing Education for Registered Persons'') and 405(b) (''Supervision of Accounts'').

[29] *See, e.g.,* Exchange Act Rule 15g–9 [17 CFR 240.15g–9] (''Sales Practice Requirements for Certain Low-Priced Securities''); NASD Rule 2310 (''Recommendations to Customers (Suitability)''); NASD Rule 2440 (''Fair Prices and Commissions'').

[30] *See* NASD Rule 2210 (''Communications with the Public''); NYSE Rule 472 (''Communications with the Public''). These rules include standards for communications with the public, approval, record keeping, and filing requirements. The NASD and the NYSE also require supervisory review of communication with the public. NASD Conduct Rule 3010 (''Supervision''); NYSE Rule 342 (''Offices-Approval, Supervision, and Control'').

[31] *See, e.g.,* The Interagency Statement on Retail Sales of Nondeposit Investment Products (February 15, 1994), 7 Fed. Banking L. Rep. (CCH) ¶ 70–101 (joint statement by the Federal Reserve, OTS, FDIC, and the OCC).

[32] H.R. Rep. No. 106–74, pt. 3, at 113–14, 161–62 (1999).

[33] Exchange Act Section 3(a)(4) [15 U.S.C. 78c(a)(4)].

[34] Former Exchange Act Section 3(a)(4).

[35] Exchange Act Section 3(a)(4)(B) [15 U.S.C. 78c(a)(4)(B)].

[36] 17 CFR 240.3b–17.

[37] Exchange Act Section 3(b) [15 U.S.C. 78c(b)] authorizes us to define terms used in the Exchange Act, consistent with the provisions and purposes of the Exchange Act.

definition of broker for banks that enter into third-party brokerage (''networking'') arrangements.[38] Under this exception, and subject to certain conditions, a bank will not be considered a broker if it ''enters into a contractual or other written arrangement'' with a registered broker-dealer through which the broker-dealer ''offers brokerage services on or off the premises of the bank.'' [39] Statutorily imposed conditions to the exception address separation of brokerage and banking services, compliance with advertising conditions, functions and compensation of bank employees, conditions to fully disclose the customers' accounts to broker-dealers, and conditions on banks acting as carrying brokers.

One particular condition prohibits unregistered bank employees from receiving:

incentive compensation for any brokerage transaction unless such employees are associated persons of a broker or dealer and are qualified pursuant to the rules of a self-regulatory organization, except that the bank employees may receive compensation for the referral of any customer if the compensation is a nominal one-time cash fee of a fixed dollar amount and the payment of the fee is not contingent on whether the referral results in a transaction.[40]

Legislative history indicates that this condition, like the other conditions in the networking exception, was designed to promote investor protection.[41] Specifically, Congress included the limitation on incentive compensation to unregistered bank employees to ensure that those people who have a ''salesman's stake'' in securities transactions are subject to the sales practice standards and other requirements of the federal securities laws.[42]

We have kept Congress' limit in mind in interpreting two terms in the provision. First, Rule 3b–17(h) defines the term ''referral'' to mean a bank employee arranging a first securities-related contact between a registered broker-dealer and a bank customer. The term ''referral'' does not include any activity (including any part of the account opening process) related to effecting transactions in securities beyond arranging that first securities-related contact.[43]

Second, Rule 3b–17(g) provides two alternative definitions of the term ''nominal one-time cash fee of a fixed dollar amount.'' First, the rule provides that a nominal one-time cash fee of a fixed dollar amount may be a payment that does not exceed one hour of the gross cash wages of the unregistered bank employee making the referral. Second, the rule also provides that a nominal one-time cash fee of a fixed dollar amount may be a payment in the form of points in a system or program that covers a range of bank products and non-securities related services, where the points count toward a bonus that is cash or non-cash, if the points awarded for referrals involving securities are not greater than the points awarded for products or services not involving securities. Banks may use either alternative in setting nominal payments if they meet the requirements discussed below, including the requirement that any payment not be designed as an incentive to a bank employee to solicit particular investors to open accounts or to engage in securities transactions.

We provided two alternative ways to measure cash compensation to give banks the flexibility of compensating their employees for securities referrals based either on their current wages or on what the banks pay for referrals of other products and services. By creating two alternative standards, we allow banks to develop a market-based approach to employee compensation that is consistent with the compensation limitation in the networking exception. In either case, as discussed below, we require that any payment not be designed as an incentive to a bank employee to solicit particular investors to open accounts or to solicit investors to engage in securities transactions.

We considered choosing a set dollar amount as the measure for a nominal cash payment. We decided against this approach after considering that we would likely have to adjust periodically any set dollar amount to reflect changes in the economy that would affect its real value. We also determined that, given the economic differences across the country, an across-the-board dollar amount may not have a nominal value everywhere or in every part of the bank. For example, what is considered a nominal dollar amount in San Francisco, California may be considered generous in Wichita, Kansas. Similarly, one system may be used for teller referrals and another system for private banker referrals. Using one hour of the cash wages of the unregistered bank employee making a referral should alleviate these concerns. Hourly wages are generally adjusted, not just to reflect the current state of the economy, but also to reflect the economic climate of a particular location and the duties of a particular employee. Also, using one hour of cash wages as the measure for a nominal cash payment, we ensured that the referral fee is proportionate to an employee's overall wages.

We understand that bank employees making referrals typically are paid a yearly salary rather than an hourly wage. In these cases, translating the yearly salaries into hourly wages should still be a simple task. We request comment on whether an hour's wages, subject to the limits described below, is a proper measure of a ''nominal'' fee.

Use of a point system under the second alternative reflects our understanding that banks do not always reward employees with a set cash referral fee. Payment of bonuses as part of a point system or program offered to bank employees is not necessarily inconsistent with the networking exception. A point system may do nothing more than translate a nominal one-time cash referral fee into nominal one-time referral points. If the point system is part of an overall system that includes products other than securities and lines of business other than brokerage, and the securities-related referral points have a value that is no greater than the points received under the system for any other product or service, it should have only a nominal value in the system. Accordingly, we have provided this alternative definition in an effort to accommodate existing bank practices. Of course, the program may not be structured in any way that allows unregistered bank employees to be compensated either directly or indirectly for meeting sales targets

[38] This exception follows a long line of letters issued by the Commission staff regarding these types of arrangements. H.R. Rep. No. 106–74, pt. 3, at 163 (1999); *see, e.g.,* Letter re: *Chubb Securities Corp.* (Nov. 24, 1993) (''Chubb Letter''). The Chubb Letter superseded prior staff positions regarding these arrangements. *See also* NASD Rule 2350 (Broker-Dealer conduct on the Premises of Financial Institutions). The Chubb Letter will remain in effect for required service corporations of savings associations and savings banks; however, the Chubb Letter is available only to service corporations so long as a savings association or savings bank is required to use one. A savings association or savings bank that complies with the terms of the networking exception will automatically comply with the terms of the Chubb Letter.

[39] Exchange Act Section 3(a)(4)(B)(i) [15 U.S.C. 78c(a)(4)(B)(i)].

[40] Exchange Act Section 3(a)(4)(B)(i)(VI) [15 U.S.C. 78c(a)(4)(B)(i)(VI)].

[41] *See* H.R. Rep. No. 106–74, pt. 3, at 163 (1999) (''The [third-party brokerage arrangements] exception is * * * limited by a variety of conditions designed to promote investor protection.'').

[42] *See id.* (''[T]he conditions contained in the networking exception * * * restrict the securities activities of unregistered bank personnel to reduce sales practice concerns.'').

[43] The ''account opening process'' commences at the point of first contact between a broker-dealer and a customer. *See* NASD Notice to Members 97–89 (1997), at Question 7.

related to securities products or services.

We understand that banks may choose to provide prizes, rather than cash bonuses, to bank employees that meet a certain point goal.[44] As long as the point system meets the conditions described above, including the requirement that any payment not be designed as an incentive to a bank employee to solicit particular investors to open accounts or to solicit investors to engage in securities transactions, we would view the system as consistent with the statutory exception.[45]

Regardless of the form of payment banks decide to use, Rule 3b–17(g) also provides that any payment may not be designed to provide, either directly or indirectly,[46] an incentive to a bank employee to solicit investors to open accounts or to solicit investors to engage in securities transactions. Therefore, Rule 3b–17(g) also specifies that payments may not be based on: (1) The size, value, or completion of any securities transaction; (2) the amount of securities-related assets gathered; (3) the size or value of any customer's bank or securities account; or (4) the customer's financial status.

This interpretation is consistent with the Commission staff's historical position on networking activities.[47] Also, while nominal referral payments that are not based on the success of any securities transactions may provide a limited salesman's stake, we believe these parameters will help ensure that the effect of the stake will be small.[48]

We are concerned that referral payments, while ''nominal'' when considered independently, may not be ''nominal'' when considered in the aggregate. For example, one referral payment to a teller for one referral in one day of work may be ''nominal,'' but twenty referral payments to a teller for twenty referrals in one day may not be ''nominal'' when considered in the aggregate. ''Nominal'' payments are to be paid to employees for whom referrals to the broker-dealer constitute an insubstantial part of an employee's duties. If a referral fee system were structured in such a manner that referral fees constituted a substantial portion of an employee's total compensation, it would raise serious questions about whether the payments were designed to encourage the bank employee to solicit securities activities. We solicit comment on whether we need to establish gross compensation standards so that referral payments that are ''nominal'' do not become incentive compensation when aggregated, and if so, what those limits should be.

Banks also have questioned whether bonuses paid in addition to a point system, either in the form of cash or non-cash compensation, are acceptable under the exception. We do not believe that bonuses based on brokerage referrals fall within the compensation limits of the exception.[49] While bonuses sometimes fall within the category of a one-time payment, by their very nature they are incentive compensation. The networking exception prohibits unregistered bank employees from receiving incentive compensation for any brokerage-related activity except for nominal one-time cash payments of a fixed dollar amount for a referral.

Banks, however, may give bonuses, either in the form of cash or non-cash compensation, to unregistered bank employees based on the overall profitability of the bank regardless of the contribution of employee or employees receiving the bonus. To rely on the third-party brokerage exception, however, banks cannot indirectly pay their unregistered bank employees incentive compensation for securities transactions through a branch, department, or line of business or through a bonus program related to the securities transactions of a branch, department, or line of business.

In addition, the language and legislative history of the networking exception indicate that brokerage referral fees can only be paid to natural persons who are bank employees.[50] The compensation limit, however, does not interfere with any incentive-based compensation arrangements between the broker-dealer and the bank as a whole. Therefore, a broker-dealer in a third-party brokerage arrangement with a bank may make transaction-related payments to the bank for brokerage transactions conducted by the broker-dealer with the bank's customers.[51]

We find that the definitions in Rule 3b–17 related to the networking exception are consistent with the provisions and purposes of the Exchange Act.[52] We request comment on the interpretation of the limits on incentive compensation in the networking exception. Commenters are specifically requested to identify other issues related to the payment of various types of incentive compensation.

B. Trust And Fiduciary Activities Exception

Exchange Act Section 3(a)(4)(B)(ii)[53] excepts banks that act as trustees or fiduciaries from the definition of ''broker,'' subject to certain conditions. Under the terms of this exception, a bank will not be considered a ''broker'' if it meets the following conditions in conducting brokerage activities: (1)

[44] Non-cash compensation can include, but is not necessarily limited to, merchandise, gifts, prizes, travel expenses, meals, and lodging. *See* NASD Rule 2830(b)(1)(D) (providing essentially the same definition of non-cash compensation for NASD rule limiting cash and non-cash compensation to members in connection with investment company securities activities).

[45] This condition does not necessarily dictate equal weighting for referrals to different business lines. Rather, it means that, to the extent there are differential referral payouts, points for referrals to broker-dealers should not have greater weight than points for any other type of referral.

[46] We look behind the terms of a compensation arrangement to determine its economic substance, that is, to determine whether it is transaction-related. Thus, a fee arrangement designed to compensate a person for what that person would have received if the person directly received transaction-related compensation (for example, a flat fee that is recalculated periodically to reflect an increase or decrease in the number of transactions) would be the equivalent of transaction-related compensation. In this regard, a flat fee representing a percentage of expected future commissions could be considered transaction-related.

[47] *See* Chubb Letter, *supra* note 38.

[48] This is important, in our view, because referral compensation may create an improper salesman's incentive. For example, in 1998 NationsSecurities and NationsBank, N.A., without admitting or denying the matters set forth in the settlement order, settled administrative proceedings brought by us for alleged misleading sales practices relating to two high-risk sales of closed-end bond funds. In the Matters of NationsSecurities and NationsBank, N.A., Securities Act Rel. No. 7532; Exchange Act Rel. No. 39947; File No. 3–9596 (May 4, 1998). The bank also adopted a referral fee system that created heightened incentives for bank employees to make customer referrals to the broker-dealer. Under this program, the broker-dealer paid the bank 5% of the broker-dealer's gross commission for making referrals to the broker-dealer and the bank then paid the referring bank employee. The payment was conditioned on closing a sale of securities and was proportional to the size of the sale. In some instances, bank employees substantially increased their monthly compensation during this period by making referrals to the broker-dealer. The statutory limitations on the networking exception are designed to prevent precisely these types of incentives to unregistered bank personnel.

[49] The statute also does not contemplate deferred compensation on a sliding scale, a grid, or breakpoints for referrals. *See* H.R. Rep., No. 106–74, pt. 3, at 163 (''[B]ank employees who are not registered representatives may not receive incentive compensation in connection with securities transactions.''). In the securities industry, variable commission payments are designed to be incentive compensation. *See generally* Report of the Committee on Compensation Practices (April 10, 1995) (''Tully Report'').

[50] *See generally* Exchange Act Section 3(a)(4)(B)(i) [15 U.S.C. 78c(a)(4)(B)(i)]; H.R. Rep. No. 106–74, at 163 (1999) (both the language of the statute and the legislative history of the exception refer only to bank employees in the context of individual natural persons, especially when comparing their status to registered representatives; registered representatives are always individual natural persons).

[51] Banks cannot structure arrangements with networking broker-dealers or affiliated broker-dealers in which the bank becomes the carrying broker for the affiliates or networking broker-dealers. *See* Exchange Act Section 3(a)(4)(B)(viii)(II) [15 U.S.C. 78c(a)(4)(B)(viii)(II)].

[52] Exchange Act Section 3(b) [15 U.S.C. 78c(b)].

[53] 15 U.S.C. 78c(a)(4)(B)(ii).

Effects transactions in a trustee or fiduciary capacity; (2) effects such transactions in its trust department or other department that is regularly examined by bank examiners for compliance with fiduciary principles and standards; (3) is chiefly compensated for such transactions, consistent with fiduciary principles and standards, on the basis of an administration or annual fee (payable on a monthly, quarterly, or other basis), a percentage of assets under management, or a flat or capped per order processing fee equal to not more than the cost incurred by the bank in connection with executing such securities transactions or any combination of such fees; and (4) does not publicly solicit brokerage business, other than by advertising that it effects transactions in securities in conjunction with advertising its other trust activities.[54] A bank also must execute such transactions through a registered broker-dealer or in a cross trade.[55]

This exception recognizes the traditional role banks have played in effecting securities transactions for trust customers. These activities generally were inherent in a bank's trust operation itself, or arose as an accommodation to bank customers or through a traditional trust arrangement, rather than through promotion and public solicitation of bank brokerage services.[56] Congress expressed the expectation that we would not disturb traditional bank trust activities under this exception.[57] Congress, however, did not intend the trust exception to be used to conduct a securities brokerage operation in the bank trust department without the appropriate investor protections provided under the federal securities laws.[58] We believe that this legislative history indicates that the trust and fiduciary activities exception was designed not only to preserve these traditional securities-related bank trust activities but also to apply broker-dealer protections to securities activities outside those traditional lines. We have kept that intent in mind in interpreting this exception.

1. Trustee Capacity

The trust and fiduciary activities exception excepts banks that act in a ''trustee capacity'' or in a ''fiduciary capacity'' from the definition of broker.[59] Trustees typically are subject to the strongest of fiduciary duties to trust beneficiaries.

We have been asked, however, whether a bank that acts as a ''trustee'' in three specific situations involving securities accounts directed by others qualify for trust and fiduciary activities exception. This question arises because banks in these situations may not be subject to significant fiduciary responsibilities. These three situations are indenture trustees, Employee Retirement Security Act (''ERISA'') and other pension plan trustees, and Individual Retirement Account (''IRA'') trustees. In each of these situations, the person who assumes certain ministerial duties for tax, employee benefit, or trust indenture purposes is labeled a trustee, often under a federal statute, but does not actually assume a comprehensive set of fiduciary duties under either state or federal law.

a. Indenture Trustees. Under certain forms of trust indenture,[60] a bank acting as an indenture trustee may invest idle cash in shares of money market mutual funds or other securities.[61] Sometimes, the issuer of the bonds actually directs the investments. In this case, an indenture trustee might act as an order-taker at the direction of the bond issuer, within the investment parameters set forth in the indenture. However, an indenture trustee acts in a constrained order-taking capacity, because the indenture trustee is responsible for making sure that any investments it undertakes fall within the investment parameters of the trust indenture.

Indenture trustees are subject to the Trust Indenture Act of 1939 (''TIA'') when the corporate securities that underlie the indenture are sold to the public by use of the mails or in interstate commerce.[62] State law also may provide additional duties in circumstances where the TIA and federal common law are not controlling.[63] However, the courts, in expounding and construing the law regarding indenture trustees, have not always agreed on the type and nature of the duties of indenture trustees.[64]

b. ERISA And Other Similar Trustees. ERISA [65] Section 403(a) generally requires that ''all assets of an employee benefit plan shall be held in trust by one or more trustees,'' who are to be named in the trust instrument or appointed by a named fiduciary of the plan. [66] The term ''fiduciary,'' as defined under ERISA Section 3(21)(A),[67] provides that:

Except as otherwise provided in subparagraph (B),[68] a person is a fiduciary

[54] Exchange Act Sections 3(a)(4)(B)(ii)(I) and (II); [15 U.S.C. 78c(a)(4)(B)(ii)(I) and (II)].

[55] Exchange Act Section 3(a)(4)(C) [15 U.S.C. 78c(a)(4)(C)].

[56] H.R. Rep. No. 106–74, pt. 3, at 164. (1999).

[57] H.R. Conf. Rep. No. 106–434, pt. 3, 164 (1999).

[58] H.R. Rep. No. 106–74, pt. 3, at 164 (1999).

[59] Exchange Act Section 3(a)(4)(B)(ii) [15 U.S.C. 3(a)(4)(B)(ii) excepts any bank * * * ''that effects transactions in a trustee capacity, or effects transactions in a fiduciary capacity. * * *'' Exchange Act Section 3(a)(4)(D)(i) [15 U.S.C. 78c(a)(4)(D)(i)] defines the term ''fiduciary capacity'' to mean ''* * * in the capacity as trustee.''

[60] The difficulties of issuing secured corporate debt to numerous bondholders gave rise to the need for indenture trustees. Since it would be wholly impractical to have the security run to the group of bondholders directly or to have a separate security instrument for each bondholder, a trustee exercises its powers and duties on behalf of the bondholders. *See* G. Bogert, TRUSTS AND TRUSTEES 250, pp. 254–55 (West 1977); *E.F. Hutton v. Union Planters National Bank,* 953 F.2d 963, 968 (5th Cir. 1992).

The need for an indenture trustee for issues of modern day unsecured corporate debentures also continues because the debt represented by the debenture is typically not secured by specific assets of the issuer and is frequently subordinated to senior indebtedness of the issuer. Thus, the corporate trustee is needed to protect the rights of the many holders of the debentures and to perform certain ministerial tasks connected with the normal operation of the debentures. Although the debts created by debentures run directly from the issuer to the holders, the contractual rights conferred by the indenture run from the issuer to the trustee for the benefit of the holders of the debentures. *E.F. Hutton,* 953 F.2d at 968.

[61] *See, e.g.,* Investment Company Act Rel. No. 15900, *Community Program Loan Trust No. 1987 A; Application,* 52 FR 28628 (Applicant represented that trust indenture agreement permitted indenture trustee to invest funds of indenture trust in certain eligible investments as described in the agreement).

[62] 15 U.S.C. 77aaa *et seq.* (1988).

[63] Martin D. Sklar, *The Corporate Indenture Trustee: Genuine Fiduciary or Mere Stakeholder?,* 106 Banking L.J. 42, 49 (1989).

[64] *See Meckel* v. *Continental Resources Co.,* 758 F.2d 811, 816 (2d Cir. 1985) and *Elliott Associates* v. *J. Henry Schroder Bank and Trust Co.,* 838 F. 2d 66, 71 (2d Cir. 1988), both of which held that indenture trustees have no duties above the specific obligations imposed in the indenture. *But see Dabney* v. *Chase National Bank,* 196 F.2d 668 (2d Cir. 1952), *appeal dismissed,* 346 U.S. 863, 74 S. Ct. 102, 103, 98 L. Ed. 374 (1953), where Judge Learned Hand, writing for the Second Circuit, reached a somewhat different conclusion when the indenture trustee was a creditor of the obligor, and the court found the indenture trustee liable for prematurely collecting a debt from the obligor. The bondholders sued the indenture trustee, alleging that it had forced the obligor into bankruptcy. Judge Hand stated that the duty of a trustee not to profit at the possible expense of his beneficiary is the most fundamental of the duties, which he accepts when he becomes a trustee. It is a part of his obligation to give his beneficiary his undivided loyalty, free from any conflicting personal interest; an obligation that has been nowhere more jealously and rigidly enforced than in New York where these indentures were executed. Judge Hand indicated that indenture trustees are not fiduciaries by saying: ''We can find no warrant for so supposing; and, indeed, a trust for the benefit of a numerous and changing body of bondholders appears to us to be preeminently an occasion for a scruple even greater than ordinary; for such beneficiaries often have too small a stake to follow the fate of their investment and protect their rights.'' *Id.* at 671.

[65] 29 U.S.C. 1001 *et seq.*

[66] 29 U.S.C. 1103(a).

[67] 29 U.S.C. 1105(c)(1)(A).

[68] Subparagraph (B) states that an investment company registered under the Investment Company Act of 1940, and the company's investment adviser or principal underwriter, are not deemed to be

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with respect to a plan to the extent (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan. Such term includes any person designated under section 405(c)(1)(B).[69]

Under ERISA, a person performing any of the duties described in the definition of ''fiduciary'' would be considered a fiduciary.[70] A person is a fiduciary, however, only to the extent that he performs ''fiduciary'' functions.[71] For example, a person may be a fiduciary with respect to some plan assets but not others.[72]

While a trustee can be considered a plan fiduciary if the trustee has discretionary authority over the plan and its assets, depending on the structure of the particular retirement plan, the trustee may be subject to investment direction from the ''named fiduciary'' of the plan, investment managers, or plan participants.[73] Thus, the issue becomes whether an ERISA plan trustee who is subject to another person's investment direction is a fiduciary. Similar issues may arise regarding state and local government plans permitted under Section 457 of the Internal Revenue Code (''IRC'').[74] Although courts have disagreed regarding whether a trustee subject to investment direction is a fiduciary under ERISA,[75] the Department of Labor takes the position that a trustee of an ERISA plan is a fiduciary by the very nature of its position.[76]

c. IRA Trustees. An IRA[77] account can be created through a trust or custody agreement with a bank under the IRC.[78] Whichever type of agreement is used, an IRA account must be maintained at all times as a domestic trust in the United States.[79] The trustee's duties with respect to an account are generally ministerial in nature.[80] IRA trustees do not have discretion regarding the management of the IRA assets.[81]

Courts that have considered IRA trustees in other contexts generally, but not uniformly, have reached the conclusion that an IRA trust does not establish a fiduciary relationship and that an IRA should not be treated as a trust is treated under other law.[82] An IRA trustee does not actually assume a comprehensive set of fiduciary duties towards investors under either state or federal law.

d. Definitional Exemption Alleviates Uncertainty. The law is unclear as to whether banks acting in these three capacities should be covered by the trust and fiduciary activities exception because they are acting, at most, in a limited fiduciary capacity with regard to investors who direct their investments, despite their ''trustee'' label. To alleviate this legal uncertainty, we are providing an exemption for these trustees if they conduct their securities activities in accordance with all of the other terms of the exception for trustee activities, including being within a ''trust department or other department that is regularly examined by bank examiners for compliance with fiduciary principles and standards.''[83]

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fiduciaries or parties in interest to plans investing in the company's securities (except for in-house plans of such persons). ERISA Section 3(21)(B) [29 U.S.C. 1002(21)(B)].

[69] ERISA Section 405(c)(1)(B) [29 U.S.C. 1105(c)(1)(B)] describes the designation by named fiduciaries of other persons to carry out fiduciary responsibilities.

[70] *See, e.g., Olson* v. *E.F. Hutton and Co.,* 957 F.2d 622 (8th Cir. 1992) (ERISA applied to a broker-dealer).

[71] *See, e.g., Chicago Board Options Exchange* v. *Connecticut General Life,* 713 F.2d 254 (7th Cir. 1983).

[72] *See* Class Exemption for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers, 49 F.R. 9494, 9496 (1984).

[73] *See* Sections 403(a) and 404(c) of ERISA, 29 U.S.C. 1103(a) and 1104(c).

[74] 26 U.S.C. 457(b). Assets and deferred amounts of Section 457(b) plans can be held in trust, custodial accounts, or annuity contracts. 26 U.S.C. 457(g). However, custodial accounts and annuity contracts are treated as trusts, and regardless of how the assets and deferred amounts are held, they must be held for the exclusive benefit of participants and their beneficiaries for the plan. 26 U.S.C. 457(g)(1) and (3).

[75] *See, e.g, Bedall* v. *State Street Bank and Trust Co.,* 137 F.3d 12 (1st Cir. 1998) (bank, which held plan assets ''in trust'' but did not manage, administer, or conduct valuations of the assets, was not a fiduciary); *Maniace* v. *Commerce Bank of Kansas City, N.A.,* 40 F.3d 264 (8th Cir. 1994), *cert. denied,* 514 U.S. 1111 (1995) (bank trustee of an employee stock ownership plan was not a fiduciary under ERISA because it did not have real discretion over the plan's assets, and because the trust document explicitly limited the bank's discretion with respect to employer stock); *Donovan* v. *Cunningham,* 541 F. Supp. 276, 290 (S.D. Tex 1982), modified on other grounds, 716 F.2d 1455 (5th Cir. 1983), *cert. denied,* 476 U.S. 1251 (1984) (trustee, who was a ''directed trustee'' under ERISA Section 403(a)(1), was not liable for breach of fiduciary duties where its activities were confined to the ''limited role of directed trustee''); *Robbins* v. *First American Bank,* 514 F. Supp. 1183 (1981 N.D. Ill.) (bank was not a fiduciary when acting as directed trustee following instructions of a plan fiduciary, or is custodian of plan assets); *Bradshaw* v. *Jenkins,* 1984 WL 2405, Fed. Sec. L. Rep. P 99,719 (W.D.Wash. Mar. 9, 1984) (bank, which was a ''directed trustee,'' was a ''mere custodian of plan assets who follows the instructions of another fiduciary'').

[76] *See* 29 CFR 2509.75–8, D–3 (trustee is a fiduciary by the very nature of its position). If a bank trustee does not make any recommendations concerning the selection of particular investment company securities, but another plan fiduciary independently selects, from mutual fund families made available to the bank, particular funds to be made available for investment by plan participants, these duties will not arise if the bank gives notice to the plan sponsor before modifying the list of funds available for investment by plan participants. *See* Department of Labor (''DOL'') Advisory Opinion 97–16A (May 22, 1997) regarding Frost National Bank (''The Department points out that the act of limiting designative investment options which are intended to constitute all or part of the investment universe of an ERISA 404(c) plan is a fiduciary function, which, whether achieved through fiduciary designation or express plan language, is not a direct or necessary result of any particular direction of such plan.''); DOL Information Letter to Mark H. Sokolsky, WSB File No. DL0523 (Sept. 5, 1996) (a trustee subject to direction from a named fiduciary has ''residual'' fiduciary authority for determining whether the direction is proper and consistent with ERISA); *see also* 29 CFR 2550.404c–1(f)(8).

[77] *See* Section 408 of the Internal Revenue Code of 1986 [26 U.S.C. 408] and the regulations promulgated thereunder. 26 CFR 1.408–2.

[78] The IRC permits an IRA to be denominated as a ''trust'' or a ''custodial account.'' *See* 26 CFR 1.408–2(b) and (d). Other entities also may become the holder of custodial or trustee accounts for IRAs if they meet the requirements established by the Internal Revenue Service under the Department of the Treasury. 26 U.S.C. 408(h) and 26 CFR 408–2(e). For our purposes, this alternative qualification procedure is not relevant because banks, which are the focus of our analysis, are automatically qualified to undertake this role under the statute.

[79] *See* 26 CFR 1.408–2(b).

[80] The bank must file form ''5498 IRA Contribution Information'' on an annual basis. The bank also must file appropriate form ''1099–R Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.'' to reflect distributions from any IRA account.

[81] ERISA Section 403(a) establishes the general requirement that a plan trustee ''shall have exclusive authority and discretion to manage and control the assets of a plan.'' An exception to the general rule is when a trustee receives directions from a named plan fiduciary, that is, when it acts as a ''directed trustee.'' *See* ERISA Section 403(a)(1) for basis of ''directed trustee'' exception.

[82] For example, Texas courts have likened IRAs to safe deposit boxes where the bank administers the IRA, keeping records and compiling reports, and the IRA depositor decides what assets the IRA will contain. *See Colvin* v. *Alta Mesa Resources, Inc.,* 920 S.W. 2d 688 (Tex.App.''Houston 1996); *Lee* v. *Gutierrez,* 876 S.W. 2d 382 (Tex.App.''Austin 1994, writ denied). Other courts have reached similar conclusions. *See In re Houck, Eisenberg* v. *Houck,* 181 B.R. 187 (Bankr. E.D. Pa. April 19, 1995) (court found that an IRA was not a trust as that term was commonly used); *Estate of Davis* v. *Davis,* 171 Cal.App.3d 854, 217 Cal. Rptr. 734 (1985) (court found that an IRA was not an express trust because there was no intent to establish a trust; an IRA was a trust for the purpose of tax deferment only). *But see In re Gillett, Tavormina* v. *Merchants Bank of Miami,* 55 B.R. 675, 13 Bankr.Ct.Dec. 1101 (Bankr. S.D. Fla., Dec. 19, 1985).

[83] Because banks may act as trustees or custodians for IRAs, it is important to note that this exemption is available only when the bank acts as a trustee and meets all of the other conditions of the trustee exception. The trust and fiduciary activities exception does not apply to IRA custodians. However, as described below, we are using our exemptive authority to grant two conditional exemptions under the safekeeping and custody exception to permit banks to effect securities

Specifically, Rule 3b–17(k) defines the term ''trustee capacity'' in the trust and fiduciary activities exception to include trust indenture trustees and trustees for certain tax-deferred accounts.[84] By clarifying that ''trustee capacity,''[85] as set forth in the trustee and fiduciary activities exception, includes these types of trustees, banks will be able to continue to effect securities transactions for investors free from doubt regarding their broker-dealer status under the trust and fiduciary activities exception.[86]

We invite comment on the scope of the fiduciary responsibilities of indenture trustees, ERISA trustees, IRA trustees, and trustees for other pension plans. We also invite comment on the scope of the fiduciary responsibilities of indenture trustees that are not subject to the TIA. In addition, we invite comment on the circumstances under which, if any, indenture trustees, ERISA trustees, IRA trustees and trustees for other pension plans may disclaim fiduciary responsibilities, which fiduciary responsibilities they may or may not disclaim, and whether, in such circumstances, this definitional exemption is appropriate.

2. Fiduciary Capacity

The trust and fiduciary activities exception applies to banks acting in a trustee or fiduciary capacity to investors. The term fiduciary capacity is defined in Exchange Act Section 3(a)(4)(D), which identifies several alternative forms of fiduciary capacity. Banks may qualify as acting in a fiduciary capacity if they act as a ''trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, assignee, receiver, or custodian under a uniform gift to minor act * * *''[87] Banks also may qualify as acting in a fiduciary capacity if they act as an investment adviser if the bank ''receives a fee for its investment advice'' or ''possess[es] investment discretion on behalf of another.''[88] Finally, banks may act in a fiduciary capacity if they act ''in any other similar capacity.''[89]

In general, we analyze the activities that a person is engaged in, as well as the label used, to determine whether a person is acting in a particular capacity. We take the same approach in considering whether a bank is acting as a fiduciary under the trust and fiduciary activities exception. As Justice Frankfurter stated in another context, ''to say that a man is a fiduciary only begins the analysis; it gives direction to further inquiry. To whom is he a fiduciary? What obligations does he owe as a fiduciary?''[90] We understand that the exact nature of the fiduciary obligations differ depending on the type and nature of the fiduciary relationship between the customer and the bank.[91]

Congress intended that banks act in a ''strict trustee or fiduciary capacity''[92] that provides investors the protection of strong fiduciary principles if conducting securities activities without broker-dealer regulation under the trust and fiduciary activities exception. We address specific situations with respect to the term ''fiduciary capacity.''

a. *Transfer Agent.* One category included in the statutory definition of fiduciary capacity that requires special explanation is ''transfer agent.''[93] In considering the fiduciary capacity role of transfer agents for purposes of the trust and fiduciary activities exception, we must take into account the Exchange Act definition of transfer agent.[94] Under the Exchange Act, a transfer agent is generally any person who engages in certain activities ''on behalf of an issuer of securities or on behalf of itself as an issuer of securities. * * *'' This definition makes clear that the fiduciary relationship of acting as a transfer agent runs primarily to the issuer, and any

transactions as IRA custodians. Furthermore, the small bank custody exemption is available to trustees and fiduciaries that are acting as custodians. For example, the small bank custody exemption is available to small bank trustees that have custody of assets and are effecting transactions in investment company securities consistent with the terms of that exemption.

[84] We are providing this definitional exemption under our exemptive authority under Exchange Act Section 36(a)(1) [15 U.S.C. 78mm(a)(1)]. Exchange Act Section 36(a)(1) allows us to grant exemptions from any provision of the Exchange Act or the Exchange Act's Rules, if an exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors. *See also* Exchange Act Section 15(a)(2) [15 U.S.C. 78o(a)(2)], Exchange Act Section 15(a)(2) [15 U.S.C. 78o(a)(2)] allows us to grant exemptions from Exchange Act 15(a)(1) [15 U.S.C. 78o(a)(1)], which generally requires brokers and dealers to be registered if effecting transactions in securities, if the exemption is consistent with the public interest and the protection of investors.

[85] It is important to note that our definitional exemption regarding the term ''trustee capacity'' in Section 3(a)(4)(B)(ii) of the Act does not alter our view that Section 3(c)(3) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(3)] is unavailable to common trust funds holding IRA assets.

As amended by the GLBA, Section 3(c)(3) excludes from the definition of investment company:

''any common trust fund or similar trust fund maintained by a bank exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as a trustee, executor, administrator, or guardian, if—

''(A) such fund is employed by the bank solely as an aid to the administration of trusts, estates, or other accounts created and maintained for a fiduciary purpose;

''(B) except in connection with the ordinary advertising of the bank's fiduciary services, interests in such fund are not—

''(i) advertised; or

''(ii) offered for sale to the general public; and

''(C) fees and expenses charged by such fund are not in contravention of fiduciary principles established under applicable Federal or State law.''

The GLBA added paragraphs (A) through (C). These changes, among other things, codify our longstanding interpretation that the common trust fund exception is unavailable to common trust funds holding IRA assets because such assets are not held ''for a fiduciary purpose.'' *See* In re Commercial Bank and Marvin C. Abeene, Securities Act Rel. No. 7116, Investment Company Act Rel. No. 20757, Admin. Proc. File No. 3–8567, 58 SEC Dkt. 0487, 0491 (Dec. 6, 1994) (Order Instituting Public Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Sections 9(b) and 9(f) of the Investment Company Act of 1940, Making Findings, Imposing Remedial Sanctions and Ordering Respondents to Cease and Desist). See also Santa Barbara Bank and Trust, SEC No-Action Letter (Nov. 1, 1991) (citing Testimony of Richard C. Breeden, Chairman, U.S. Securities and Exchange Commission, Before the Subcommittee On Telecommunications and Finance of the House Committee on Energy and Commerce (Oct. 4, 1990)); United Missouri Bank of Kansas City, N.A., SEC No-Action Letter (Dec. 31, 1981).

[86] This exception should not, however, be considered by banks in analyzing whether they are acting in a ''similar capacity'' as that term is used in the definition of ''fiduciary capacity.'' Exchange Act Section 3(a)(4)(D). *See also* discussion of ''similar capacity,'' *infra* at Part 3 of this section.

[87] Exchange Act Section 3(a)(4)(D)(i) [15 U.S.C. 78c(a)(4)(D)(i)].

[88] Exchange Act Sections 3(a)(4)(D)(i) and (ii) [15 U.S.C. 78c(a)(4)(D)(i) and (ii)].

[89] Exchange Act Section 3(a)(4)(D)(iii) [15 U.S.C. 78c(a)(4)(D)(iii)].

[90] *SEC* v. *Chenery Corp.,* 318 U.S. 80, 85–86, 87 L. Ed. 626, 63 S. Ct. 454 (1943).

[91] *See* 1 Austin Wakeman Scott and William Franklin Fratcher, The Law of Trusts 8.1 (4th ed. 1987) (''When a bank * * * receives the position of securities or other property from a customer, its duties depend on what it undertakes to do.'').

[92] *See* H.R. Rep. No. 106–74, pt. 3, at 165 (1999) note 9 above, at 165 (''Because these activities will be conducted by banks acting in a strict trustee or fiduciary capacity, subject to Federal and State trust law, and rigorously and regularly examined by bank examiners, bank trust customers will be afforded some basic protections. This mitigates concerns that would otherwise exist because of the lack of Federal securities law protections for these customers. *Absent this protection, the exemption may be inappropriate.*'') (emphasis added).

[93] Exchange Act Section 3(a)(4)(B)(iv) [15 U.S.C. 78c(a)(4)(B)(iv)] also provides a separate exception for banks that effect transactions, as part of their transfer agent activities, in certain stock purchase plans.

[94] Exchange Act Section 3(a)(25) [15 U.S.C. 78c(a)(25)] provides that a transfer agent is:

''any person who engages on behalf of an issuer of securities or on behalf of itself as an issuer of securities in (A) countersigning such securities upon issuance; (B) monitoring the issuance of such securities with a view to preventing unauthorized issuance, a function commonly performed by a person called a registrar; (C) registering the transfer of such securities; (D) exchanging or converting such securities; or (E) transferring record ownership of securities by bookkeeping entry without physical issuance of securities certificates. The term ''transfer agency'' does not include any insurance company or separate account which performs such functions solely with respect to variable annuity contracts or variable life policies which it issues or any registered clearing agency which performs such functions solely with respect to options contracts which it issues.''

fiduciary duties that a transfer agent may have to shareholders when carrying out transfer agent activities are the same as the issuer's duty to the shareholder.[95]

Taken together, the definitions of ''fiduciary capacity'' and ''transfer agent'' in the Exchange Act indicate that the trust and fiduciary activities exception in Exchange Act Section 3(a)(4)(B)(ii) does not extend to securities activities that a bank transfer agent conducts with the shareholders of an issuer that resemble those of a broker-dealer. If a bank that is registered as a transfer agent engages in transfer agent activities for shareholders on behalf of the issuer of the type that are specified in the Exchange Act's definition of transfer agent and other similar activities, the bank may rely on the trust and fiduciary activities exception for those particular activities. Other securities activities would not be covered by the fiduciary responsibilities owed to the shareholder that are contemplated under the exception.[96] Accordingly, unless another exemption was available,[97] broker-dealer registration would be required for bank transfer agents that also effected securities transactions for investors.

We request comment on any fiduciary role of transfer agents. We also request comment on any fiduciary responsibilities owed directly to the shareholders.

b. Investment Adviser If The Bank Receives A Fee For Its Investment Advice. As further described below, if a bank provides its customer with investment advice for a fee for an account, even though the customer is free to accept or reject the bank's advice, the bank may rely on the trust and fiduciary activities exception. In this situation, the bank would be acting as ''an investment adviser if the bank receives a fee for its investment advice,'' as described in the definition of fiduciary capacity.[98] For the reasons stated below, Rule 3b–17(d) defines the term ''investment adviser if the bank receives a fee for its investment advice'' to mean a relationship between the bank and a customer in which the bank: (1) provides, in return for a fee, continuous and regular investment advice to a customer's account that is based upon the individual needs of the customer; and (2) under state law, federal law, contract, or customer agreement owes a duty of loyalty, including an affirmative duty to make full and fair disclosure to the customer of all material facts relating to conflicts.

i. Continuous And Regular Investment Advice. Banks act in an advisory capacity to varying degrees in non-discretionary accounts. It may be difficult to determine whether a bank that provides some investment advice to a non-discretionary account falls within the fiduciary capacity category of an investment adviser that receives a fee for its advice. Accordingly, we are providing guidance to aid banks in determining which advisory relationships to non-discretionary accounts are covered by the fiduciary category of ''investment adviser if the bank receives a fee for its investment advice.''

Congress did not intend the trust and fiduciary activities exception to allow a bank to administer an account offering primarily brokerage without the investor protections of the federal securities laws.[99] At its narrowest, a brokerage relationship comes into existence when ''the order has been placed and the broker has consented to execute it'' and ''ends when the transaction is complete.''[100] Accordingly, where the responsibilities of a bank to its customer arise only when the customer places an order for his account, and terminate once the transaction is complete,[101] that account has the indicia of a brokerage account that the federal securities laws are designed to regulate. The bank's activities, therefore, would not fall within the trust and fiduciary activities exception. We reach the same conclusion even if the bank provides incidental, ancillary investment advice to the account. Because full-service broker-dealers frequently also give incidental, ancillary investment advice,[102] such an account would still have the indicia of a brokerage account, and thus, the fees paid would be primarily for brokerage services, not for advice.

Accordingly, Rule 3b–17(c) provides that a bank providing only non-discretionary investment advice must provide the customer's account with ''continuous and regular investment advice * * * that is based on the individual needs of the customer'' in order for the bank to fall within the definition of an ''investment adviser if the bank receives a fee for its investment advice.'' Rule 3b–17(e) neither purports nor attempts to provide a comprehensive definition of ''investment advice'' or of the types of investment advice banks may offer their customers. The rule identifies the circumstances where the bank's non-discretionary advisory services to a customer's account for a fee are sufficiently substantial that any brokerage services provided for that fee are merely ancillary to the advice. To state it another way, the rule identifies the circumstances where the fees paid by the account may be viewed properly as for investment advice, rather than for brokerage, when the bank provides both investment advice and brokerage to the account. The rule thus gives effect to Congress' intent, as discussed earlier,

[95] *See generally* Uniform Commercial Code Section 8–407 (transfer agent performing transfer agent functions has the same obligation, with regard to those functions, as the issuer has with those functions). *See also Caleb and Co.* v. *E.I. DuPont de Nemours and Co.,* 599 F. Supp. 1468, 1475 (S.D.N.Y. 1984) (transfer agent acting within scope of agency, if found to have acted detrimentally to alter the rights of shareholders, would be held to fiduciary standards with respect to shareholders).

[96] Legal authorities have generally found that transfer agents who have acted outside the scope of usual transfer agent activities are more than transfer agents and therefore, owe shareholders more extensive fiduciary duties under the federal securities laws. *See Affiliated Ute Citizens* v. *United States,* 406 U.S. 128, 151–52 (1972) (if bank employees claiming to be acting as transfer agents had performed purely transfer agent functions, instead of acting as market makers for stock, they would not have expanded their liability under the federal securities laws); *see also Goldman* v. *McMahan, Brafman, Morgan and Co.,* 1987 WL 12820, *22 (S.D.N.Y. June 18, 1987) (citing *Affiliated Ute Citizens* to support holding that defendant acted as more than a transfer agent by actively engaging in activity to create fraudulent trading losses, thereby expanding its fiduciary duties beyond the scope of the transfer agency to plaintiff).

[97] Banks have a separate exception for transactions effected ''as part of [their] transfer agency activities'' in the securities of an issuer as part of certain stock purchase plans of the issuer. Exchange Act Section 3(a)(4)(B)(iv) [15 U.S.C. 78c(a)(4)(B)(iv)].

[98] Exchange Act Section 3(a)(4)(D)(i).

[99] *See* H.R. Rep. No. 106–74, pt. 3, at 164 (1999).

[100] *Robinson* v. *Merrill Lynch, Pierce, Fenner and Smith, Inc.,* 337 F. Supp. 107, 111 (N.D. Ala. 11971), aff'd, 453 F.2d 417 (5th Cir.1972); *see also E.F. Hutton and Company, Inc.,* 49 S.E.C. 829, 832 n.9 (1988) (citing *Robinson* v. *Merrill Lynch, Pierce, Fenner and Smith, Inc.* as support for conclusion that broker-dealer became customer's agent for the purpose of executing a limit order). The decision in *E.F. Hutton and Company, Inc.,* also known as the Manning Decision after the name of the customer, became the genesis for the NASD's Limit Order Protection Rule, IM–2110–2, which prohibits any member from trading at the same price as, or at a better price than, a customer limit order that it holds.

[101] *See Certain Broker-Dealers Deemed Not To Be Investment Advisers,* Exchange Act Rel. No. 42099, Investment Advisers Act Rel. No. 1845 (Nov. 4, 1999) (notice of proposed rulemaking); *see also Merrill Lynch, Pierce, Fenner and Smith, Inc.* v. *Cheng,* 697 F. Supp. 1224, 1226–27 (D.D.C. 1988) (finding that fiduciary relationship between stockbroker and customer holding a non-discretionary account limited to time between placement of order and subsequent purchase).

[102] *See Certain Broker-Dealers Deemed Not To Be Investment Advisers,* Exchange Act Rel. No. 42099, Investment Advisers Act Rel. No. 1845 (Nov. 4, 1999) (proposing to codify the position that the Advisers Act applies only to those customers to whom the broker-dealer provides advice that is not incidental to brokerage services); *see also De Kwiatkowski* v. *Bear Stearns and Co., Inc.,* 126 F. Supp. 2d 672 (S.D.N.Y. 2000) (finding that broker-dealer acted as investment adviser when broker-dealer gave continuous investment advice that went beyond ancillary matters).

that a bank not be permitted to offer what is essentially a brokerage account absent the investor protections of the federal securities laws.[103]

A bank will provide ''continuous and regular'' investment advice under Rule 3b–17(e) if the bank has ongoing (as opposed to episodic or periodic) responsibility to select or make recommendations, based upon the needs of the client, as to specific securities or other investments the customer may purchase or sell. We adopted this same standard under Section 203A(a)(2) of the Investment Advisers Act (''Advisers Act''), which uses ''continuous and regular'' to determine which advisers have $25 million or more of ''assets under management'' and thus are eligible for Commission registration.[104] Congress added this provision to the Advisers Act in 1996, as part of the National Securities Markets Improvement Act (''NSMIA'').[105]

In developing the Commission's rules to implement NSMIA, we faced the question of when are non-discretionary advisory services significant and ongoing enough to constitute ''assets under management.'' Albeit with different import, we face a similar question here '' namely, when are the bank's non-discretionary advisory services significant enough that the fee paid ''for advice'' is for an ongoing advisory relationship with the customer account rather than a brokerage relationship. In both cases, we look to the actual nature of the underlying advisory services that the adviser, or bank, provides and to the duties and responsibilities that the adviser, or bank, accepts.[106]

If a bank provides continuous and regular guidance for a fee to a non-discretionary account based on the individual needs of that account, the bank would fit the definition of ''investment adviser if the bank receives a fee for its investment advice,'' even if a customer makes self-directed trades in the account independent of the bank's advice. Accordingly, we would consider the bank to be acting in a fiduciary capacity for purposes of the trust and fiduciary activities exception.[107]

If, however, the bank provides brokerage and ancillary, incidental advice in return for a fee to a self-directed non-discretionary account, such advice would not meet the continuous and regular standard, and the fee would be viewed as payment for brokerage, rather than payment for the advice. For instance, if the bank provides only impersonal advice, such as market newsletters, or provides advice only on an intermittent or periodic basis upon the request of the client or in response to some market event, the bank would not be giving continuous and regular investment advice.[108] Also, if a bank offers a certain number of trades for a set fee for an ''advisory'' account without providing continuous and regular advisory services, we would not consider the account to fall within the trust and fiduciary activities exception. Such an account is more similar to a brokerage account described above than the type of fiduciary account covered under the trust and fiduciary activities exception.

Customer agreements outlining an account holder's relationship with a bank will be instructive in distinguishing those non-discretionary accounts for which banks provide continuous and regular investment advice from those for which they provide little investment advice. The nature of the bank's advice and the nature of the trading in the account also will be relevant to the analysis.

ii. Full And Fair Disclosure. Investment advisers historically have been considered to be fiduciaries with corresponding duties.[109] If a bank acts in the capacity of an investment adviser and receives a fee for its advice, the bank will perforce be subject to an investment adviser's duties. The Supreme Court has stated that the most important duty an investment adviser has is a duty of loyalty.[110] This includes an affirmative duty to make full and fair disclosure of material facts, thereby eliminating, or at least exposing, conflicts of interest.[111] Therefore, the investment adviser must act with ''utmost good faith'' and ''solely'' in the best interests of the client.[112] By disclosing all of its potential conflicts of interest to a client, the investment adviser enables the client to make an informed decision of whether to enter into or continue in an advisory relationship with the adviser or whether to take some action to protect himself against the specific conflict of interest involved.[113] The definition of ''investment adviser if the bank receives a fee for its investment advice'' in Rule 3b–17(c) acknowledges the importance of this duty by providing that banks giving investment advice for a fee must owe a duty of loyalty that includes making full and fair disclosure to their clients. We find that this definition is

[103] H.R. Rep. No. 106–74, pt. 3, at 164 (1999).

[104] Investment Advisers Act Release No. 1633, Rules Implementing Amendments to the Investment Advisers Act of 1940 (May 15, 1997) [62 FR 33008 (May 22, 1997)] (adopting release).

[105] The amendment was part of the Investment Advisers Supervision Coordination Act, which was Title III of NSMIA. Pub. L. 104–290, 110 Stat. 3416 (1996). The Coordination Act effected several amendments to the Advisers Act, and the most significant of these was to divide responsibility for regulating investment advisers between the Commission and the securities administrators of the several states. Following NSMIA, the Commission regulates advisers that have at least $25 million in ''assets under management'' and the states regulate advisers with assets under management under $25 million. Congress defined ''assets under management'' to mean the ''securities portfolios with respect to which an investment adviser provides continuous and regular supervisory or management services.'' [15 U.S.C. 80b–3a].

[106] See Investment Advisers Act Rel. No. 1601, *Rules Implementing Amendments to the Investment Advisers Act of 1940* (December 20, 1996) (proposing release) (''Whether an adviser that does not have discretionary authority will be considered to provide continuous and regular management or supervisory services with respect to an account would depend upon the nature of the adviser's responsibilities. The greater the amount of day-to-day responsibility an adviser has, the more likely the adviser would be providing continuous and regular supervisory or management service.''); *see also* Item 2 of Part 1A of Form ADV.

[107] This approach is consistent with the OCC's view on a bank receiving a fee for providing investment advice. In describing its definition of ''fiduciary capacity,'' upon which the GLBA's definition of fiduciary capacity is based, the OCC indicated that, if the bank received a fee from the customer for investment advisory activities (regardless of whether or not the customer followed the advice) the account would be brought under the fiduciary umbrella because ''the customer has a reasonable expectation of receiving advice that is free of conflicts of interest.'' Final Rule; Fiduciary Activities of National Banks; Rules of Practice and Procedure, 61 FR 68543, 68545 (Dec. 30, 1996) (codified at 12 CFR 9.2(e)). However, if a customer is paying a minimal fee for ancillary investment advice, there is very little, if anything, the fiduciary umbrella is covering that can be protected by the fiduciary principles that are replacing the investor protection provided under the federal securities laws.

[108] These examples are taken, in part, from examples we have previously given to provide guidance on what accounts receive continuous and regular supervisory or management services and what accounts do not. *See* Item 2 of Part 1A of Form ADV. We have included only those examples that involve the giving of advice and do not involve providing management services.

[109] *SEC* v. *Capital Gains Research Bureau, Inc.,* 375 U.S. 180, 187 (1963) (recognizing that investment advisers have historically been considered fiduciaries).

[110] *Id.* at 191–92, 194.

[111] *Id.* at 192–92, 194.

[112] *Id.* at 191–92, 194; *see also Laird* v. *Integrated Resources, Inc.,* 897 F.2d 826, 834 (5th Cir. 1990) (citing *Capital Gains* for proposition that an investment adviser has a fiduciary duty of utmost good faith and full and fair disclosure of all material facts, as well as an affirmative obligation to employ reasonable care to avoid misleading his clients); *SEC* v. *Blavin,* 760 F.2d 706, 711–12 (6th Cir. 1985) (same).

[113] *Applicability of the Investment Advisers Act to Financial Planners, Pension Consultants, and Other Persons Who Provide Investment Advisory Services as a Component of Other Financial Services,* Investment Advisers Act Rel. No. 1092 (Oct. 8, 1987), 52 FR 38400 (Oct. 16, 1987).

consistent with the provisions of the Exchange Act.[114]

We invite comments on all aspects of this definition. Commenters also are encouraged to suggest alternative ways to evaluate whether a bank meets the definition of ''investment adviser if the bank receives a fee for its investment advice.''

3. Other Similar Capacity

The definition of fiduciary capacity also provides that a bank may qualify for the trust and fiduciary activities exception if it acts ''in any other similar capacity'' to the fiduciary relationships already described in the definition.[115] We have identified from uniform acts and codes several capacities that are not expressly set forth in the definition of fiduciary capacity that we believe are similar to the fiduciary capacities that are covered by the trust and fiduciary activities exception.[116]

For example, the Uniform Probate Code, which has been adopted in 18 states,[117] uses the term ''Personal Representative'' and similar successor titles in place of executor or administrator as the representative of a decedent. Under the Uniform Custodial Trust Act, which has been adopted in 14 states,[118] the terms that are used for fiduciaries who act for persons who have become incapacitated include ''Conservator'' and ''Custodial trustee.'' A bank would be eligible to act in any of these capacities under these uniform acts.

Exchange Act Section 3(a)(4)(D)(i) references only the capacity of a ''custodian under a uniform gift to minor act.'' In contrast, the Uniform Transfers to Minors Act, which has been adopted in 49 States and the District of Columbia,[119] uses both the terms ''Conservator'' and ''Custodian'' for fiduciaries that act for minors.[120] A bank would be eligible to act in either or both of these capacities for a minor under this uniform act.

We consider banks that act as fiduciaries in these representative capacities are acting in similar fiduciary capacities for purposes of the trust and fiduciary activities exception, provided that the other requirements of that exception are met. We invite comment on whether there are additional roles, functions, or relationships of banks that should be considered as being an ''other similar capacity'' for purposes of this exception.

As noted above, courts have raised serious questions regarding whether indenture trustees and trustees for tax-deferred accounts are fiduciaries. Thus, although we have provided legal certainty to permit them to operate within the exception, we do not believe that banks operating in a similar capacity to such exempted entities are necessarily acting in a fiduciary capacity. For example, an IRA custodian is virtually indistinguishable from an IRA trustee, but does not take on the ''trustee'' label. Thus, it is not eligible for the definitional exemption in Rule 3b–17(k).

4. Other Department That Is Regularly Examined By Bank Examiners For Compliance With Fiduciary Principles And Standards

To protect investors, Congress specifically required that the activities conducted by banks under the trust and fiduciary activities exception be ''rigorously and regularly examined by bank examiners.''[121] Because Congress believed that the ''examinations of bank trust departments are today rigorous in nature,'' these examinations would provide customers with ''some basic protections'' to mitigate the lack of federal securities law protections.[122]

While the bank trust department is the traditional center of bank fiduciary services, the trust and fiduciary activities exception recognizes that banks may effect transactions in a fiduciary capacity in bank departments other than the trust department, as long as those departments are ''regularly examined by bank examiners for compliance with fiduciary principles and standards.'' This condition is key in affording investors some protection when banks conduct activities under this exception.

Some banks place all of their fiduciary activities in the trust department, while others conduct them in different bank departments depending on the nature of the fiduciary service. As a result, the number and type of banking departments that are regularly examined by bank examiners for compliance with fiduciary principles and standards could easily vary from bank to bank. Because of this variance, we intend to rely primarily on the bank regulatory agencies in determining whether the activities are conducted in an area subject to examination by fiduciary examiners and examined on a regular basis.[123]

We also note that for a bank to be effecting securities transactions in compliance with the trust and fiduciary activities exception, the bank needs to ensure that all aspects of its role in effecting those transactions are conducted in a part of the bank that is regularly examined by bank examiners for compliance with fiduciary principles and standards. Effecting transactions in securities includes more than just executing trades or forwarding securities orders to a broker-dealer for execution. Generally, effecting securities transactions can include participating in the transactions through the following activities: (1) Identifying potential purchasers of securities; (2) screening potential participants in a transaction for creditworthiness; (3) soliciting securities transactions;[124] (4) routing or

[114] Exchange Act Section 3(b) [15 U.S.C. 78c(b)].

[115] Exchange Act Section 3(a)(4)(D)(iii) [15 U.S.C. 78c(a)(4)(D)(iii)].

[116] The National Conference of Commissioners of Uniform State Laws has worked for the uniformity of state laws since 1892. Today the Conference is recognized primarily for its work in securities law, commercial law, family law, probate and estates, law of business organizations, health law, and conflicts of law. *See* The National Conference of Commissioners of Uniform State Laws website at http://www.nccusl.org/uniformact_factsheets/uniformacts-fs-upc.htm.

[117] *Id.*

[118] *Id.*

[119] *Id.*

[120] The Uniform Transfers to Minors Act was developed in 1983, amended in 1986 and supersedes the Uniform Gifts to Minor Act (1956, amended 1965 and 1966), which was perceived to be inadequate to address all of the issues inherent in this area of the law. *See* The National Conference of Commissioners of Uniform State Laws, *Summary, Uniform Transfer to Minors Act,* available at http://www.nccusl.org/uniformact_summaries/uniformacts-s-uttma.htm.

[121] H.R. Rep. No. 106–74, pt. 3, at 165 (1999).

[122] *Id.* at 164–65.

[123] We note the use by the federal financial institutions' regulators of the Uniform Interagency Trust Rating System (''UITRS'') in evaluating financial institutions' fiduciary activities. In 1999, there were 3,034 banks and trust companies (both insured and uninsured) that were subject to reporting requirements of the Federal Financial Institutions Examinations Council regarding their trust assets. *See* http://www2.fdic.gov/structur/trust/99trustdata.html.

[124] Solicitation is one of the most relevant factors in determining whether a person is effecting transactions. *See, e.g., SEC* v. *Century Investment Transfer Corp.,* [1971–72 Transfer Binder] Fed.Sec.L.Rep. (CCH) ¶ 93,232 (S.D.N.Y. 1971) at 91,441–3 (entity acted as a broker by soliciting customers for securities transactions, among other things); *SEC* v. *National Executive Planners,* 503 F. Supp. 1066, 1073 (M.D.N.C. 1980) (where entity solicited clients actively and sold $4.3 million worth of securities, ''[c]learly, [the entity] was a broker-dealer as defined in the 1934 Act''); *see also* 15 David A. Lipton, *Broker-Dealer Regulation,* at 1.04[3][a] (1998) (''Solicitation is considered a badge of securities activity that would bring a person within the definition of broker''). As we have previously stated, ''no amount of disclosure in a prospectus can be effective to protect investors unless the securities are sold by a salesman who understands and appreciates both the nature of the securities he sells and his responsibilities to the investor to whom he sells.'' *See Persons Not Deemed To Be Brokers,* Exchange Act Rel. No. 20943, 49 FR 20512 (May 15, 1984). Solicitation includes any affirmative effort intended to induce transactional business for a broker-dealer and encompasses such activities as advertising and providing investment advice or recommendations intended to induce transactions that benefit or

matching orders, or facilitating the execution of a securities transaction; (5) handling customer funds and securities;[125] and (6) preparing and sending transaction confirmations (other than on behalf of a broker-dealer that executes the trades).[126] In other words, for purposes of qualifying for the trust and fiduciary activities exception, the bank must make sure that all of the key points in a transaction that it participates in are in a part of the bank that meets the examination conditions of the exception.

We invite comment on this discussion of this prong of the trust and fiduciary activities exception. We particularly invite commenters to provide information on the location within banks of activities related to effecting securities transactions in a trust or fiduciary capacity.

5. Chiefly Compensated

To qualify for the trust and fiduciary activities exception from the definition of broker, banks must meet certain compensation limits for transactions effected in a fiduciary capacity. First, banks must be ''chiefly compensated * * * on the basis of an administration or annual fee (payable on a monthly, quarterly, or other basis), a percentage of assets under management, or a flat or capped per order processing fee equal to not more than the cost incurred by the bank in connection with executing securities transactions for trustee and fiduciary customers, or any combination of such fees.''[127] Second, this revenue must be consistent with fiduciary principles and standards.[128]

The first question that must be addressed, then, is how to determine when a bank is ''chiefly'' compensated. The term ''chiefly'' has not been previously defined in the federal securities or banking laws. In choosing the term, Congress not only expected us to interpret it, Congress also expected that our interpretation would limit a bank's ability to receive incentive compensation or similar compensation that could foster a ''salesman's stake'' in promoting a securities transaction.[129] In framing our definition of the term ''chiefly compensated,'' we have sought to apply the purposes of the GLBA so that the broker-dealer requirements of the federal securities laws apply to situations that could foster a salesman's stake in promoting securities transactions.[130] This definition is discussed below.

a. Account-By-Account Calculations. Determining when a bank is ''chiefly compensated'' requires, ultimately, a comparison of the different types of compensation that a bank receives. We considered several alternatives, but believe that the calculation to determine whether a bank is chiefly compensated by the statutorily enumerated fees should be done on an account-by-account basis. In our view, this calculation is consistent with assuring the protection of each investor and with determinations that trustees must make under state trust law.[131] Moreover, fiduciaries often use fee schedules, which should provide a basis to make an account level calculation of compensation.

We considered, alternatively, whether this calculation should be made on a transaction-by-transaction or customer-by-customer basis. We concluded, however, that these methods would be unnecessarily burdensome for banks, without providing significantly more protection for investors. We also considered whether the ''chiefly compensated'' calculation should be made across a bank's entire fiduciary department or on a business line basis. While a department or business line approach would provide administrative convenience to banks, we believe that adopting this approach as a guiding principle is inconsistent with the wording of the statute, which reads ''chiefly compensated *for such transactions.*'' (emphasis added). In referring to ''such transactions,'' the statute focuses on the compensation at the level at which the transactions occurred, which is the account level, and focuses on protection of investors making such transactions. Making the ''chiefly compensated'' calculation at the department or business line level would potentially allow a bank to primarily engage in a brokerage relationship, without investor protection, with a large number of customers if the compensation from the statutorily enumerated fees across the department or business line exceeded that from brokerage. Moreover, a department or line of business is difficult to define because lines of business vary from institution to institution.

Nonetheless, as discussed below, for administrative simplicity, we are adopting Rule 3a4–2, which provides an exemption to permit banks to compute compensation on the basis of their total fiduciary activities if sales compensation is less than 10% of relationship compensation for these total fiduciary activities.[132] To rely on this exemption, however, banks must have in place procedures that are reasonably designed to ensure compliance at certain key times in the life of the account with the condition that they be ''chiefly compensated'' by relationship compensation.

We believe this exemption reduces costs for many banks by avoiding account level calculations where most accounts are likely to satisfy the ''chiefly'' standard. This exemption also balances Congress's intent that brokerage relationships be administered in a broker-dealer with its desire that we not disturb traditional trust activities. Accordingly, we find that this exemption is necessary or appropriate in the public interest and is consistent with the protection of investors.[133]

b. Annual Computation. The account-by-account ''chiefly'' calculation should be conducted on a yearly basis. We

involve the solicitor. *See SEC* v. *Margolin,* [1992 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 97,025 (S.D.N.Y. 1992) at 94,517 (person acted as a broker by, among other things, advertising for clients); *see also* Letters re: *Attkisson, Carter and Akers* (June 17, 1998) (among other things, the person seeking relief from Section 15(a) of the Exchange Act would neither recommend nor endorse specific investments); *Charles Schwab and Co., Inc.* (Nov. 27, 1996) (same).

[125] *See, e.g.,* 15 David A. Lipton, *Id.* at 1.04[3] (having custody or control over the funds and securities of others is a badge of being a broker-dealer); *SEC* v. *Margolin,* [1992 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 97,025 (S.D.N.Y. 1992) (defendant was ''engaged in the business'' because he provided clearing services for the securities trading of his clients; other evidence of brokerage activity included receiving transaction-based compensation, advertising for clients, and possessing client funds and securities). However, where banks customarily hold securities for customers in accounts in other parts of the bank, these funds and securities may be accessed as part of a transaction covered by the trust and fiduciary exception.

[126] *See* 15 David A. Lipton, *Broker-Dealer Regulation, supra* note 124 at 1.04[3].

[127] Exchange Act Section 3(a)(4)(B)(ii) [15 U.S.C. 78c(a)(4)(B)(ii)].

[128] *Id.*

[129] H.R. Rep. No. 106–74, pt. 3, at 164 (1999) (''The Commission is expected to interpret * * * the reference[ ] to 'chiefly' * * * so as to limit a bank's ability to receive incentive compensation or similar compensation that could foster a 'salesman's stake' in promoting a securities transaction.'').

[130] H.R. Rep. No. 106–74, pt. 3, at 164 (1999).

[131] Generally, trust instruments and state trust laws allow trustee compensation on an account basis that is ''reasonable'' and ''not excessive.'' 1 Scott, *supra* note 91, Section 242 at 275. Moreover, we note that courts consider the cost of performing trustee services in determining the reasonableness of trustee compensation. *See, e.g., In re Powell,* 411 P.2d 162 (Wash. 1966) (stating that the ''universal'' standards needed to determine trustee compensation are: (1) The amount of risk and responsibility involved, (2) the time actually required of the trustee in the performance of the trust, (3) the size of the estate, (4) the amount of income received, and (5) the manual and overall services performed).

[132] We chose 10% as a threshold because we understand that many banks would fit within this exemption using that threshold.

[133] Exchange Act Sections 15(a)(2), 23(a)(1), and 36(a)(1) [15 U.S.C. 78o(a)(2), 78w(a)(1), and 78mm(a)(1)].

considered calculations on a more frequent basis, such as quarterly, but concluded that annual calculations would achieve the purposes of the provision with lower burdens for banks. The definition of ''chiefly compensated'' incorporates this concept by allowing banks to use a calendar year or other fiscal year consistently used by the bank for recordkeeping and reporting purposes.

c. A Flat Or Capped Per Order Processing Fee. A bank may count as one of its statutorily enumerated sources of compensation ''a flat or capped per order processing fee equal to not more than the cost incurred by the bank in connection with executing securities transactions for trustee and fiduciary customers.'' [134] New Rule 3b–17(b) defines this term as a fee that is no more than the amount a broker-dealer charged the bank for executing the transaction, plus the costs of any resources of the bank that are solely dedicated to transaction execution, comparison, and settlement for trust and fiduciary customers. Per transaction charges are a hallmark of a brokerage relationship, and Congress explicitly limited a bank trust department to cost recovery for these charges.[135]

These dedicated resources would include the salary of a bank trust department employee whose sole responsibility is working on a trading desk that is exclusively dedicated to executing and comparing trades for trust or fiduciary customers. These dedicated resources would also include information technology resources exclusively related to trade execution, comparison, and settlement for trust or fiduciary customers, such as trade execution and comparison software that links a bank trust department trading desk with broker-dealers.

In contrast, these dedicated resources would not include the cost of an employee's incentive based compensation related to the number, size, or value of trades executed. Such incentive payments typically do not reflect costs incurred to execute trades, but rather are inducements to encourage trades. These dedicated resources also would not include the cost of shared resources, general overhead allocation, or a return on capital.

If a per order processing fee exceeds the broker-dealer charges and the costs of dedicated resources, that entire fee would be excluded from the ''per order processing fee'' source of revenue. We also believe that brokerage commissions paid to execute trust and fiduciary transactions would not fall within the ''flat or capped per order processing fee'' definition if they result in cash rebates or soft dollar benefits to the bank other than for brokerage, research, or expenses covered by this definition.[136] Soft dollar benefits are, on their face, more than the cost of executing a trade.[137] However, commissions resulting in payments for general research and brokerage expenses of the trust department that are strictly within the safe harbor of Exchange Act Section 28(e) would not need to be deducted from the costs that are permitted to be passed through to customers.[138]

We note that, consistent with fiduciary principles and standards, banks may send trades to be executed by affiliated broker-dealers under the trust and fiduciary activities exception. However, banking regulators have recognized that sending trust customer trades to an affiliated broker-dealer raises issues regarding the bank's fiduciary obligation to its trust customers.[139] In addition, we note that fees charged to fiduciary accounts, including brokerage commissions, must be consistent with fiduciary principles. We intend to rely primarily on the banking regulators' supervision of whether these fees are in fact consistent with fiduciary principles.

d. ''Relationship Compensation,'' ''Sales Compensation,'' And ''Unrelated Compensation''. To calculate whether banks are ''chiefly compensated'' for effecting transactions in a manner consistent with the terms of the trust and fiduciary activities exception, we compare two categories of bank compensation related to transactions, which we call ''sales'' compensation and ''relationship'' compensation. ''Relationship'' compensation, which is based on the statutorily enumerated sources of compensation, must exceed ''sales'' compensation for the account to be ''chiefly compensated.'' We exclude other compensation not related to transactions in making the ''chiefly compensated'' calculation.[140]

i. Relationship Compensation. We have defined the term ''relationship compensation'' in Rule 3b–17(i) to include the eligible statutory fees, which are generally charged based on an account relationship. As defined in the rule, relationship compensation must be received directly from the customer or beneficiary, or directly from the assets of the trust or fiduciary account. An annual or administrative account fee, or an account fee that is based on a percentage of assets under management, received from these sources would be relationship compensation. We interpret a percentage of assets under management fee as a fee for the bank's managing or otherwise caring for the assets of a trust or fiduciary account. Assets under management fees would not include payments from other persons, such as investment companies, that are based on the amount of assets maintained by the bank's trust and fiduciary accounts with those other persons. We believe this interpretation is consistent with the intent of the trust and fiduciary activities exception.[141] In addition, relationship compensation would include a flat or capped per order processing fee equal to not more than the cost incurred by the bank in connection with executing securities

[134] Exchange Act Section 3(a)(4)(B)(ii)(I) [15 U.S.C. 78c(a)(4)(B)(ii)(I)].

[135] We find that this definition is consistent with the provisions and purposes of the Exchange Act. *See* Exchange Act Section 3(b) [15 U.S.C. 78c(b)]; *see also* Exchange Act Section 23(a)(1) [15 U.S.C. 78w(a)(1)].

[136] The soft dollar safe harbor only applies to persons who exercise ''investment discretion with respect to an account.'' Exchange Act Section 28(e)(1) [15 U.S.C. 78bb(e)(1)]. The term ''investment discretion'' is defined in Exchange Act Section 3(a)(35) [15 U.S.C. 78c(a)(35)].

[137] Soft dollar arrangements are understood generally as arrangements under which products, services, or other economic benefits, other than the execution of securities transactions, are obtained by a money manager in exchange for the direction by the money manager of client brokerage transactions to a broker-dealer. Investment Advisers Act Rel. No. 1469, 60 FR 9750 (Feb. 21, 1995).

[138] We also note that bank trust departments that accept soft dollar payments for expenses other than brokerage and research do not fit within the Section 28(e) safe harbor. ''Brokerage and research services'' are defined in Section 28(e)(3) of the Exchange Act as: (1) Furnishing advice, either directly or through publications or writings, as to the value of securities, the advisability of investing in, purchasing, or selling securities, and the availability of securities or purchasers or sellers of securities; (2) furnishing analyses and reports concerning issuers, industries, securities, economic factors and trends, portfolio strategy, and the performance of accounts; or (3) effecting securities transactions and performing functions incidental thereto (such as clearance, settlement, and custody) or required in connection therewith by rules of the Commission or a self-regulatory organization of which such person is a member or person associated with a member or in which such person is a participant. Exchange Act Section 28(e)(3) [15 U.S.C. 78bb(e)(3)].

[139] The OCC has stated, for example, that the general rule followed by it is that national banks could only effect securities transactions through an affiliated discount broker-dealer if the transactions are performed on a non-profit basis. *See* OCC Trust Banking Circular 23 (Oct. 4, 1983). The OCC subsequently stated that ''[t]o the extent that TBC–23, ''Policy of the OCC with Respect to Trust Department Purchase of Securities Through Affiliated Discount Brokerage Companies,'' (Oct. 4, 1983) permitted affiliated brokerage transactions on a nonprofit basis, that policy is no longer in effect.'' *See* OCC Trust Interpretive Letter No. 273 (Sept. 23, 1992).

[140] We find that this definition is consistent with the provisions and purposes of the Exchange Act. *See* Exchange Act Section 3(b) [15 U.S.C. 78c(b)]; *see also* Exchange Act Section 23(a)(1) [15 U.S.C. 78w(a)(1)].

[141] H.R. Rep. No. 106–74, pt. 3, at 164 (1999).

transactions for trustee and fiduciary customers.

ii. Sales Compensation. We also define the term ''sales compensation'' in Rule 3b–17(j) for purposes of determining whether a bank is ''chiefly compensated.''[142] Sales compensation includes: (1) A fee for effecting a transaction in securities that is not a flat or capped per order processing fee equal to not more than the cost incurred by the bank in connection with executing securities transactions for trustee and fiduciary customers; (2) compensation that if paid to a broker or dealer would be payment for order flow;[143] (3) a fee received in connection with a securities transaction or account, except for those finders' fees received pursuant to the networking exception in Exchange Act Section 3(a)(4)(B)(i);[144] (4) fees paid for an offering of securities that are not received directly from a customer or beneficiary, or directly from the assets of the trust or fiduciary account; (5) fees paid pursuant to a Rule 12b–1 plan under the Investment Company Act of 1940 (''Investment Company Act'');[145] and (6) ''service fees'' paid by an investment company for personal service or the maintenance of shareholder accounts.[146]

We understand that some banks acting as trustees or fiduciaries may charge customers an annual or asset-based fee that includes a specified number of securities transactions, or even unlimited trading on an irregular and occasional basis. If a bank charges an annual fee for effecting a certain number of securities transactions, this fee should be scrutinized to determine whether the fee is for transactions or fiduciary services. We believe that this approach is consistent with the statutory intent to separate compensation giving rise to sales incentives from non-sales oriented compensation. For example, if the bank effects transactions in a trustee or other fiduciary capacity where the bank is exercising investment discretion, in addition to offering trades for the annual fee, we believe the entire annual fee should be counted as relationship revenue. If a bank offers continuous and regular investment advice and a specified number of trades for a fee but separately charges for additional trades, we believe that the fees for combined advice/trading would be relationship revenues. The separate charges for trades, however, must be evaluated under the ''per order processing fee'' definition to determine their status. If the bank acts as an IRA trustee and offers a specified number of trades for a fee, this fee should be evaluated under the ''per order processing fee'' definition unless the fee permits an unlimited number of trades. If a fiduciary provides an unlimited number of transactions for an annual or assets under management fee, this fee would be considered relationship compensation.

Paying banks to distribute securities, such as when an investment company pays a bank to distribute its shares through Rule 12b–1 fees, creates a conflict of interest between the bank distributor and investors. Rule 12b–1 fees are fees for distributing investment company securities and not for managing investors' assets.[147] We view Rule 12b–1 fees as commissions, and in fact, these fees are often described as trail commissions.[148] Unlike fees for assets under management by the bank, which do not differ depending on the investment selected by the bank but are paid for the management role of the bank, the Rule 12b–1 fees differ based on the particular investment company securities in which the assets are invested and maintained. These differing fees create incentives to distribute particular investment company securities and raise conflicts between the bank and investors. Similarly, finders' fees create incentives for bank trust departments to solicit trust customers to engage in securities transactions with other entities.[149] It is precisely these divided loyalties or conflicts of interest faced by securities salesmen that drive much of broker-dealer regulation, and particularly rules governing securities practice standards.[150] Therefore, these fees are defined as sales compensation.

iii. Unrelated Compensation. Compensation that does not fall within the definitions of ''sales compensation'' or ''relationship compensation,'' we call ''unrelated compensation.'' Unrelated compensation should not be used to determine whether banks are ''chiefly compensated'' in a manner consistent with the terms of the trust and fiduciary activities exception. For example, unrelated compensation includes fees charged separately for any activity of the bank that is not related to securities

[142] We find that this definition is consistent with the provisions and purposes of the Exchange Act. *See* Exchange Act Section 3(b) [15 U.S.C. 78c(b)]; *see also* Exchange Act Section 23(a)(1) [15 U.S.C. 78w(a)(1)].

[143] 17 CFR 240.10b–10(d)(9).

[144] Exchange Act Section 3(a)(4)(B)(i) [15 U.S.C. 78c(a)(4)(B)(i)]. *See, e.g.,* NASD Rule 2420; NYSE Rule 345. *See also NASD Guide to Rule Interpretations,* III. Questions and Answers, A. Frequently Asked Interpretive Questions About NASD Rules and Regulations With Responses From Its Office of General Counsel, Question 1. (as of 9/12/2000) (NASD's Office of General Counsel stated that ''it is improper for a member or person to [pay finders' or referral fees to third parties that introduce or refer prospective customers to the member] unless the recipient is registered as a representative of an NASD member firm. * * *'' The NASD has consistently maintained that persons who introduce or refer prospective customers and receive compensation for such activities are engaged in the securities business for the member in the form of solicitation''); IV *NYSE Interpretation Handbook,* Rule 345, Employees—Registration, Approval, Records, at (a)(i)/02 (Compensation to non-registered persons) (''Rule 345(a) precludes members and member organizations from paying to non-registered persons compensation based upon the business of customers they direct to members or members organization if (a) the compensation is formulated as a direct percentage of the commissions or income generated, or * * * (d) such person regularly engages in activity which may be reasonably expected to result in the procurement of new customers or orders. * * *'').

[145] Rule 12b–1 under the Investment Company Act of 1940 [17 CFR 270.12b–1] allows investment companies to use their assets to finance sales related expenses. *See* Investment Company Act Rel. No. 11414, 45 FR 73898 (Nov. 7, 1980).

[146] Our definition is based on the NASD's definition of ''service fees.'' ''Service fees'' are distinguished from other fees because they relate to personal services provided to the customer, such as a registered representative providing information on investments. The NASD excludes from the term ''service fees'' fees paid to a transfer agent for performing shareholder services pursuant to its transfer agent agreement. The term ''service fees'' also does not include record keeping charges, accounting expenses, transfer costs, or custodian fees. Specific services not covered by the term ''services fees'' include: (1) Transfer agent and subtransfer agent services for beneficial owners of the funds' shares; (2) aggregating and processing purchase and redemption orders; (3) providing beneficial owners with statements showing their positions in the investment companies; (4) processing dividend payments; (5) providing subaccounting services for fund shares held beneficially; (6) forwarding shareholder communications, such as proxies, shareholder reports, dividend tax notices; and updating prospectuses to beneficial owners; and (7) receiving, tabulating, and transmitting proxies executed by beneficial owners. Unlike ''service fees,'' these other fees would be unrelated compensation rather than sales compensation. *See* NASD Rule 2830(b)(9); NASD Notice to Members 93–12 (1993) at Question 17 (explanation of term ''service fees'').

[147] *Id. See also* Investment Company Act Rel. No. 16244, 53 FR 3192 (Feb. 4, 1988); Exchange Act Rel. No. 30897, 57 FR 30985–02 (July 13, 1992).

[148] *See supra* note 146, regarding Rule 12b–1 fees.

[149] *See supra* note 144, regarding finders' fees.

[150] By way of contrast, such conflicts of interest are managed differently under the fiduciary principles that take the place of the protections of broker-dealer regulations for activities covered by the trust and fiduciary activities exception. For example, in 1983, the FDIC issued an opinion, which generally addressed the use of unaffiliated discount brokers, stating that bank trust departments ''should not share in any commission associated with the transactions'' for a trust customer. *See* FDIC General Counsel's Opinion No. 6, 48 FR 22989 (May 23, 1983). The FDIC subsequently stated that, in the absence of a statutory prohibition, and assuming no unusual facts, the sharing of commissions would not itself give rise to a breach of fiduciary obligations if ''(1) a trust instrument expressly authorizes the bank trustee to share in commissions generated by securities transactions effected on behalf of the account, and (2) the settlor of the trust entered into the authorization after full disclosure of the facts.'' *See* FDIC–84–10 (Apr. 3, 1984).

transactions, such as taking deposits, lending funds (including margin lending), managing non-securities assets, or providing other services that are not related to managing securities accounts pursuant to the trust and fiduciary activities exception. Unrelated compensation also includes compensation received pursuant to another exception under the GLBA, such as a fee received pursuant to the networking exception, except for a referral fee listed in that exception.[151]

In addition, unrelated compensation includes other compensation received by the bank, such as when the bank acts as an investment adviser, transfer agent, or custodian to an investment company, or receives administrative fees from an investment company, including payments for providing subtransfer agent, subaccounting, or administrative services for securities accounts.[152] As stated previously, where the customer is charged an annual or assets under management fee by a bank that meets the conditions of acting in a trustee or fiduciary capacity or as an investment adviser for a fee, the entire annual or assets under management fee would be relationship compensation. This would also be the case if the fee included compensation for an unlimited number of transactions, even though the investor may only effect a few transactions.

e. ''Chiefly Compensated'' Computation. To calculate whether it is ''chiefly compensated,'' Rule 3b–17(a) requires that a bank must first set aside any compensation received from an account that does not fall within the definitions of ''relationship compensation'' or ''sales compensation,'' in Rules 3b–17(i) and (j), respectively. In other words, the bank must set aside ''unrelated compensation.'' The bank then must identify the remaining compensation received from the account either as ''relationship compensation'' or ''sales compensation,'' again based on the definitions of those terms in Rule 3b–17. To meet the definition of ''chiefly compensated'' in Rule 3b–17(a) for this account, the bank's relationship compensation from the account must exceed its sales compensation for that account in the immediately preceding year, which can be either a calendar year or other fiscal year consistently used by the bank for recordkeeping and reporting purposes.[153]

A simple chart providing an example of the ''chiefly'' calculation is set forth below. This chart is based on a trust customer with $1,000,000 in trust assets, all of which are invested in investment company securities. In this chart, the bank trust department charges a $1,000 annual base fee plus 1.235% of the first $1,000,000 under management. For the $1,000 annual base fee, the bank provides continuous and regular investment advice and allows the customer to effect securities transactions on an occasional and irregular basis. Because the bank also provides fiduciary services in addition to trades for this fee, this fee would be relationship compensation. The 1.235% of assets under management fee is not related to the customer's self-directed trades, and therefore would be relationship compensation.[154] The bank also receives 41 basis points as sales compensation in the form of Rule 12b–1 fees from the investment company.

Bank A receives:	Relationship compensation for $1,000,000 in trust assets	Sales compensation for $1,000,000 in trust assets
Base fee $1,000	1,000	.....
Assets under management fee of 1.235%	12,350	.....
Rule 12b–1 fees		$4,100
Total	13,350	4,100

The account meets the ''chiefly compensated'' definition because the $13,350 in relationship compensation exceeds the $4,100 in sales compensation.

In defining ''chiefly compensated,'' we have taken a conservative approach by adopting a definition that requires that the ''relationship compensation'' simply exceed the ''sales compensation'' on an annual basis. This definition depends upon all of the imbedded definitions and interpretations, including our definitions of the terms ''relationship compensation,'' ''sales compensation,'' and ''flat or capped per order processing fee equal to not more than the cost incurred by the bank in connection with executing securities transactions for trustee and fiduciary customers.'' In addition, the items included within each of the categories of compensation were carefully chosen in consideration of the test that simply requires that the ''relationship compensation'' exceed the ''sales compensation.'' We considered requiring a higher level of relationship compensation in interpreting this phrase as we did in interpreting ''predominantly'' with respect to the origination of asset-backed transactions in Rule 3b–18.[155] Requiring a higher level of relationship compensation, at least initially, also would have been consistent with the approach taken by the Federal Reserve as the revenue test for so-called section 20 subsidiaries developed.[156] We chose the more than 50% approach for the purposes of this interim final rule. We solicit comment on whether the chiefly test should be higher, such as 75% or 90%.

f. Rule 3a4–2—Exemption For Banks That Are Compensated By Relationship Compensation. We are particularly sensitive to the concerns expressed by banks regarding the compensation computations required under the trust and fiduciary activities exception. Therefore, we are adopting Rule 3a4–2 [157] to permit banks that are compensated almost entirely by relationship compensation to avoid making calculations on an account-by-account basis. We find that this exception is necessary or appropriate in the public interest and is consistent with the protection of investors.[158] It should minimize the costs and regulatory burdens on banks arising from the GLBA requirements relating to the trust and fiduciary compensation computations discussed above.

New Rule 3a4–2 exempts a bank from the definition of ''broker'' if it: (1) Complies with the trust and fiduciary activities exception, except for the ''chiefly compensated'' condition; (2) can demonstrate that sales compensation, as that term is defined in Rule 3b–17, received during the immediately preceding year for its total fiduciary activities is less than 10% of the total amount of relationship compensation, as that term is defined in

[151] *See* Exchange Act Section 3(a)(4)(B)(i)(VI) [15 U.S.C. 78c(a)(4)(B)(i)(VI)].

[152] For a complete list of payments included in this category, *see* NASD Notice to Members 93–12 (1993) at Question 17 (what does the term ''service fees'' include or exclude?). *See supra* note 146, regarding service fees.

[153] We find that this definition is consistent with the provisions and purposes of the Exchange Act. *See* Exchange Act Section 3(b) [15 U.S.C. 78c(b)]; *see also* Exchange Act Section 23(a)(1) [15 U.S.C. 78w(a)(1)].

[154] Even if this fee is related to the customer's self-directed trades, it would be relationship compensation if the customer effected the trades as part of the bank's fiduciary relationship.

[155] The word ''chiefly'' is defined as: (1) in chief, in particular; preeminently; especially, particularly; above all, most of all; and (2) (relative to others) principally, mainly, for the most part (usually with the force of ''mainly but not exclusively''). 3 J.A. Simpson & E.S.C. Weiner, *The Oxford English Dictionary* (2d ed. 1989).

[156] *See infra* at notes 276–78 (Section 20).

[157] 17 CFR 240.3a4–2.

[158] Exchange Act Section 36(a)(1) [15 U.S.C. 78mm(a)(1). *See* Exchange Act Section 3(b) [15 U.S.C. 78c(b)]; *see also* Exchange Act Section 23(a)(1) [15 U.S.C. 78w(a)(1)].

Rule 3b–17, received for its total fiduciary activities during the same year; (3) maintains procedures reasonably designed to ensure compliance with the definition of ''chiefly compensated'' with respect to a trust or fiduciary account: (i) When the account is opened, (ii) when the compensation arrangement for the account is changed, and (iii) when sales compensation received from the account is reviewed by the bank for purposes of determining an employee's compensation; and (4) complies with the requirement that resulting orders be executed through a broker-dealer (or in a cross trade).

A bank must first determine whether a trust or fiduciary account involves activities for which the bank relies on the trust and fiduciary activities exception. Compensation from accounts that do not hold securities would not be included in the 10% calculation because the definitions of relationship compensation and sales compensation are based on securities activities conducted under the trust and fiduciary activities exception. Similarly, compensation received by the bank for activities covered by another exception or exemption would not be included in the 10% calculation. Once a bank determines which accounts contain securities, which should be done at the same time as the 10% calculation, the bank can use the total compensation received from these accounts for the 10% calculation.

A simple chart providing an example of the 10% calculation is set forth below. The bank's total revenue is $1,000,000 from its trust and fiduciary accounts that contain securities. The bank acts as a personal trustee, and as an ERISA trustee. Asset under management and annual fees from its personal trusts and ERISA trusts are the bank's main source of revenue. The bank also receives sales compensation in the form of Rule 12b–1 fees and fees for executing trades that are not flat or capped per order processing fees.

Bank A receives:	Relationship compensation	Sales compensation
Personal trustee:		
a. Total annual and assets under management fees	$500,000	.....
b. Total 12b–1 fees	.....	$4,000
ERISA trustee:		
a. Total annual and assets under management fees	480,000	.....
b. Total non-flat or capped per order fees	.....	16,000
Total	980,000	20,000

The bank would meet the 10% calculation because its sales compensation, $20,000, is less than 10% of its relationship compensation, $980,000 ($20,000/$980,000 = 2%).

A second chart using the example of a bank acting as an indenture trustee illustrates the interaction of this exemption with other exemptions, statutory exceptions, and non-securities income. An indenture trustee receives income from five sources: annual fees, fees for effecting transactions in government securities that are not flat or capped per order fees, fees for non-securities related services, Rule 12b–1 fees for investing in no-load money market funds, and non-flat or capped per order fees for effecting transactions in securities that are not covered by another exception. Even though the bank is charging the indenture trusts transaction fees for government securities that are not flat or capped per order processing fees, these fees would count as unrelated compensation for purposes of the 10% calculation because the transactions are covered by the permissible securities transactions exception.[159] Similarly, the Rule 12b–1 fees for no-load money funds (which are sales compensation) would count as unrelated compensation for purposes of the 10% calculation because the bank is exempt for effecting transactions in no-load money funds when acting as an indenture trustee under Rule 3a4–3. Fees for non-securities related services would also be excluded from the 10% calculation as unrelated compensation.

Bank A receives:	Relationship compensation	Sales compensation	Unrelated compensation
Indenture trustee:			
a. Annual fees	$5,000,000	.....	.....
b. Non-flat or capped per order fees for gov't securities transactions	.....	.....	$5,000
c. Non-securities related fees	.....	.....	5,000
d. 12b–1 fees for no-load money funds	.....	.....	150,000
e. Non-flat or capped per order fees for other securities transactions	.....	50,000	.....
Total	5,000,000	50,000	160,000

The bank would meet the 10% calculation because its sales compensation, $50,000, is less than 10% of its relationship compensation, $5,000,000 ($50,000/$5,000,000 = 1%).

As discussed above, the bank must maintain procedures reasonably designed to ensure compliance with the chiefly compensated condition with respect to a trust or fiduciary account: (1) When the account is opened; (2) when the compensation arrangement for the account is changed; (3) and when sales compensation received from the account is reviewed by the bank for purposes of determining an employee's compensation. We do not believe that these procedures will be unduly burdensome to banks. Rather, the procedures need to be reasonably designed to ensure compliance with the definition of ''chiefly compensated'' with respect to a trust or fiduciary account in the three described situations. For new accounts, bank employees could project on a prospective basis whether an account, depending on the type and activity of the account, is likely to generate more of its revenue from relationship compensation than sales compensation. For existing accounts, bank employees could review whether an account, depending on the type and activity of the account, generated more of its revenue from relationship compensation than sales compensation.

In addition, under the compensation element of the requirement, the bank

[159] Section 3(a)(4)(B)(iii) of the Exchange Act [15 U.S.C. 78c(a)(4)(B)(iii)].

needs to maintain procedures for situations in which the bank uses sales compensation received from accounts in determining the compensation of an employee. The bank does not need these procedures if it only uses relationship compensation received from accounts in determining an employee's compensation.

If, after reviewing an account, a bank determines that the account either is likely to exceed the compensation limits or has done so in the past, the bank must follow its procedures to bring the account into compliance with the ''chiefly compensated'' definition. For example, a bank can do this by revising the compensation schedule or shifting the securities trades into the client's brokerage account.

We believe this exemption, which permits banks to avoid calculations on a continuous basis in much of their traditional trust business, is consistent with Congress' dual intents of not disturbing traditional trust activities and requiring securities business that has been conducted in the trust department to be administered in the future by a broker-dealer that is subject to the investor protections available under the federal securities laws.

g. Rule 3a4–3—Exemption From ''Chiefly Computation'' For Indenture Trustees. We are adopting Rule 3a4–3 [160] to provide an exemption to address the use of the trust and fiduciary activities exception from the broker registration for banks that serve as indenture trustees. As discussed previously, banks may serve as indenture trustees in accordance with the requirements of the TIA. The issuer of a bond indenture may be a state, a municipality, a quasi-public authority, a school, a church, or any organization that needs to raise cash through the sale of bonds. Bonds may be sold to the general public, to a limited investor group, or to a single investor such as an insurance company or governmental agency.

As a part of its duties as an indenture trustee, a bank also may invest otherwise idle cash in shares of money market investment companies or other securities, solely at the direction of the issuer of the bonds. Commonly, compensation that may be received from an investment company or its distributor for investments of mutual funds is considered when the terms of the trust indenture, including the bank's compensation, are negotiated.

The trust and fiduciary activities exception requires banks to compute for each trustee or fiduciary account whether the bank meets the ''chiefly compensated'' condition. A bank acting as a trustee under an indenture may not meet the condition that it receive more of its compensation from relationship compensation than from sales compensation because of fee structures individually negotiated with the issuers. Therefore, we are adopting, in Rule 3a4–3, an exemption from the definition of broker for banks acting in the narrow role of indenture trustees investing in no-load money market funds.

Rule 3a4–3 provides that, if a bank, acting in its capacity as a bond indenture trustee, complies with all of the conditions of the trust and fiduciary activities exception, other than the compensation condition, the bank is exempt from the definition of the term ''broker'' solely for effecting transactions as an indenture trustee in no-load money market funds.[161] Granting banks acting as indenture trustees an exemption to directly place idle cash in a no-load money market fund, an investment vehicle with a constant net asset value per shares and without a sales load, does not create any serious risk of abuse. In addition, the limit in the exemption to no-load, money market funds is consistent with the sweep accounts exception, which provides that a bank may invest depositors' funds through a sweep program without being considered a broker as long as the bank limits its sweep program to no-load, money market funds. Also, granting such an exemption relieves banks acting as indenture trustees of the task of continually watching the maturity of an instrument with the draw schedule of a project financed by bond proceeds. Therefore, we find that this exception is necessary or appropriate in the public interest and is consistent with the protection of investors.[162]

h. Solicitation of Comment. We invite comment on the definition of ''chiefly compensated,'' including whether other methods of calculation would accurately assess whether a bank is meeting the ''chiefly compensated'' condition, consistent with the investor protection concerns that we have expressed. We also request comment on whether we set the threshold test for being ''chiefly compensated'' too low and whether we should consider raising that test to a higher level, such as 75% or 90%. In addition, we request comment on whether the definition of ''chiefly compensated'' also should be changed to require a higher relative amount of ''relationship compensation'' in the event that any of the underlying definitions were to be changed.

Further, we seek comment on the definition of ''a flat or capped per order processing fee equal to not more than the cost incurred by the bank in connection with executing securities transactions for trustee and fiduciary customers.'' In particular, we are interested in whether we have struck an appropriate balance between accuracy and simplicity by permitting banks to pass on costs of resources exclusively dedicated to trustee and fiduciary transactions, but not pass on the proportional allocations of costs of shared resources. If proportional allocations of costs were permitted, would the record keeping costs exceed the benefits of permitting the allocations? We also solicit comment on both exemptions, and are especially interested other ways to exempt banks that receive small amounts of sales compensation and whether a line of business calculation is feasible.

In addition, some banking industry representatives have told us that banks may charge one comprehensive fee for several accounts of an individual or members of one family. We seek comment on how to treat clusters of accounts for which a bank may charge a single fee attributable to all of the accounts in that cluster. We also seek comment on how to determine a nexus among such accounts to consider the scope of any additional relief that may be necessary.

C. Sweep Accounts Exception

Section 3(a)(4)(B)(v) of the Exchange Act[163] provides an exception from the definition of broker for sweep account activities. Under the exception, a bank will not be considered a broker if it ''effects transactions as part of a program for the investment or reinvestment of deposit funds into any no-load, open-end management investment company registered under the Investment Company Act that holds itself out as a money market fund.'' The sweep accounts exception is intended to continue to allow banks to sweep funds into no-load money market funds without having to register as broker-dealers.

Payments by investment companies of asset-based fees to distributors of their securities create a conflict of interest for the brokers and banks that are distributing these shares. The sweep account exception protects sweep customers from conflicts of interest

[160] 17 CFR 240.3a4–3.

[161] The term ''money market fund'' is defined in Rule 3b–17(e).

[162] Exchange Act Section 36(a)(1) [15 U.S.C. 78mm(a)(1). *See* Exchange Act Section 3(b) [15 U.S.C. 78c(b)]; *see also* Exchange Act Section 23(a)(1) [15 U.S.C. 78w(a)(1)].

[163] 15 U.S.C. 78c(a)(4)(B)(v).

created by compensation arrangements by limiting banks that are not registered as broker-dealers to sweeping deposit accounts into no-load, money market funds that pay minimal distribution fees. In addition, the sweep accounts exception's limitation to no-load money market funds results in limited risks to bank customers because of the constant net asset value of the funds, the absence of a sales load, and the minimal distribution fees that funds may pay to the banks.

The term ''no-load'' is not defined in the GLBA or in the federal securities laws. Historically, the term ''no-load'' was viewed as meaning that neither investors in the fund, nor the fund itself, bore the costs of distributing the fund's shares, including making payments to broker-dealers.[164] The Commission's adoption in 1980 of Investment Company Act Rule 12b–1, which for the first time permitted funds to use their assets to finance distribution expenses, created some confusion as to the meaning of the term.[165] To address this confusion, the National Association of Securities Dealers, Inc. (''NASD'') adopted Rule 2830(d)(4), which describes what a ''no-load'' investment company is. Rule 2830(d)(4) allows an NASD member broker-dealer to describe an investment company as being ''no-load'' or as having ''no sales charge'' if the investment company does not have a front-end or deferred sales charge, and if its total charges against net assets to provide for sales related expenses and/or service fees do *not* exceed 0.25 of 1% of average net assets per annum.[166]

Although the rules of the NASD expressly apply only to the conduct of NASD member broker-dealers and their associated persons, our Division of Investment Management has endorsed the NASD's definition of ''no load'' regardless of whether an investment company is associated with an NASD member. We believe that the NASD's definition of ''no load in NASD Rule 2830(d)(4) is reasonable, and we have adopted this definition in Rule 3b–17(f). This definition should help clarify the sweep accounts exception.

We also are adopting a definition of ''money market fund.'' Specifically, Rule 3b–17(e) defines that term as an open-end management investment company registered under the Investment Company Act that is regulated as a money market fund pursuant to Rule 2a–7 under the Investment Company Act. Rule 3b–17(f) provides that an investment company registered under the Investment Company Act is ''no-load'' if: (1) Purchases of the investment company's securities are not subject either to a sales load (as that term is defined in Section 2(a)(35) of the Investment Company Act) or a deferred sales load (as that term is defined in Rule 6c–10 under the Investment Company Act); and (2) its total charges against net assets that provide for sales or sales promotion expenses[167] and for personal services or the maintenance of shareholder accounts do not exceed 0.25 of 1% of average net assets annually and are disclosed in the mutual fund's prospectus.[168]

A bank can meet the conditions of the sweep accounts exception contained in Exchange Act Section 3(a)(4)(B)(v) if it invests customer assets through its sweep program in money market funds that meet the definition contained in new Rule 3b–17(e). All charges against fund assets that fall within the definition count toward the 0.25 of 1% limit, whether they are disclosed as an item in the fund's fee table or as part of the fund's miscellaneous or aggregate expenses.

Rule 3b–17(f) gives effect to the ''no-load money market fund'' condition of the sweep account exception by reflecting current industry and public understanding of what ''no-load'' means. The rule would not prevent a bank from directly charging its customers for the bank's sweep services, because such direct charges would have no effect on whether the fund is a ''no-load'' fund. The rule also would not prevent a bank from sweeping accounts into a money market fund that charges more than 0.25 of 1% of net assets under its Rule 12b–1 plan, provided that it charges a total of no more than 0.25 of 1% of the fund's net assets for sales or sales-related expenses and fees for personal service or the maintenance of the shareholder accounts.[169]

We find that our definitions of the terms ''no-load'' and ''money market fund'' used in the sweep accounts exception are consistent with the provisions and puroses of the Exchange Act.[170]

D. Safekeeping And Custody Activities Exception

Exchange Act Section 3(a)(4)(B)(viii) provides an exception from the definition of broker for certain safekeeping and custody activities.[171] Under the exception, a bank will not be considered a ''broker'' because, as part of customary bank activities, it engages in certain specified types of safekeeping and custody services with respect to securities on behalf of its customers.[172]

Traditionally, activities that have been identified as the type of activity requiring broker-dealer registration include, among other things, executing securities transactions and holding customer funds and securities.[173] The

[164] *See* Investment Company Act Release No. 15431 (June 13, 1988), 53 FR 23258.

[165] Investment Company Act Release No. 11414 (Oct. 28, 1980), 45 FR 73898 (Nov. 7, 1980).

[166] NASD Rule 2830(d)(4) specifically states that a member broker-dealer may *not* ''describe an investment company as being ''no-load'' or as having ''no sales charge'' if the investment company has a front-end or deferred sales charge *or its total charges against net assets to provide for sales related expenses and/or service fees exceed .25 of 1% of average net assets per annum.*'' (emphasis added). *See* Exchange Act Release No. 30897 (July 7, 199), 57 FR 30985–02 (July 13, 1992). NASD Rule 2830(d)(4) was formerly classified as Article III, Section 26(d)(3) of the NASD Rules of Fair Practice. *See* Exchange Act Release No. 36698 (Jan. 11, 1996), 61 FR 1419 (Jan. 19, 1996).

[167] Rule 12b–1 under the Investment Company Act [17 CFR 270.12b–1] provides that an investment company may make payments with respect to the distribution of shares of the investment company securities as long as, among other things, those payments are made pursuant to a written plan. Payments made by a fund pursuant to Rule 12b–1 must be disclosed in the fund's prospectus. *See* Item 8(b) of Form N–1A. In practice, however, fees paid pursuant to a Rule 12b–1 plan sometimes also may relate to types of services other than distribution-related services.

[168] Interim Final Rule 3b–17(f) provides, however, that certain charges a money market fund makes against fund assets will not be considered charges for personal service or the maintenance of shareholder accounts. In particular, charges against a money market fund's assets for transfer agent and subtransfer agent services for beneficial owners of the fund shares; aggregating and processing purchase and redemption orders; providing beneficial owners with statements showing their positions in the investment companies; processing dividend payments; providing subaccounting services for fund shares held beneficially; and forwarding shareholder communications, such as proxies, shareholder reports, dividend and tax notices, updating prospectuses to beneficial owners; and receiving, tabulating, and transmitting proxies executed by beneficial owners will not count toward the 0.25 of 1% limit in Rule 3b–17(f)(2).

[169] Accordingly, banks relying on the sweep accounts exception should ensure that any money market fund included in the bank's sweep program that discloses Rule 12b–1 fees in its prospectus that exceed 0.25 of 1% of the fund's net assets does not use more than 0.25 of 1% of the fund's net assets to pay for sales or sales promotion expenses and personal services or the maintenance of shareholder accounts. A bank could satisfy this obligation by using only money market funds that hold themselves out as no-load funds or by obtaining written confirmation from the money market fund that it is a no-load fund before including the fund in its sweep program.

[170] Exchange Act Section 3(b) [15 U.S.C. 78c(b)].

[171] 15 U.S.C. 78c(a)(4)(B)(viii).

[172] Exchange Act Section 3(a)(4)(B)(viii)(aa–ee).

[173] *See, e.g.,* 15 David A. Lipton, *supra* note 124, at 1.04[3] (having custody or control over the funds and securities of others is a badge of being a broker-dealer); *SEC* v. *Margolin*, [1992 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶97,025 (S.D.N.Y. 1992) (defendant was ''engaged in the business'' because he provided clearing services for the securities trading of his clients; other evidence of brokerage activity included receiving transaction-based

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safekeeping and custody exception makes clear that banks, as part of customary banking activities, may hold customer funds and securities without being considered a broker if, except with respect to government securities, they do not act as a carrying broker.[174]

In addition, the safekeeping and custody exception explicitly allows banks that hold securities for their customers, on behalf of their customers, to exercise warrants or other rights, facilitate the transfer of funds or securities in connection with the clearance and settlement of the customers' transactions, effect securities lending or borrowing transactions when the securities are in the custody of the bank, invest cash collateral pledged in connection with securities lending or borrowing transactions, and facilitate the pledging or transfer of securities that involve the sale of those securities.[175] Moreover, banks may provide custody and related administrative services to IRAs, pension, retirement, profit sharing, bonus, thrift savings, incentive, or other similar benefit plans without being considered a broker.[176]

Securities trades conducted under the safekeeping and custody exception must still be executed in compliance with Exchange Act Section 3(a)(4)(C). Exchange Act Section 3(a)(4)(C) requires banks that accept orders to the extent they engage in transactions under a specified safekeeping and custody function either to transmit orders to be executed to a registered broker-dealer or to internally cross those orders. Exchange Act Section 3(a)(4)(C) ensures that when investors purchase or sell securities through banks under the trust and fiduciary activities exception, safekeeping and custody exception, and certain stock purchase plans exception, registered broker-dealers, rather than unregulated market intermediaries, ultimately execute those transactions.

Exchange Act Section 3(a)(4)(C) does not require all orders to purchase and sell a security to be sent to a registered broker-dealer. To read the section otherwise would mean that a bank would always be required to purchase or sell the underlying securities through a registered broker-dealer in connection with, for example, an investor's exercise of rights or warrants. This would preclude a bank from filling an investors' exercise of rights or warrants by delivery of shares from the issuer—a commonly used method. However, if a bank does purchase or sell the underlying securities in the open market, Exchange Act Section 3(a)(4)(C) requires banks either to execute the transactions through a registered broker-dealer or internally to cross the trade. Furthermore, Exchange Act Section 3(a)(4)(C) should not be read to permit a bank to accept orders for the purchase or sale of securities in situations not specifically provided for under the safekeeping and custody exception. In this regard, it does not expand a bank's ability to accept orders for the purchase or sale of securities without registering as a broker-dealer.

Congress also did not intend the safekeeping and custody activities exception to allow banks to engage in broader securities activities.[177] For example, although the safekeeping and custody exception permits banks to provide custody and related administrative services to IRAs and various benefit plans,[178] as one of the limited securities-related activities that can be conducted under the safekeeping and custody activities exception, the exception does not allow banks, under the rubric of providing these ''related administrative services''[179] to accept orders to purchase and sell securities.

The point at which orders are accepted from customers and routed for execution represents a critical juncture for an investment decision and results in the consummation of the sale. Therefore, it is important that the customer protections, such as employee sales practice and training requirements,

compensation, advertising for clients, and possessing client funds and securities).

[174] 15 U.S.C. 78c(a)(4)(B)(viii)(II). A bank acting as a carrying broker facilitates the transfer of funds and securities associated with the clearance and settlement of securities and related margin lending on behalf of a broker-dealer and executes trades for itself and its customers. A carrying broker relationship is distinguished from a custody relationship by the fact that the bank is selected and its systems are utilized primarily by the broker-dealer rather than primarily by the customer. In a situation where the broker-dealer arranges for a substantial majority of its customers to use bank custody or deposit services of a bank, a carrying broker relationship may be established particularly if the bank performs clearance and settlement functions that the broker-dealer cannot perform economically or efficiently. In contrast, a bank would not be a carrying broker when it acts as custodian for a customer of a broker-dealer and responds to customer directions to deliver securities against payment or cash against receipt of securities.

[175] Exchange Act Section 3(a)(14) provides, ''[t]he terms ''sale'' and ''sell'' each include any contract to sell or otherwise dispose of.'' Similarly, Exchange Act Section 3(a)(13) provides, ''[t]he terms ''buy'' and ''purchase'' each include any contract to buy, purchase, or otherwise acquire.'' Courts have read this language broadly. For example, the Supreme Court has stated that a transaction does not need to involve cash to constitute a sale of securities for purposes of the anti-fraud provisions of the Exchange Act. *Gelles* v. *TDA Industries*, 44 F.3d 102, 104 (2d Cir. 1994) (citing *SEC* v. *National Securities, Inc.*, 393 U.S. 453 (1969)). Moreover, neither delivery nor the passing of title is required for the transaction to be considered a ''sale'' for these purposes. The pledge of stock is a ''sale'' within the meaning of Section 2(3) of the Securities Act. *Rubin* v. *United States*, 449 U.S. 424 (1981). The Court stated that although full title to the pledged securities were not transferred, the transaction nonetheless could be a sale. In the Court's view, the ''inchoate but valuable interest'' transferred by a pledge (*i.e.*, the right to absolute title and ownership in the event of a default) was an ''interest in a security'' within the meaning of Section 2(3) of the Securities Act. 449 U.S. at 429–30.

[176] 15 U.S.C. 78c(a)(4)(B)(viii)(ee). *See* H.R. Rep. No. 106–74, pt. 3, note 9 above, at 169 (1999) (''Many of the activities permitted under the safekeeping and custody exception are incidental to activities that banks perform today.'').

[177] *See* H.R. Rep. No. 106–74, pt. 3, at 169 (1999) (''This exception is not intended to allow banks to engage in broader securities activities.'').

[178] We note that securities in retirement plans, including IRAs, are not immune to the sales practice abuses and fraudulent conduct that the rules of the SROs and securities laws are designed to address. The NASD has brought several enforcement actions for unsuitable recommendations and unauthorized trading in IRA accounts. *See, e.g., In re Frederick C. Heller,* 1991 NASD Discip. LEXIS 115 (Aug. 26, 1991) (registered representative engaged in excessive and unauthorized trading in an IRA account); *In re Paul D. Baune,* 1994 NASD Discip. LEXIS 17 (Aug. 4, 1994) (registered representative violated the NASD's suitability rule by recommending illiquid limited partnerships for the IRA account and non-IRA account of an elderly widow); *In re William J. Lucadamo et al.,* 1997 NASD Discip. LEXIS 35 (May 20, 1997) (registered representative made unsuitable recommendations and engaged in unauthorized trading in IRA accounts). In addition, a pension plan administrator was permanently enjoined from, among other things, violating Sections 10(b), 15(a), and 17(a) of the Exchange Act for acting as an unregistered broker-dealer and misappropriating customer funds, some of which were held at a custodial bank. *See Securities and Exchange Commission* v. *Qualified Pensions Inc. et al.,* Civil Action No. 95–1746 (LFO) (D.D.C. July 2, 1997), Litigation Releases No. 15403, 64 S.E.C. Docket 2280 (July 2, 1997) and No. 14680, 60 S.E.C. Docket 1086 (Oct. 5, 1995). *See also In re Bankers Pension Services, Inc.,* Exchange Act Rel. No. 37567 (Aug. 14, 1996) (order instituting a public administrative proceeding, making findings, and imposing a cease-and-desist order); *In re Transcorp Pension Services, Inc.,* Exchange Act Rel. No. 37278 (June 4, 1996) (order instituting a public administrative proceeding, making findings, and imposing a cease-and-desist order); *First Philadelphia Corp.,* 50 SEC 360 (1990) (allocation of shares in a ''hot issue'' to a custodial account for the benefit of securities firm's president's son).

[179] Although the term ''related administrative services'' is not defined in the securities laws, in the broker-dealer industry, administrative services generally are considered to be those services that are labeled as ''clerical and ministerial.'' Clerical and ministerial activities include, for example, mechanical tasks such as bookkeeping and record keeping, performing calculations, and data processing functions. Accepting general orders to buy and sell securities, however, is not a ''clerical and ministerial'' activity. *Cf. Exchange Services, Inc.* v. *S.E.C.,* 797 F.2d 188, 190 (4th Cir. 1986) (The court determined that the SEC was not being arbitrary and capricious when it relied, as a reason to deny an exemption, on NASD's policy that anyone taking orders from the public must register.). A person accepting general securities orders must, at a minimum, register as an assistant representative for order processing with the NASD. *See generally* NASD Rules 1041 and 1042 (listing registration requirements, and limits on the activities of, assistant representatives).

that flow from broker-dealer registration and application of the federal securities laws apply at this juncture.[180] Accepting orders necessarily involves communication with customers. The risks inherent in communication with customers relating to securities transactions—sales practice abuses and customer confusion—as well as related order taking risks, are risks that the securities laws are uniquely designed to address. Accepting orders to buy and sell securities also implicates concerns traditionally covered by the federal securities laws and the requirement of best execution.[181] For these reasons and the others discussed above, we have determined that ''custody'' or ''related administrative services'' do not include accepting orders from investors to purchase or sell securities. In particular, we do not believe that by its terms the safekeeping and custody exception covers a bank that accepts orders from investors to purchase or sell securities other than those specifically permitted in the exception, such as with respect to securities lending and borrowing or investing collateral.

We are supported in our conclusion by a comprehensive reading of the GLBA broker exceptions. An interpretation that banks engaged in safekeeping and custody services may accept orders without being required to register as broker-dealers would contradict the comprehensive statutory scheme of limited brokerage exceptions with the attendant conditions that Congress established for banks to be able to effect securities transactions without any of the investor protections available under the federal securities laws.[182]

Bankers have asserted that the custody exception was intended to preserve all ''customary'' activities involving custody accounts. This exception, however, just like the other exceptions from broker-dealer registration, was not designed to protect from the federal securities laws every existing bank brokerage activity. Prior to the passage of the GLBA, banks could operate a brokerage business without any conditions and still be excepted from broker-dealer registration. By replacing the blanket exception with specific exceptions, the GLBA limited the range of excluded bank securities activities. Therefore, the terms of a specific exception and the purpose of the exceptions must be examined to determine what bank securities activities were, in fact, excepted. This determination cannot be made merely based on an assumption that all ''customary'' bank securities activities were excepted.

Although we conclude that the safekeeping and custody activities exception allows banks to accept only those orders specifically permitted in the exception, we are creating two exemptions to permit banks to accept orders from investors for the purchase and sale of securities under limited circumstances in a safekeeping and custody capacity. Rule 3a4–4 provides that small banks may effect transactions in investment company securities in customers' tax-deferred custody accounts. In addition, Rule 3a4–5 provides that banks may accept orders for securities for safekeeping and custody accounts where the bank is not compensated for these transactions. The bank, however, may pass on the broker-dealer's charge for executing the transactions. As discussed below, we find that these exceptions are consistent with the public interest and the protection of investors.[183]

1. Rule 3a4–4—Exemption For Small Bank Custodians Effecting Transactions In Investment Company Securities For Tax-Deferred Custody Accounts

To permit small banks to continue assisting IRA customers to invest in investment company securities under conditions designed to foster a passive sales environment, new Rule 3a4–4 [184] provides that, under certain conditions, a small bank [185] is exempt from the definition of the term ''broker'' under Section 3(a)(4) of the Exchange Act solely for effecting transactions in securities of an investment company in a tax-deferred account [186] for which the bank acts as custodian under the safekeeping and custody activities exception, or as trustee under the trust and fiduciary activities exception.

We have been advised that small banks offering tax-deferred custody accounts may not have an affiliated broker-dealer or networking arrangements with registered broker-dealers. In 1996—the last year for which data was available—over 90% of banks used registered broker-dealers to effect securities transactions as brokers.[187]

[180] A critical aspect of the federal securities laws is the protection of investors that is accomplished not only through our rules, but also through investor protection conditions imposed by SROs on registered entities and their personnel.

[181] The duty of best execution requires a broker-dealer to seek the most advantageous terms reasonably available under the circumstances for a customer's transaction. The duty of best execution derives from the common law duty of loyalty, which obligates an agent to act exclusively in the principal's best interest. When a broker-dealer acts as agent on behalf of a customer in a transaction, the agent is under a duty to exercise reasonable care to obtain the most advantageous terms for a customer. Restatement 2d Agency Sec. 424 (1958). Traditionally price has been the predominant factor in determining whether a broker-dealer has satisfied its best execution obligations. Exchange Act Release No. 34902, 59 FR 55006 (1994). We also have stated that broker-dealers should consider at least six additional factors: (1) The size of the order; (2) the speed of execution available on competing markets; (3) the trading characteristics of the security; (4) the availability of accurate information comparing markets and the technology to process such data; (5) the availability of access to competing markets; and (6) the cost of such access. *See, e.g.,* Second Report on Bank Securities Activities, at 97–98, n.233, as reprinted in H.R. Rep. No. 145, 95 Cong., 1st Sess. 233 (Comm. Print 1977).

[182] If banks were allowed to effect transactions for compensation as custodians, they would be subject to fewer requirements than banks effecting transactions for investors under other exceptions contained in the GLBA amendments to Exchange Act Section 3(a)(4). Congress created at least three specific exceptions to permit banks to effect securities transactions with retail investors—as part of networking arrangements with broker-dealers; pursuant to the trust and fiduciary exception; and as registered transfer agents for issuer plans. To read the term ''administrative services'' to include accepting orders for the purchase and sale of securities would mean that banks acting as custodians would be subject to significantly fewer limits than banks that effect transactions with investors in these three situations. In short, an expansive reading of the word ''administrative services'' would circumvent the conditions of all of the other exceptions that restrict banks' ability to become active brokerage distribution channels outside of the investor protections of the federal securities laws.

[183] Exchange Act Section 36(a)(1) [15 U.S.C. 78mm(a)(1)]; *see also* Exchange Act Sections 15(a)(2) and 23(a)(1) [15 U.S.C. 78o(b)(2) and 78w(a)(1)].

[184] 17 CFR 240.3a4–4. Of course small bank trustees for tax-deferred accounts that are effecting transactions in investment company securities and that are acting as custodian may alternatively rely on this exemption.

[185] We define the term ''small bank'' as a bank with less than $100 million in assets as of December 31 of both of the prior two calendar years, and since December 31 of the third prior calendar year has not been, an affiliate of a bank holding company or a financial holding company that as of December 31 of both of the prior two calendar years had consolidated assets of more than $1 billion. The $100 million in assets cut-off was derived from The Small Business Administration, Small Business Size Regulations. 13 CFR 121.201; *see also* 66 FR 10212 (citing 13 CFR 121.201).

[186] A ''tax deferred account'' is defined as those accounts described in Sections 401(a), 403, 408, and 408A under Subchapter D and in Section 457 under Subchapter E of the Internal Revenue Code of 1986.

[187] *See* Testimony of Andrew C. Hove, Jr., Acting Chairman Federal Deposit Insurance Corporation, on Financial Modernization before the Subcommittee on Finance and Hazardous Materials, Committee on Commerce, United States House of Representatives, July 17, 1997, where he said:

Second, the vast majority of insured institutions already use registered broker/dealers for sales of nondeposit investment products. Recent surveys, including the FDIC's 1996 survey of nondeposit investment product sales practices, have found that very few banks—less than 300 out of 10,000—sell such products using their own employees under the present exemption from registration as a broker/dealer. Thus, most of those selling nondeposit investment products at banks and thrifts already are registered representatives of broker/dealers subject to the regulatory oversight of the Securities and

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Nevertheless, small banks without broker-dealers might occasionally accept unsolicited orders for investment company securities from customers in these tax-deferred accounts.

Because the IRC requires tax-deferred accounts to be held by a custodian or trustee, investors often hold these accounts with banks. To avoid unnecessarily disrupting this service in small banks that do not have an affiliate or networking arrangement with a broker-dealer, we provide an exemption from the definition of broker for small banks with under $100 million in assets as of December 31 of both of the two prior years.[188] Such a bank may also not be an affiliate of a bank holding company or financial holding company with more than $1 billion in consolidated assets in the two prior calendar years.[189] Under this exemption, small banks may effect transactions in investment company securities for customers' tax-deferred custody accounts and receive compensation for these securities transactions, subject to a revenue limit. This exemption does not apply to banks that do not meet the definition of ''small banks'' because these banks can more easily affiliate with a broker-dealer or develop a networking arrangement with a registered broker-dealer.[190]

Because this exemption is designed to allow the bank to effect transactions in securities as an accommodation to its customers, the bank must not be affiliated with a broker or dealer or have a networking arrangement with a broker or dealer to effect transactions in securities for the bank's customers. Similarly, a bank employee effecting transactions under this exemption must not be an associated person of a broker or dealer, must primarily perform duties for the bank other than effecting transactions in securities for customers, and must not receive incentive compensation for such transactions. In effecting transactions under this exemption, the bank also must execute the order through a broker-dealer (or in a cross transaction).[191]

In addition, the bank may solicit transactions only through certain limited activities. First, a bank may deliver only advertising and sales literature about an investment company's securities that is prepared by the registered broker-dealer that is the principal underwriter of the investment company, or prepared by the investment company that is not an affiliated person of the bank, as defined in Section 2(a)(3) of the Investment Company Act.[192] The requirement to use sales literature prepared by a broker-dealer that complies with the NASD's advertising rules is designed to protect investors from representations about investments that could not be made by a registered broker-dealer. Second, banks may respond to questions from potential purchasers of securities, but the bank must limit its answers to information contained in the registration statement for the investment company security or sales literature prepared by the investment company security's principal underwriter that is a registered broker-dealer. Third, a bank may advertise its trust activities, but only as permitted under the advertising conditions of the trust and fiduciary activities exception.[193] Finally, banks may notify their existing customers that they accept orders for investment company securities in conjunction with solicitations related to their other activities concerning tax-deferred accounts.

We are concerned that this exemption could be used primarily as a means to market proprietary investment company securities without the protections available under the federal securities laws. Thus, to meet the conditions of the exemption in Rule 3a4–4, a bank that sells investment company securities of affiliated persons must make available to the tax-deferred account the securities of similar investment companies that are not affiliated persons of the bank.[194] Investment companies with similar characteristics would be investment companies with similar investment objectives and strategies, such as two global equity funds. We solicit comment on whether we need to define further the term ''similar characteristics.''

Finally, the bank's compensation related to effecting transactions in securities pursuant to this exemption[195] must be less than 3% of its annual revenue.[196] This exemption is provided to permit small banks to accept the occasional investor order to purchase and sell investment company securities for tax-deferred accounts. We have chosen the 3% revenue limit consistent with this intent.

We expect small banks effecting transactions in securities under the terms of this exemption to be offering brokerage services solely as an accommodation to their customers. We do not intend for this exemption to be used to allow an unregistered sales force to market widely securities without complying with the requirements of the federal securities laws, such as licensing, advertising, and other sales practice standards, and continuing education requirements. The conditions a bank must meet to qualify for this exemption reflect this purpose.

In adopting this exemption, we have carefully balanced the administrative convenience to investors of submitting orders to small bank custodians that do not have arrangements with broker-dealers to interact with these customers, with the loss of the protections afforded to those investors under the federal securities laws. We also have considered that small broker-dealers do not have a similar exemption from the application of the federal securities laws. Nonetheless, in this limited situation, we believe that the exemption for small banks is appropriate.

We have imposed a 3% annual revenue limit under this exemption and imposed conditions to limit banks' solicitation of investors to ensure a passive securities distribution channel because none of the protections available to investors under the federal securities laws are available in this situation. We solicit comment on whether this exemption poses a burden on competition for broker-dealers that do not have a similar exemption. We also solicit comment on whether this exemption is necessary and consistent

Exchange Commission and securities industry self-regulatory organizations, such as the National Association of Securities Dealers (NASD).

[188] Because a new bank, bank holding company, or financial holding company would have no assets in either one or both of the two prior years, it would qualify for the exemption for at least the period of time in which had no assets.

[189] We chose $1 billion to indicate small bank holding companies or financial holding companies because the Federal Reserve Board has previously categorized these companies as ''small, noncomplex bank holding companies'' for the purpose of determining the type of supervisory review that they receive. *See* 1999 Federal Reserve Annual Report at 122.

[190] Banks cannot structure arrangements with networking broker-dealers or affiliated broker-dealers in which the custody department becomes the carrying broker for the affiliates or networking broker-dealers. *See* Section 3(a)(4)(B)(viii)(II) of the Act [15 U.S.C. 78c(a)(4)(B)(viii)(II)].

[191] Section 3(a)(4)(C) of the Exchange Act [15 U.S.C. 78c(a)(4)(C)]. The bank also may use the NSCC's Mutual Fund Services, including Fund/SERV to execute the order, pursuant to Rule 3a4–6.

[192] *Id.*

[193] Exchange Act Section 3(a)(4)(B)(ii)(II) [15 U.S.C. 78c(a)(4)(B)(ii)(II)].

[194] Investment Company Act Section 2(a)(3) [15 U.S.C. 80a–2(a)(3)].

[195] The term ''compensation related to effecting transactions in securities pursuant to this exemption'' means the total annual compensation received for effecting transactions in securities pursuant to this exemption, including fees received from investment companies for distribution.

[196] Revenue is defined as the annual total net interest income and noninterest income from the bank's four most recent Reports of Condition and Income or any successor reports required to be filed by the bank's appropriate federal banking agency.

with the protection of investors under the federal securities laws.

2. Rule 3a4–5—Exemption for Bank Custodians Placing Orders as an Accommodation to Customers

New Rule 3a4–5 [197] is broader than Rule 3a4–4 in that it is available to all banks for the full range of securities. However, the exemption builds upon the passive sales conditions developed in Rule 3a4–4 by also prohibiting receipt by the bank of any transaction-related compensation.

Rule 3a4–5 exempts a bank from the definition of the term ''broker'' solely for effecting transactions in securities in an account for which the bank acts as custodian under the safekeeping and custody activities exception if the bank meets certain conditions. Specifically, the bank may not directly or indirectly receive any compensation for effecting such transactions. We also impose the same limitations on soliciting orders, and other conditions, as apply to small banks effecting transactions for investors under Rule 3a4–4. The bank also must comply with the order execution condition in Exchange Act Section 3(a)(4)(C).[198]

We believe that the exemption balances the intent of not unnecessarily disrupting bank securities activities with the intent to require active and compensated securities sales operations to be subject to the federal securities laws as required by the GLBA. It will allow existing custody customers to maintain their relationships with their banks to the extent the service of effecting securities transactions is provided as a true accommodation. However, because the protection of the securities laws will not be available, nor will fiduciary standards be applicable, the exemption contains strict compensation limits on the bank and its employees. For example, the bank may not receive sales compensation, as that term is defined in Rule 3b–17. The bank, however, may pass on the broker-dealer's charge for executing the transaction. Thus, under the exemption, if a bank charges an annual or assets under management custodial fee, it must charge the same custody fee to an investor who engaged in many securities transactions as it would to one who engaged in only a few securities transactions or none at all. A bank must also charge the same custody fees regardless of whether the investor invested in proprietary investment company securities or investment company securities sponsored by unaffiliated broker-dealers. These conditions are consistent with our intent to permit banks in their custody capacity to accept investors' orders for the purchase or sale of securities, while limiting to a passive securities distribution channel brokerage that does not carry the investor protections found in the federal securities laws.

We solicit comment on whether this exemption is necessary, and consistent with the protection of investors under the federal securities laws. We also request comments on the exemptions that we have provided for banks that engage in certain securities activities. Are there other areas or lines of business of the banks where an exemption may be appropriate if there are sufficient investor protection obligations? Are there conditions that may be imposed in those circumstances to limit solicitation of securities brokerage and compensation that could address our investor protection concerns?

III. Discussion of Other Exceptions From Broker

A. Affiliate Transactions Exception

Exchange Act Section 3(a)(4)(B)(vi) excepts from the definition of broker a bank that ''effects transactions for the account of any affiliate (as defined in section 2 of the Bank Holding Company Act) [199] of the bank.'' [200] Questions have arisen regarding this exception, particularly in light of one of the exemptions from broker-dealer registration found in Exchange Act Rule 15a–6.[201]

The affiliate exception applies to banks effecting trades for the accounts of affiliates of the bank, excluding registered broker-dealers or affiliates engaged in merchant banking. The exception was provided because affiliates were not deemed to need the protections of broker-dealer registration. The exception does not cover a bank effecting trades with non-affiliated customers, even when the customer transaction also is effected as part of a trade involving an affiliate. A separate exception is necessary for the customer side of the trade.

Exchange Act Rule 15a–6 provides an exemption from U.S. broker-dealer registration for certain foreign broker-dealers.[202] Subsection (a)(4)(i) of Rule 15a–6 [203] allows a foreign broker-dealer to effect transactions in securities with or for a U.S. registered broker-dealer or bank acting in a broker-dealer capacity as permitted by U.S. law. If a foreign broker-dealer or bank is an affiliate of a U.S. bank acting in a broker-dealer capacity permitted by U.S. law, the foreign broker-dealer or bank can rely on Rule 15a–6(a)(4)(i) to effect transactions in securities with or for such U.S. bank without registering in the United States as a broker-dealer. Moreover, in these transactions with its foreign affiliate, the U.S. bank could rely on the affiliate transactions exception.[204] However, if the foreign broker-dealer or bank seeks to have direct contact with customers of the U.S. bank, the foreign entity may not avail itself of the exemption in Rule 15a–6(a)(4)(i). Similarly, the U.S. bank could not rely on the affiliate transactions exception to avoid any registration requirements arising out of its role in the foreign broker-dealer's or bank's dealings with its customers.

B. De Minimis Exception and RULE 3a5–1

Exchange Act Section 3(a)(4)(B)(xi) [205] excepts from the definition of broker banks that effect no more than 500 securities transactions, other than transactions that qualify for one of the other statutory exceptions. A transaction in which the bank is acting as an agent for a customer would count as one transaction toward the 500-transaction limit. Questions have arisen, however, as to whether banks can rely on this exception if they engage in ''riskless'' principal transactions.[206]

In the context of permissible bank activity under the Glass-Steagall Act, the OCC has interpreted ''riskless''

[197] 17 CFR 240.3a4–5.

[198] 15 U.S.C. 78c(a)(4)(C). The bank also may use the Fund/SERV system to execute orders in investment company securities, pursuant to Rule 3a4–6.

[199] Bank Holding Company Act Section 2(k) [12 U.S.C. 1841(k)] defines affiliate to mean ''any company that controls, is controlled by or that is under common control with another company.''

[200] 15 U.S.C. 78c(a)(4)(B)(vi).

[201] 17 CFR 240.15a–6.

[202] 17 CFR 240.15a–6. Rule 15a–6 and other exemptions from registration remain viable after the passage of the GLBA to the extent that the conditions of such exemptions can be met. Even when the GLBA permits a bank to engage in securities-related activities without itself registering as a broker-dealer, a broker-dealer engaged in the business of effecting transactions for such bank still must register absent an exemption or other exclusion from the requirements of the Exchange Act. For instance, this would be the case for a foreign broker-dealer that handles trades for a bank under Exchange Act Section 3(a)(4)(C). Moreover, foreign banks do not enjoy the bank exemptions because they do not fall within the definition of bank in Exchange Act Section 3(a)(6).

[203] 17 CFR 240.15a–6(a)(4)(i).

[204] Exchange Act Section 3(a)(4)(B)(vi) [15 U.S.C. 78c(a)(4)(B)(vi)].

[205] 15 U.S.C. 78c(a)(4)(B)(xi) [15 U.S.C. 78c(a)(4)(B)(xi)].

[206] ''Riskless'' principal transactions are generally described as trades in which, after receiving an order to buy (or sell) from a customer, the broker-dealer purchases (or sells) the security from (or to) another person in a contemporaneous offsetting transaction. *See* Exchange Act Rule 10b–10(a)(2)(ii)(A) [17 CFR 240. 10b–10(a)(2)(ii)(A)]; Exchange Act Rel. No. 33743 (Mar. 9, 1994) at n.11.

principal activity as equivalent to agency activity.[207] Nevertheless, under the securities laws, ''riskless'' principal transactions involve dealer activity because entities that engage in ''riskless'' principal transactions as a matter of course would be involved in the business of buying and selling securities for their own accounts, even if the risk associated with the transactions is minimal or non-existent.[208] In light of the differing interpretations regarding ''riskless'' principal transactions, we have determined to adopt Rule 3a5–1 to exempt banks from the definition of dealer provided that the number of ''riskless'' principal transactions and agency transactions engaged in by a bank does not exceed 500 transactions per year.[209] We believe that this exemption provides relief to banks in an area that may have been understood to have been covered by the *de minimis* exception because of the differing legal interpretations under the banking and securities laws. This exemption, however, does not expand the number of transactions permitted under the statutory exception. Rather, this is a technical exemption to clarify that banks may act as a riskless principal, as well as an agent, and meet the terms of the *de minimis* exception.

Rule 3a5–1 provides that a bank is exempt from the definition of the term ''dealer'' solely for engaging in riskless principal transactions if the number of such riskless principal transactions combined with transactions in which the bank is acting as an agent for a customer under the *de minimis* exception do not exceed 500 transactions. A ''riskless principal transactions'' is defined as a transaction in which, after having received an order to buy from a customer, the bank purchased the security from another person to offset a contemporaneous sale to such customer or, after having received an order to sell from a customer, the bank sold the security to another person to offset a contemporaneous purchase from such customer.

For purposes of Rule 3a5–1 and the *de minimis* exception, riskless principal transactions should be counted toward the 500-transaction limit in the following manner. First, a transaction in which the dealer bank is acting as a riskless principal intermediary between a broker-dealer and a non-broker-dealer customer would count as one trade toward the 500-transaction limit. Second, a transaction in which the dealer bank is acting as a riskless principal intermediary between two non-broker-dealer customers would count as two trades toward the 500-transaction limit. We have included this methodology in Rule 3a5–1(b), which explicitly provides that for purposes of the 500-transaction limit ''a riskless principal transaction counts as: (1) Two transactions if neither transaction comprising the riskless principal transaction is with a broker or dealer; or (2) one transaction if either transaction comprising the riskless principal transaction is with a broker or dealer.''

We believe this methodology is consistent with the *de minimis* exception to the definition of ''broker.'' Specifically, a broker acts as an agent for a customer in executing securities transactions. Because riskless principal transactions are in many respects equivalent to transactions effected on agency basis for customers, we determined to focus on transactions between banks and customers that are similar to agency transactions. Transactions between banks and broker-dealers appear in many respects to be transactions between principals. We therefore determined not to count transactions with broker-dealers for purpose of this exemption.

We request comment on whether riskless principal transactions should be counted as provided in Rule 3a5–1 for purposes of the *de minimis* exception. Should this exception be limited to instances where a broker or dealer is the counterparty to a particular transaction? Are there other specific types of transactions that should be specially accounted for in determining the *de minimis* exception?

IV. Rule 3b–18—Definitions of Terms Used in Asset-Backed Exception to Dealer

Exchange Act Section 3(a)(5)(A) defines the term ''dealer'' generally as ''any person engaged in the business of buying and selling securities for such person's own account through a broker or otherwise * * *'' Exchange Act Section 3(a)(5)(B)[210] provides an exception for any ''person that buys or sells securities for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.'' Prior to the passage of the GLBA, the Exchange Act completely excepted banks from the definition. However, the Glass-Steagall Act generally prohibited banks from acting as underwriters or dealers of corporate securities and certain other types of securities. The GLBA retained the general prohibition on bank underwriting and dealing in corporate securities and certain other types of securities but repealed the Exchange Act's blanket exception for banks acting as dealers. The GLBA replaced the blanket exception with four specific exceptions for certain securities activities that a bank may engage in without being considered a dealer.[211] The four exceptions are for: (1) Permissible securities transactions;[212] (2) investment, trustee, and fiduciary transactions;[213] (3) asset-backed transactions;[214] and (4) transactions in identified banking products.[215] The permissible securities transactions exception allows banks to buy and sell permissible securities, which include commercial paper and exempted securities. The second exception permits banks to buy and sell securities for investment purposes for the bank or for the accounts for which the bank acts as a trustee or fiduciary. The third exception is discussed below. The fourth exception permits the bank to buy and sell identified banking products, which include deposit accounts, letters of credit issued by a bank, and loans made by a bank. We view the first, second, and fourth exceptions as not needing additional clarification by rule at this time. However, we do solicit comment on whether there are any issues surrounding the interpretation of these three exceptions of which we should be aware and as to which we should provide guidance.

The third exception allows banks to issue and sell certain asset-backed securities.[216] Under this exception banks are permitted to issue or sell

[207] The OCC stated that, ''riskless principal activities are the legal and economic equivalent of permissible brokerage activities inasmuch as riskless principal brokerage is conducted in a manner consistent with the express terms of section 16,'' of the Glass-Steagall Act. *See* OCC Interpretive Letter No. 371 (June 13, 1986).

[208] *See* Securities Exchange Act Section 3(a)(5). In connection with amendments to Rule 10b–10, however, the Commission stated that ''riskless'' principal transactions are in many respects equivalent to transactions effected on an agency basis. *See Securities Confirmations,* Exchange Act Rel. No. 15219 (Oct. 6, 1978), 43 FR 47495 (Oct. 6, 1978).

[209] We find that this exception is necessary and appropriate in the public interest and consistent with the protection of investors. *See* Exchange Act Sections 15(a)(2), 23(a)(1), and 36(a)(1) [15 U.S.C. 78o(a)(2), 78w(a)(1), and 78mm(a)(1)].

[210] 15 U.S.C. 78c(a)(5)(B) [15 U.S.C. 78c(a)(5)(B)].

[211] Exchange Act Section 3(a)(5)(C) [15 U.S.C. 78c(a)(5)(C)].

[212] Exchange Act Section 3(a)(5)(C)(i) [15 U.S.C. 78c(a)(C)(i)].

[213] Exchange Act Section 3(a)(5)(C)(ii) [15 U.S.C. 78c(a)(C)(ii)].

[214] Exchange Act Section 3(a)(5)(C)(iii) [15 U.S.C. 78c(a)(C)(iii)].

[215] Exchange Act Section 3(a)(5)(C)(iv) [15 U.S.C. 78c(a)(C)(iv)].

[216] Exchange Act Section 3(a)(5)(C)(iii) [15 U.S.C. 78c(a)(5)(c)(iii)].

specified securities to qualified investors through a grantor trust or other separate entity without being considered a dealer. The specified securities generally must be originated by the bank and backed by the obligations of the bank's customers. We have identified several issues under this exception that require clarification. We are adopting Rule 3b–18 to assist banks in structuring their activities in accordance with the new asset-backed transaction exception.[217]

The exception to the definition of dealer registration for banks engaging in asset-backed issuance and sale transactions specifically provides that a bank may ''engage in the issuance or sale to qualified investors, through a grantor trust or other separate entity, of securities backed by or representing an interest in notes, drafts, acceptances, loans, leases, receivables, other obligations (other than securities of which the bank is not the issuer), or pools of any such obligations predominantly originated by: (1) The bank; (2) an affiliate of any such bank other than a broker or dealer; or (3) a syndicate of banks of which the bank is a member, if the obligations or pool of obligations consist of mortgage obligations or consumer-related receivables.'' [218]

This language makes it clear that Congress intended to create a narrow dealer exception for banks that engage in the issuance and sale of securities based on assets created by the bank itself and sold only to qualified investors. Congress' intent to limit this exception to bank-generated underlying assets is shown by the language found at the conclusion of the section that requires any of the obligations to be ''predominantly originated'' by the group consisting of the bank and its affiliates. In the case of mortgage obligations and consumer-related receivables, the limitation is expanded to permit a syndicate of banks that includes the issuing bank to originate the obligations or pool of obligations.

Moreover, the legislative history indicates that this exception should be limited to syndicates in which the bank is more than an insignificant member. It states that, ''[t]he Committee expects this provision shall be interpreted so that the bank will [have] not less than ten percent of the assets in the syndicate or pool of obligations.'' [219] This interpretation generally limits the availability of the underwriting exception to asset-backed transactions predominantly originated by the bank that is underwriting the transaction, or involving syndicates where that bank is not an insignificant member. In addition, the exception requires the asset-backed securities to be placed into a grantor trust or other separate entity.

The exception by its terms does not cover repurchases by the bank of the asset-backed securities after they have been originated and issued; rather, the terms of the exception cover the issuance or sale of asset-backed securities. Thus, the exception permits a bank to create, underwrite, and issue asset-backed securities predominantly originated by the bank and its affiliates. This exception does not permit the bank to be a dealer by regularly repurchasing and reselling the asset-backed securities that it issues. A bank may purchase these securities for investment purposes, so long as the bank is not acting as a dealer.[220]

We note that this is the only exception that permits this type of securitized transaction. The exception to the definition of dealer for banks buying or selling identified banking products [221] does not permit the packaging of securities for sale in an asset-backed transaction.[222]

We are clarifying several terms in the asset-backed securities exception to assist banks in understanding how this section applies to their asset-backed securities activities. Specifically, Rule 3b–18 defines the terms ''affiliate,'' ''consumer-related receivable,'' ''member of a syndicate of banks,'' ''obligation,'' ''originated,'' ''pool,'' ''predominantly originated,'' and ''syndicate of banks'' as used in this exception. We find that these definitions are consistent with the provisions and purposes of the Exchange Act.[223]

First, in defining the term ''predominantly,'' which modifies the term ''originated,'' we looked to other sections of the GLBA in which the term is used. Section 103(n) of the GLBA uses the term ''predominantly'' to modify ''financial'' and to allow analysis of whether nonfinancial activities and affiliations may be retained.[224] Section 103(n)(2) of the GLBA expressly provides that a firm is predominantly engaged in financial activities when at least 85% of the annual gross revenues of the consolidated company derive from financial activities, excluding any revenue from banks. To be consistent, we are applying the same numerical test found in Section 103(n)(2) of GLBA for loan product originations for the purpose of the asset-backed securities exception from the definition of dealer.

Therefore, for the purpose of the asset-backed transaction exception, Rule 3b–18(g) defines ''predominantly originated'' so that a bank may engage in the issuance or sale of asset-backed securities without registration as a dealer if at least 85% of the obligations underlying the securities were originated by the bank or its affiliates, other than its broker-dealer affiliates, or any permitted syndicate of which the bank is more than an insignificant member. Specifically, the bank, its affiliates, or any such syndicate must have originated 85% of the obligations in any pool as measured by the value of the obligations. We considered and

[217] *Id.*

[218] Exchange Act Sections 3(a)(5)(C)(iii)(I), (II), and (III) [15 U.S.C. 78c(a)(C)(iii)(I), (II), and (III)].

[219] *See* H.R. Rep. No. 106–74, pt. 3, at 171 (1999).

[220] Exchange Act Section 3(a)(5)(C)(ii) [15 U.S.C. 78c(a)(C)(ii)]. In contrast, a bank also may deal in government securities, such as securities of the Federal National Mortgage Association (''Fannie Mae'') and the Federal Home Loan Mortgage Corporation (''Freddie Mac''). Exchange Act Sections 3(a)(5)(C)(II) (exception from ''dealer'' for exempted securities) [15 U.S.C. 78c(a)(5)(C)(II)], 3(a)(12)(A) (exempted security defined) [15 U.S.C. 78c(a)(12)(A)], and 3(a)(42)(B) and (C) (government securities defined) [15 U.S.C. 78c(a)(42)(B) and (C)].

[221] Section 206 of the GLBA defines the term ''identified banking product'' as:

''(1) a deposit account, savings account, certificate of deposit, or other deposit instrument issued by a bank;

''(2) a banker's acceptance;

''(3) a letter of credit issued or loan made by a bank;

''(4) a debit account at a bank arising from a credit card or similar arrangement;

''(5) a participation in a loan which the bank or an affiliate of the bank (other than a broker or dealer) funds, participates in, or owns that is sold—

''(A) to qualified investors; or

''(B) to other persons that—

''(i) have the opportunity to review and assess any material information, including information regarding the borrower's creditworthiness; and

''(ii) based on such factors as financial sophistication, net worth, and knowledge and experience in financial matters, have the capability to evaluate the information available, as determined under generally applicable banking standards or guidelines; or

''(6) any swap agreement, including credit and equity swaps, except that an equity swap that is sold directly to any person, other than a qualified investor (as defined in section 3(a)(54) of the Securities Act of 1934) shall not be treated as an identified banking product.'' 15 U.S.C. 78c note.

[222] Exchange Act Section 3(a)(5)(C)(iv) [15 U.S.C. 78c(a)(5)(C)(iv)].

[223] Exchange Act Section 3(b) [15 U.S.C. 78c(b)].

[224] Bank Holding Company Act Section 4(n)(2) [12 U.S.C. 1843(n)(2)].

rejected also having banks apply the predominantly originated test to the number and dollar amount owing on the obligations as well as the value in an asset-backed transaction pool. We rejected this more extensive test as too burdensome for any increased reliability that it might offer. We invite comment on this definition.

Many of the definitions we are adopting are intended to shed light on the financial terms used in the exception and avoid ambiguities without delving into complex financial issues that may not be relevant to the analysis of whether a bank would be considered a dealer. Thus, the definitions should be relatively straightforward and uncomplicated. In defining the terms, we have looked to generally understood meanings and the interpretations of the other financial participants, including regulators.

For instance, Rule 3b–18(e) provides that ''originated'' means initially making and funding an obligation.[225] Thus, to count as an obligation originated by the bank or its affiliates, the bank and its affiliates must be the initial lender as shown both by creating and supplying the money for a loan. Rule 3b–18(d) provides that ''obligation'' means any note, draft, acceptance, loan, lease, receivable, or other evidence of indebtedness that is not a security issued by a person other than the bank.[226]

Rule 3b–18(a) defines the term ''affiliate'' by using the same definition found in Section 509 of the GLBA and Section 2 of the Bank Holding Company Act.[227] This definition states that affiliate means ''any company that controls, is controlled by, or is under common control with another company.'' Rule 3b–18(h) defines the term ''syndicate of banks'' to mean a group of banks that acts jointly, on a temporary basis, to loan money in one or more bank credit obligations.[228]

The asset-backed transaction exception allows ''consumer-related receivables'' to be originated by a syndicate of banks of which a bank is a member, as well as being originated by the bank itself or an affiliate of the bank, other than a broker-dealer.[229] Rule 3b–18(b) defines ''consumer-related receivable,'' as any obligation incurred by any natural person to pay money arising out of a transaction in which the money, property, insurance, or services (being purchased) are primarily for personal, family, or household purposes.[230]

Rule 3b–18(g) defines a ''pool'' as more than one obligation or type of obligation grouped together to provide collateral for a securities offering.[231] Finally, we note that the term ''qualified investor'' is defined in Section 3(a)(54) of the Exchange Act, as amended by Section 207 of the GLBA. This definition limits the universe of purchasers of asset-backed securities to a more sophisticated group when there is not a registered broker-dealer underwriting the securities offering.

We invite comment on these definitions, including whether there are any alternate definitions of these terms that would be more appropriate for the purposes of this specific functional exception to the definition of dealer. We also invite comment on whether the 85% test for ''predominantly originated'' and whether calculating the ''predominantly originated by'' test based on the value of the obligations is a workable approach, or whether other means of determining ''predominantly'' should be considered. Commenters also are requested to give their views on whether there are any other definitions or interpretations that should be added, or issues that should be considered to enhance the clarity of this exception.

V. Rule 3a4–6—Exemption To Permit Execution of Investment Company Securities Through NSCC'S Mutual Fund Services

We have been asked whether banks may purchase and redeem shares of open-end investment companies through NSCC's Mutual Fund Services,[232] including Fund/SERV, and still comply with Exchange Act Section 3(a)(4)(C). NSCC's Mutual Fund Services provide an automated system to participants to process transactions in investment company securities. Fund/SERV centralizes order entry, confirmation, registration, and settlement of purchases and redemptions of investment company securities. NSCC's Mutual Fund Services are available to investment companies, broker-dealers, banks, trust companies, and other financial institutions that have been accepted for membership in NSCC.

Exchange Act Section 3(a)(4)(C) requires banks to execute through a registered broker-dealer (or internally cross) securities transactions effected pursuant to the trust and fiduciary activities exception, safekeeping and custody exception, or certain stock purchase plans exception.[233] Banks that use NSCC's Mutual Fund Services to execute transactions in investment company securities may not use a registered broker-dealer to execute these transactions, depending on whether the NSCC arrangement is with the principal underwriter or the transfer agent of the investment company. Therefore, some banks require an exemption from the trade execution requirements of Exchange Act Section 3(a)(4)(C) to continue to use NSCC's Mutual Fund Services while complying with exceptions and exemptions from the definition of broker. We are adopting this exemption to allow banks to continue to execute transactions in shares of open-end investment companies through NSCC's Mutual Fund Services because NSCC's Mutual Fund Services simplify and automate the process for purchasing and redeeming investment company securities without raising investor protection concerns. This exemption is available only to banks that process orders through a service of a registered clearing agency subject to our supervision and regulation. We find that this exception is necessary or appropriate in the public interest and consistent with the protection of investors.[234]

VI. Rule 15a–7—Extentions of Time

We have received a number of requests from representatives of banks for an extension of time to comply with

[225] *See, e.g.,* John Downes and Jordan Elliot Goodman, *Dictionary of Finance and Investment Terms* 422 (5th ed. 1998); Glenn G. Munn, updated by F.L. Garcia, *Encyclopedia of Banking and Finance* 743 (8th ed 1983); and Yahoo! Financial Glossary at http://dir.yahoo.com/Business_and_Economy/Finance_and_Investment/Reference_and_Guides/Glossaries.

[226] *See, e.g., Dictionary of Finance and Investment Terms, Id.*, at 405; John F. Marshall, *Dictionary of Financial Engineering,* 122 (2000); and *Encyclopedia of Banking and Finance, Id.* at 728.

[227] Exchange Act Section 3(a)(4)(B)(vi) adopts the definition of ''affiliate'' found in Bank Holding Company Act Section 2(k) [12 U.S.C. 1841(k)]. Both definitions are the same.

[228] *See, e.g., Dictionary of Finance and Investment Terms, supra* note 225 at 555; *Encyclopedia of Banking and Finance, supra* note 225, at 907; Yahoo! Financial Glossary, *supra* note 225; *see also Federal Deposit Insurance Corporation Regional Outlook, First Quarter 1999,* at 19, citing American Bankers Association, *Banking Terminology,* 3rd ed., 1989, p. 435.

[229] Exchange Act Section 3(a)(5)(C)(iii)(I–III) [15 U.S.C. 78c(a)(5)(C)(iii)(I–III)].

[230] Adapted from 1989 Fed. Res. Interp. Ltr. Lexis 283 (Aug. 1, 1989).

[231] *See e.g., Dictionary of Financial Engineering, supra* note 226, at 117; *Yahoo! Financial Glossary supra* note 225.

[232] NSCC is a clearing agency registered pursuant to Section 17A of the Exchange Act [15 U.S.C. 78q–1].

[233] 15 U.S.C. 78c(a)(4)(B)(ii), (iv), and (viii).

[234] Exchange Act Section 36(a)(1) [15 U.S.C. 78mm(a)(1); *see also* Exchange Act Sections 15(a)(2) and 23(a)(1) [15 U.S.C. 78o(a)(2) and 78w(a)(1)].

the broker-dealer provisions of the GLBA.[235] These requests indicate that a number of banks will not have completed the process of shifting certain necessary securities activities to a registered broker-dealer by May 12, 2001, to avoid being considered a broker or dealer subject to registration requirements. They also request time to adapt to the guidance provided by the Commission regarding these provisions. We recognize the time concerns that banks have raised. Because banks have historically enjoyed an exception from broker-dealer regulation, we believe they may need additional time to more fully comply with the GLBA amendments and these rules. Accordingly, we are adopting Rule 15a–7, which provides two conditional exemptions from broker-dealer registration to allow additional time for banks to make the necessary arrangements either to register or to comply with a specific functional exception to the definitions of broker or dealer. We find that these exemptions are necessary or appropriate in the public interest and consistent with the protection of investors.[236]

First, Rule 15a–7(a) exempts until October 1, 2001 banks that would otherwise be required to register as a broker or dealer because the bank's securities activities do not fit within the exceptions to the definitions of broker or dealer. Second, Rule 15a–7(b) exempts until January 1, 2002, banks that would be a broker solely because their compensation arrangements—either for the bank or for its employees—do not meet the compensation conditions of a particular exception or exemption.[237] This would include effecting transactions in a money market fund that does not qualify as no-load under the sweeps exception.

VII. Rule 15a–8—Exemption for Contracts Entered Into by Banks Before 2003 From Being Considered Void or Voidable

We recognize that banks may need to adjust their procedures to shift their securities activities to registered broker-dealers or to comply with the conditions of the specific functional exceptions or exemptions to the definitions of broker and dealer. We also are aware that there may be instances where, despite having reasonable procedures in place, a bank may inadvertently fail to meet the terms and conditions of the specific functional exceptions upon which it is relying. This could result in the bank engaging in securities activities in violation of the registration requirements of Exchange Act Section 15 and the rules promulgated under that section.

Exchange Act Section 29(b)[238] provides that any contract made in violation of the Exchange Act or Exchange Act rules shall be void as regards the rights of any person who made or engaged in the performance of any such contract.[239] Occasionally, private parties have invoked this remedy, which is purely equitable in nature,[240] in instances involving broker-dealer registration violations by the opposite party.[241]

As explained above, the amended Exchange Act contains numerous broker-dealer definitional provisions that apply only to banks, which were previously excepted from broker-dealer regulation. Because of this history, we believe that banks may have unique issues in complying with these definitional provisions. It is, therefore, appropriate to provide a transitional period before these provisions fully apply. Therefore, to provide certainty to banks while they become fully familiar with the operation of the exceptions, we are adopting Rule 15a–8.[242] This rule provides an exemption for contracts entered into by banks before January 1, 2003 from being considered void or voidable by reason of Exchange Act Section 29 because a bank that is a party to the contract violated the registration requirements of Section 15(a) of the Exchange Act or any applicable provision of this Act and the rules and regulations thereunder based solely on a bank's status as a broker or dealer when the contract was created. We expect the banks are already working to come into full compliance with the functional regulation provisions of the GLBA. Banks may, however, have inadvertent, technical violations as they become accustomed to the new regulatory requirements. This exemption is designed to recognize the unique compliance problems that many banks have by preventing any inadvertent failures by banks to meet the conditions of the functional exceptions from triggering potential rescission under Exchange Act Section 29 during this transitional period.

We note that this provision does not relieve banks of the obligation to register as a broker or dealer if their securities activities do not fit within a specific functional exception or exemption. We also note that banks' securities activities continue to be subject to the antifraud provisions of the federal securities laws, irrespective of the bank's lack of registration or failure to comply with the provisions of the Exchange Act and the rules thereunder that otherwise apply to banks based on their status as broker-dealers. We, therefore, find that this exemption is consistent with the

[235] Letter from Lawrence R. Uhlick, Executive Director and General Counsel, Institute of International Bankers, to Robert L. D. Colby, Deputy Director, and Catherine McGuire, Associate Director and Chief Counsel, Division of Market Regulation, Commission (Mar. 15, 2001); Letter from Barry Harris, Chair, Bank Retail Broker-Dealer Committee, Securities Industry Association, to Laura Unger, Acting Chairman, Commission (Mar. 13, 2001); Letter from Sarah A. Miller, Director, Center for Securities, Trust and Investments, American Bankers Association, to Laura Unger, Acting Chairman, Commission (February 28, 2001).

[236] Exchange Act Section 36(a)(1) [15 U.S.C. 78mm(a)(1); *see also,* Exchange Act Sections 15(a)(2) and 23(a)(1) [15 U.S.C. 78o(a)(2) and 78w(a)(1)].

[237] Banks should be aware that the definitions of broker and dealer do not include any exceptions for banks acting as municipal securities dealers. Banks acting as municipal securities dealers are still required to be registered under Exchange Act Section 15B [15 U.S.C. 78o–4] and to comply with requirements of the Exchange Act applicable to municipal securities dealers.

[238] 15 U.S.C. 78cc(b).

[239] Exchange Act Section 29(b) does not make the contract automatically a nullity. Rather, the contract is voidable at the option of the innocent party. *Mills* v. *Electric Auto-Lite Co.*, 396 U.S. 375, 387 (1970). In this manner, ''interests of the victim are sufficiently protected by giving him the right to rescind; to regard the contract as void where he has not invoked the right would only create the possibility of hardships to him or others without necessarily advancing the statutory policy of disclosure.'' *Id.* at 388.

[240] *Id.* at 388; *see also Occidental Life Ins. Co.* v. *Pat Ryan and Assoc.*, 496 F.2d 1255, 1267 (4th Cir.), *cert. denied,* 419 U.S. 1023 (1974) (principles of equity, like estoppel and waiver, apply to actions brought under Exchange Act Section 29(b)).

[241] *See Boguslavsky* v. *Kaplan*, 159 F.3d 715, 722 (2nd Cir. 1998) (under the liberal pleading standard accorded pro se litigants, an investor properly presented an identifiable claim for rescission under Exchange Act Section 29(b) in asserting that the firm opeated without director of compliance and thus was not properly registered as securities broker-dealer); *Regional Properties, Inc.* v. *Financial and Real Estate Consulting Co.*, 752 F.2d 178, 182 (5th Cir. 1985) (subject to equitable defenses, real estate developers were entitled to rescind agreement with broker to structure and market limited partnership interest where broker had failed to register as required by the Exchange Act); *Regional Properties* v. *Financial and Real Estate Consulting Co.*, 678 F.2d 552, 557, 566–67 (5th Cir. 1982) (recognizing that Exchange Act Section 29(b) provides for a private, equitable cause of action for the rescission of a contract where the securities broker was unlicensed); *Eastside Church of Christ* v. *National Plan, Inc.*, 391 F.2d 357, 362 (5th Cir.)., *cert. denied*, 393 U.S. 913 (1968) (churches could void a transaction with broker under Exchange Act Section 29(b) because the broker was unregistered); *Couldock and Bohan, Inc.* v. *Societe Generale Securities, Corp.*, 93 F. Supp. 2d 220, 233 (D. Conn. 2000) (a contract violating broker registration requirements of the Exchange Act is voidable at the option of the innocent party under Exchange Act Section 29(b)).

[242] 17 CFR 240.15a–8.

public interest and the protection of investors.[243]

We request comment on the appropriateness of this temporary exemption from Exchange Act Section 29(b).

VIII. Rule 15a–9—Exemption for Savings Associations and Savings Banks

We are granting an exemption from the definitions of ''broker'' and ''dealer'' for savings associations and savings banks [244] on the same terms and conditions that banks are excepted or exempted from broker-dealer registration.[245] Savings associations and savings banks are not ''banks'' as defined in Exchange Act Section 3(a)(6).[246] Accordingly, they have not had the same general exception from broker-dealer registration for securities transactions as banks have had. Savings associations and savings banks have typically established networking arrangements with broker-dealers.[247]

Now that the general exception for banks has been replaced, and the differences between banks and savings associations have narrowed;[248] it seems reasonable to afford savings associations and savings banks the same type of exemptions. Moreover, insured savings associations are subject to a similar regulatory structure and examination standards as banks.[249] We find that extending the exemption for banks to savings associations and savings banks is necessary or appropriate in the public interest and is consistent with the protection of investors.[250]

In addition, the existence of some of the bank exceptions from broker-dealer registration, such as the trust and fiduciary activities exception, the safekeeping and custody exception, and the sweep accounts exception, that may suggest registration is necessary for certain limited conduct, create legal uncertainty for savings associations and savings banks engaging in such activities. The exemption will allow savings associations and savings banks that are governed by a similar regulatory structure to operate under the same terms and conditions as banks. We emphasize, however, that consistent with functional regulation, savings associations and savings banks, as well as banks, using the trust and fiduciary activities, safekeeping and custody, or stock purchase plan exceptions, must execute securities transactions through registered broker-dealers or internally cross their trades. We note that the OTS, the FDIC, or the Federal Financial Institutions Examinations Council may adopt recordkeeping requirements.[251] We solicit comment on whether there is a need for us to propose regulations to assure parallel recordkeeping requirements. We also request comment on all aspects of this exemption as well as whether it should be extended to any other entities.

IX. Rule 30–3—Delegation of Authority

We are amending Rule 30–3 of our Rules of Organization and Program Management [252] by adding new paragraph (a)(72) to Rule 30–3 to delegate to the Director of the Division of Market Regulation authority to review and, either unconditionally or on specified terms and conditions, to grant or deny to banks, savings associations, and savings banks exemptions from the broker-dealer registration requirements,[253] pursuant to the authority provided in Section 15 and Section 36 of the Exchange Act.[254] The delegation of authority to the Division is designed to conserve our resources by permitting Division staff to grant or deny exemptions where appropriate and in a timely manner. We expect the staff to submit to us novel and complex requests for exemption.

X. Procedural Matters

A. Administrative Procedures Act And Request For Comments

The Administrative Procedures Act (''APA'') permits an agency to issue a rule without prior notice and comment upon a finding of good cause, or if the rule is interpretive, a general statement of policy, or a rule of agency organization, procedure, or practice.[255] The APA also permits an agency to issue a rule without delaying its effective date for 30 days from the date of publication if the agency finds good

[243] Exchange Act Section 36(a)(1) [15 U.S.C. 78mm(a)(1)].

[244] This exemption requires savings associations and savings banks to have deposits insured by the FDIC under the FDIA and to not be operated for the purpose of evading the provisions of the Exchange Act. 12 U.S.C. 1811 *et seq.*

[245] Nevertheless, savings associations and savings banks that are municipal securities dealers must register and be regulated as municipal securities dealers pursuant to Exchange Act Section 15B [15 U.S.C. 78o–4]. Banks must also register pursuant to Exchange Act Section 15B. Exchange Act Section 3(a)(34)(A) [15 U.S.C. 78c(a)(34)(A) provides that the ''appropriate regulatory agency'' of a municipal securities dealer that is a bank regulated by the OCC, the Federal Reserve, or the FDIC is the agency that already regulates the bank. Exchange Act Section 3(a)(34)(A)(iv) [15 U.S.C. 78c(a)(34)(A)(iv)] designates the Commission as the appropriate regulatory agency in the case of all other municipal securities dealers, which includes savings associations and savings banks that are municipal securities dealers.

[246] *See* Letter re: *AmeriFed Federal Savings Bank* (Jan. 18, 1990). The OTS is the appropriate federal regulator for savings associations, which include federally chartered savings banks, and the FDIC is the appropriate federal regulator for state-chartered savings banks as it is for all state-chartered banks that are not members of the Federal Reserve System. 12 U.S.C. 1813(q); *see also,* Investment Company Act Rel. No. 13666, *Status of Savings and Loan Associations Under the Federal Securities Laws; Advance Notice of Possible Commission Action,* 49 FR 6383 (December 19, 1983).

[247] *See, e.g.,* Chubb Letter, *supra* note 38.

[248] *See FDIC Banking Review,* Volume 10, No., 1 pp. 3–18 (June 1997).

[249] *See e.g.,* 12 U.S.C. 1828(c), dealing with the regulatory responsibilities of the banking agencies regarding mergers of insured depository institutions; 12 U.S.C. 1828(i), governing the statutory requirements for a reduction in stock capital; 12 U.S.C. 1828(m), governing activities of savings associations and their subsidiaries; 12 U.S.C. 1818(e), governing insured depository institutions removal and prohibition authority; 12 U.S.C. 1831m, governing early identification of needed improvements in financial condition; and 12 U.S.C. 1831o, governing prompt corrective action. In each of these instances, the OTS has exactly the same regulatory authority as do the federal banking agencies with regard to the banks under their jurisdiction.

The FDIC also must approve the applications of savings associations and savings banks for deposit insurance. 12 U.S.C. 1815. The FDIC receives a notice every time a savings association or savings bank establishes or acquires a new subsidiary or commences a new activity. 12 U.S.C. 1828(m). The FDIC also has additional regulatory and examination authority over these insured depository institutions in its role as the insurer of their deposits, just like it does over state and national banks. 12 U.S.C. 1820. The FDIC also reviews the activities of state chartered savings associations and state chartered banks, including savings banks, whenever they engage in activities that are not permissible for federally chartered savings associations or national banks, respectively. 12 U.S.C. 1831e and 1831a, respectively.

[250] Exchange Act Section 36(a)(1) [15 U.S.C. 78mm(a)(1).

[251] *See* 12 U.S.C. 1828(t).

[252] *See* 17 CFR 200.30–3(a), which is entitled ''Delegation of authority to Director of Division of Market Regulation.''

[253] Section 15(a) generally requires a broker or dealer to register with us prior to effecting, inducing, or attempting to induce securities transactions.

[254] This delegation of authority does not apply to banks seeking exemptions from registration as a municipal securities dealer under Exchange Act Section 15B [15 U.S.C. 78o–4], which regulates the activities of municipal securities dealers. Banks that act as municipal securities dealers are still required to comply with the requirements of the Exchange Act applicable to non-bank municipal securities dealers. Savings associations and savings banks are required to comply with the requirements applicable to bank municipal securities dealers but by the terms of the exemption in Rule 15a–9 are exempted from complying with those requirements if they comply with rules applicable to bank municipal securities dealers.

[255] The APA provides that prior notice and comment is not required: ''(A) [for] interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice; or (B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(A) and (B).

cause and publishes its finding with the rule, or if the rule is not substantive.[256]

For the reasons discussed below, we find that there is good cause for issuing Rules 3a4–2, 3a4–3, 3a4–4, 3a4–5, 3a4–6, 3a5–1, 3b–17, 3b–18, 15a–7, 15a–8 and 15a–9 under the Exchange Act without prior notice and comment and without a delayed effective date. We also find that the amendment to Rule 30–3 of our Rules of Organization and Program Management relates solely to agency organization, procedure, or practice, and is not a substantive rule. Accordingly, we are issuing the amendment without prior notice and comment and without a delayed effective date.

As the banking regulators found with respect to certain of their regulations under the GLBA,[257] we find good cause for issuing Rules 3a4–2, 3a4–3, 3a4–4, 3a4–5, 3a4–6, 3a5–1, 3b–17, 3b–18, 15a–7, 15a–8 and 15a–9 without notice and comment or a delayed effective date. We make this finding for the following reasons: (1) The short time available between the time members of the banking community requested specific guidance as to the meaning of certain provisions of the GLBA and the date on which those provisions become effective; (2) the amount of input we already have received from the industry on the issues addressed by the rules; (3) the fact that the rules do not impose any new obligations in addition to those created by the GLBA, but rather provide guidance as to the meaning of certain provisions of that statute or provide exemptive relief consistent with the intent of those provisions; and (4) the interim nature of the rules, which come after discussions with the industry, and which invite further comment, with possible revision of the rules in light of those comments.

Although Congress enacted the GLBA in November 1999, members of the banking community more recently requested specific guidance as to the meaning of certain key terms used in the GLBA amendments to the definitions of ''broker'' and ''dealer'' and as to the application of those terms to certain activities. The GLBA does not require us to engage in rulemaking in this area, and we initially anticipated that we could work with banks on an individual basis to address their particular concerns. In recent weeks, however, we have received a significant number of inquiries regarding how we interpret some of the key terms in the new definitions. Based on these inquiries, we now believe that it is necessary to provide guidance in the form of rulemaking before the effective date of May 12, 2001.

We recently received many requests for guidance and certain relief by letter. Several of the letters asked us to delay implementing the GLBA amendments to the definitions of ''broker'' and ''dealer.''[258] One of the letters expressed the writer's view on how the trust and fiduciary activities exception applied to conduct by indenture trustees and requested an exemption for this conduct from the statute.[259] A different letter from the same writer asked how the trust and fiduciary activities exception applied to banks acting as trustees for certain benefit plans and self-directed IRAs.[260] A separate letter by the same writer asked whether certain investment management services offered by bank trust departments.[261] Another letter asked that we extend the exceptions to the definitions of ''broker'' and ''dealer'' to thrifts.[262] Still other letters noted that the term ''no-load'' was not defined in the GLBA and inquired if we interpreted the term in the same manner as the NASD's definition of that term.[263] In addition, Commission staff has had numerous discussions with industry members during the past few weeks concerning the GLBA amendments. These requests and discussions persuaded us that immediate guidance concerning the scope of the functional exceptions to the definitions of ''broker'' and ''dealer'' added by the GLBA is imperative.

The industry requests not only clarified the need for immediate rulemaking, but also provided us with valuable information in drafting the rules. In this regard, Commission staff has received critical input from the banking industry through frequent discussions with staff from banks and industry associations, as well as banking regulators. Our staff has traveled throughout the country to determine what, if any, regulatory issues are of concern to industry members in light of the GLBA amendments. In addition, we initiated a dialogue with the affected industries by soliciting inquiries, participating in industry conferences, and conducting question and answer sessions. Finally, we reviewed information provided to Congress by industry sources, including the American Bankers Association, at the time the GLBA was enacted. As a result, we have received much of the input and information that we would expect to receive from commenters during a pre-effective comment period.

The rules we have adopted in response to industry concerns do not impose any new obligations beyond those created by the statute. Rules 3b–17 and 3b–18 are primarily definitional and are designed to clarify certain terms used in the functional exceptions to the definitions of ''broker'' and ''dealer'' added by the GLBA although the definitions of trustee in Rule 3b–17 is also exemptive in nature. Six of the rules, Rules 3a4–2, 3a4–3, 3a4–4, 3a4–

[256] The APA provides that publication of a substantive rule must be made not less than 30 days prior to its effective date, except ''(1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d).

[257] *See* Interim Final Rule with Request for Comments, Repurchases of Stock by Recently Converted Savings Associations, Mutual Holding Company Dividend Waivers, 65 FR 43088 (July 12, 2000), comment period extended, 65 FR 60095 (Oct. 10, 2000) (OTS); Joint Interim Final Rule with Request for Comments, Bank Holding Companies and Changes in Bank Control, 65 FR 16460 (Mar. 28, 2000) (Board of Governors of the Federal Reserve System (Federal Reserve and Treasury); Interim Final Rules with Request for Comment, Activities and Investments of Insured State Banks, 65 FR 15526 (Mar. 23, 2000), Final Rule, 66 FR 1018 (Jan. 5, 2001) (FDIC); Interim Final Rule with Request for Comments, Financial Subsidiaries, 65 FR 14819 (Mar. 20, 2000) (Federal Reserve); Joint Interim Final Rule with Request for Comments, Financial Subsidiaries, 65 FR 15050 (Mar. 20, 2000) (Treasury and Federal Reserve); Interim Final Rule with Request for Comments, Application of Sections 23A and 23B of the Federal Reserve Act to Derivative Transactions with Affiliates and Intraday Extensions of Credit to Affiliates, 66 FR 24229 (May 11, 2001) (Federal Reserve).

[258] *See, e.g.*, Letter from Lawrence R. Uhlick, Executive Director and General Counsel, Institute of International Bankers, to Robert L. D. Colby, Deputy Director, and Catherine McGuire, Associate Director and Chief Counsel, Division of Market Regulation, Commission (Mar. 15, 2001); Letter from Barry Harris, Chair, Bank Retail Broker-Dealer Committee, Securities Industry Association, to Laura S. Unger, Acting Chairman, Commission (Mar. 13, 2001); Letter from Robert M. Kurucza, General Counsel, Bank Securities Association, to Laura S. Unger, Acting Chairman, Commission (Mar. 12, 2001); Letter from Sarah A. Miller, Director, Center for Securities, Trusts, and Investments, American Bankers Association, to Laura S. Unger, Acting Chairman, Commission (Feb. 28, 2001).

[259] Letter from Melanie L. Fein, Counsel, Federated Investors, Inc., to Robert L. D. Colby, Deputy Director, and Catherine McGuire, Associate Director and Chief Counsel, Division of Market Regulation, Commission (Mar. 30, 2001).

[260] Letter from Melanie L. Fein to Robert L. D. Colby, Deputy Director, and Catherine McGuire, Associate Director and Chief Counsel, Division of Market Regulation, Commission (Mar. 13, 2001).

[261] Letter from Melanie L. Fein to Robert L. D. Colby, Deputy Director, and Catherine McGuire, Associate Director and Chief Counsel, Division of Market Regulation, Commission (Mar. 7, 2001).

[262] Letter from Scott M. Albinson, Managing Director, OTS, to Annette L. Nazareth, Director, Division of Market Regulation, Commission and Paul F. Roye, Director, Division of Investment Management, Commission (Mar. 20, 2001).

[263] Letter from Barry Harris, Chair, Bank Retail Broker-Dealer Committee, Securities Industry Association, to Laura S. Unger, Acting Chairman, Commission (Mar. 13, 2001); Letter from Senator Phil Gramm, U.S. Senate Committee on Banking, Housing, and Urban Affairs, to Arthur Levitt, Chairman, Commission (Feb. 6, 2001).

5, 3a4–6, 3a5–1, and the definition of trustee in Rule 3b–17, provide exemptive relief for certain practices or activities where we have determined that an exemption is consistent with the intent of a functional exception. Rules 15a–7 and 15a–8 provide additional exemptive relief to banks to give them sufficient time to adjust their securities activities to comply with the new regulatory scheme of the GLBA. Finally, Rule 15a–9, extends the banks' exceptions and exemptions from the definitions of ''broker'' and ''dealer'' to savings associations and savings banks.

Accordingly, these rules do not expand the obligations of banks under the new statutory definitions of ''broker'' and ''dealer.'' Rather, they provide guidance and relief to banks that have not previously been subject to our jurisdiction. They either clarify the Commission's interpretation of certain statutory definitions or provide exemptive relief from those definitions. In our view, the limited scope of the rules reduces the need for pre-issuance comment.

Finally, we note that these are interim rules. While the rules will become effective on May 11, 2001, we are interested in receiving written comments on the rules within 60 days after the date they are published in the **Federal Register**. We will carefully examine the comments that we receive, and we will revise or amend the rules as necessary in light of those comments.

Because of the immediate need for guidance on the GLBA amendments to the definitions of ''broker'' and ''dealer'' prior to the May 12, 2001 statutory effective date, the input we have received from the industry, the limited scope of the rules, and the fact that the rules are interim in nature, we find, consistent with the APA, that good cause exists to issue these interim final rules without notice and comment and without a delayed effective date.

Although we have dispensed with notice of proposed rulemaking for the reasons set out above, we are soliciting written comments on the rules within 60 days after their publication in the **Federal Register**. We will consider carefully those comments and make changes to the rules as necessary.

We seek comments on the interpretations and the exemptions set forth in this release. In addition to the requests for comments throughout the release, we seek comment on the following: (1) Whether these rules operate to regulate the banks' broker-dealer operations in the same manner as broker-dealers subject to our jurisdiction prior to the exclusion of a bank from the definition of a broker or dealer; and (2) whether the fiduciary principles triggered by these interim final rules create a standard of conduct or disclosure by banks to which other registered broker-dealers may not be subject. Commenters should also address whether there are any legal or policy reasons why the we should consider different approaches or exemptions, including but not limited to: (1) A description of the issue to be addressed; (2) a description of the necessity of any alternate approach suggested; and (3) a recommendation as to how to remedy the problem identified, if any, as well as the feasibility of adopting and enforcing such remedy. Commenters should, where possible, provide us with empirical data and/or describe specific actions the commenter would suggest we take.

B. Paperwork Reduction Act

These interim final rules do not impose recordkeeping or information collection requirements, or other collections of information that require approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Accordingly, the Paperwork Reduction Act does not apply.[264]

C. Consideration of Costs and Benefits

1. Introduction

When the broker-dealer registration provisions of the GLBA become effective, many banks will need to restructure aspects of their securities-related business to comply with the new statutory requirements.[265] The interim final rules, which will become effective May 11, 2001, define statutory terms and provide banks with conditional exemptions. While these rules may affect how the banks' restructuring occurs, we believe that most of the restructuring will stem from the statute and not from the rules themselves.

Moreover, the extent to which banks need to restructure may be limited by the way they already do business.[266] The majority of banks conduct most of their securities activities through registered broker-dealers that are already regulated by the Commission.[267] Indeed, in 1995, the General Accounting Office ''estimated that approximately 87 percent of all sales of securities on bank premises are effected by SEC-regulated broker-dealers.'' [268] The FDIC confirmed the findings of the GAO in 1997, explaining that very few banks sold securities directly using unregistered bank employees.[269]

In considering the potential costs and benefits of these interim final rules, we have considered the historical securities activities of banks, and how those activities have expanded in recent years. We also have considered the decisions many banks will face in determining how to best restructure their businesses to comply with the new requirements of the GLBA. Finally, we have identified specific costs and benefits, and requested comment on additional costs or benefits that may stem from these interim final rules.

[264] We would expect banks, as a matter of good business practice, to be able to demonstrate that they meet the terms of a particular exemption. We also note that Section 203 of the GLBA specifically requires the bank regulators to promulgate recordkeeping requirements. Banks affected by the GLBA should already be aware of these specific GLBA requirements. *See, e.g., ''Gramm-Leach-Bliley Deadlines Draw Near: Be Aware, Prepared''*, Information Access Company, Mar. 1, 2001 (noting that to comply with GLBA ''push-out'' provisions, or to fall within an exemption in the GLBA, banks must ''maintain records that will clearly indicate that the trust department securities activities fall within the exemptions. * * * While banking regulators will provide guidance on the nature any types of records they will ask banks to maintain, there are a few steps banks can take immediately to ensure compliance with the new rules.'').

[265] Banks had been excepted from the definitions of ''broker'' and ''dealer'' under the Exchange Act since 1934. Until recent years, banks' ability to engage in securities activities had been constrained by federal banking laws. As these constraints lessened, banks have engaged in a broader range of securities activities.

[266] Banks have had varying reasons for choosing to conduct securities activities through a separate entity. For example, some banks believed that their securities activities had greater marketing credibility with a registered securities sales force. Separation of these activities also permitted banks to pay bank and securities sales teams differential compensation. *See* John L. Douglas, *Banking Organizations: Structural and Other Considerations Involving Non-Banking Activities*, 1 N.C. Banking Inst. 59, March 1997 (giving reasons why certain activities may be moved outside of the bank, including ''compensation concerns may result in shifting highly commissioned salespeople out of the bank in order to avoid jealousies or salary complaints''); *see also* Michael G. Capatides, *A Guide to the Capital Markets Activities of Banks and Bank Holding Companies* (Mar. 1, 1993) at 154 (although banks may act as private placement agents directly, banks establish separate entities for ''operational convenience as well as the desire to develop an investment bank environment with a stand alone compensation plan'').

[267] *Reform Law Leaves Some Doubters*, Am. Banker, November 8, 2000 (noting that ''many banks and securities firms had already merged via regulatory loopholes.'')

[268] *See* U.S. General Accounting Office, Report to Congressional Requesters: *Bank Mutual Sales Practices and Regulatory Issues* GAO/GGD–95–210, at p. 52 (Sept. 1995); U.S. General Accounting Office, Report to Congressional Requesters: *Banks' Securities Activities—Oversight Differs Depending on Activity and Regulator*, GAO/GGD–95–214, at p. 25 (Sept. 1995).

[269] *See* Testimony of Andrew C. Hove, Jr., Acting Chairman, Federal Deposit Insurance Corporation on Financial Modernization Before the Subcommittee on Finance and Hazardous Materials, Committee on Commerce, United States House of Representatives, July 17, 1997, *supra* at note 187.

2. Banks' Securities Activities Before the GLBA

The Glass-Steagall Act, the Bank Holding Company Act and its 1970 amendment [270] restricted banks' ability to engage in many businesses, including the securities business.[271] As a result, commercial and investment banking [272] in the U.S. were separated for over 60 years.

The GLBA repealed Sections 20 and 32 of the Banking Act of 1933.[273] Section 20 forbade affiliations between commercial banks and securities firms that were ''engaged principally'' in the investment banking business.[274] Section 32 prohibited persons involved ''in any aspect of the investment banking business'' from serving as an officer, director, or employee of a bank that was a member of the Federal Reserve System.[275]

Prior to their repeal, however, these prohibitions had already eroded over time. In 1987, Section 20 of the Glass-Steagall Act was significantly liberalized, with the regulatory expansion of bank holding companies' abilities to underwrite corporate debt and equity through their registered broker-dealer affiliates (known as ''Section 20'' affiliates).[276] The Federal Reserve established a revenue test to determine if a Section 20 affiliate was ''engaged principally'' in underwriting and dealing.[277] That revenue test created an incentive for banks to shift permissible securities activities into affiliated broker-dealers.[278]

Commercial banks also benefited from using broker-dealers to effect securities transactions. Commercial banks entered the brokerage business by licensing operating subsidiaries as registered broker-dealers. In 1996, the OCC permitted national banks to own majority interests in certain operating subsidiaries that engaged in activities that were impermissible for national banks.[279] In the case of securities activities, these operating subsidiaries were required to register as broker-dealers.[280] Subsequent national bank operating subsidiary approvals included underwriting and dealing in municipal revenue bonds and corporate debt securities.[281]

We have studied aggregate data showing that, while banks' traditional activities (described as the financing of loans with deposits) have been declining, banks' non-traditional activities (described as fee-generating activities, including underwriting, cash management, and custody services) have been rising.[282] In addition to the bank securities activities described above, these non-traditional activities would include the provision of trust and investment services to high net worth individuals.[283]

In sum, banks today may engage in a wide range of securities activities arising from their roles as custodians of fiduciaries, as well as separately for a fee. Banks engage in these activities either directly or through affiliated broker-dealers. These activities include brokerage and dealing, as well as

[270] The Bank Holding Company Act is codified at 12 U.S.C. 1841 *et seq.*

[271] Congress placed a large amount of blame for the Great Depression on commercial banks' securities activities conducted through ''so-called bank securities 'affiliates.' '' As a result, Congress enacted the Glass-Steagall Act in an attempt to achieve the complete separation of commercial and investment banking. Jonathan R. Macey, *Special Interest Groups Legislation and the Judicial Function: The Dilemma of Glass-Steagall,* 33 Emory L.J. 1, 3 (Winter 1984).

[272] Section 16 is codified at 12 U.S.C. 24 (Seventh); Section 20 is codified at 12 U.S.C. 377; Section 21 is codified at 12 U.S.C. 378; and Section 32 is codified at 12 U.S.C. 78.

[273] Public Law 106–102, Section 101 repealing Section 20 (12 U.S.C. 377) and Section 32 (12 U.S.C. 78) of the Banking Act of 1933. The GLBA retains Sections 16 and 21 of the Banking Act of 1933. 12 U.S.C. 24 (Seventh); 12 U.S.C. 377. Section 16 prohibits national banks from underwriting, selling, or dealing in securities, except for certain bank-eligible securities such as U.S. government securities. *See*, 12 U.S.C. 24 (Seventh); *see also* 12 U.S.C. 335 at 5(c) (applying Glass-Steagall Act Section 16 restrictions to state-chartered banks in the Federal Reserve System). However, Section 16 excludes from its prohibitions securities transactions in which the bank acts as agent for its customers, considered agency activity. Under state law, insured state banks generally may act as agent for their customers although insured state banks are prohibited from engaging as principal in any activities that are not permissible for national banks unless the state banks comply with applicable capital standards and the FDIC has determined that the activity will not pose a significant risk to the appropriate insurance fund. Federal Deposition Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, Title III, Section 303, 12 U.S.C. 1831a. Section 21, also still in effect, prohibits investment banks from offering checking or savings accounts. 12 U.S.C. 378a.

[274] 12 U.S.C. 377. The Supreme Court interpreted the term ''engaged principally'' to mean that bank affiliates could engage in some ineligible activities so long as they were not the primary activities. *Board of Governors* v. *Agnew*, 329 U.S. 441, 447–49 (1947). The FDIC's interpretation that section 21 did not apply to subsidiaries of state nonmember banks and thus that these subsidiaries could engage in underwriting securities was upheld by the U. S. Court of Appeals for the D.C. Circuit in 1987. *Investment Company Institute* v. *FDIC*, 815 F.2d 1540 (D.C. Cir. 1987).

[275] 12 U.S.C. 78.

[276] The Federal Reserve initially approved bank holding company subsidiaries to underwrite municipal revenue bonds, mortgage related securities of investment quality on 1–4 family residential and large denomination commercial paper as long as the underwriting revenue from these activities did not exceed five percent of the subsidiary's gross revenue of average calculated on a two year period. *See* Orders Issued Under Section 4 of the Bank Holding Company Act, Citicorp, J.P. Morgan and Co. Inc., Bankers Trust New York Corp., Order Approving Applications to Engage in Limited Underwriting and Dealing in Certain Securities, 73 Fed. Res. Bull. 473, 485 (1987).

[277] As noted above, Section 20 prohibited a member bank from affiliating with a securities firm if the securities firm was ''principally engaged'' in underwriting and dealing.

[278] The revenue test distinguished between ''bank eligible'' securities (that is, securities that a bank itself would be allowed to underwrite or deal in) and ''bank ineligible'' securities. ''Bank eligible'' securities included government securities, as well as any securities issued in private placements. ''Bank ineligible'' securities were any securities that were not ''bank eligible.'' Under the test, a bank was permitted to affiliate with a securities firm as long as the securities firm did not derive more than 5% of its gross revenues from bank-ineligible securities. In 1989, the Federal Reserve raised this restriction to 10 percent of total revenues (and later increased it again, effective in 1997 to 25 percent), and increased the types of securities allowed to include debt securities, including sovereign debt securities, corporate debt, convertible debt securities, securities issued by a trust or other vehicle secured by or representing interests in debt obligations and equity securities. *See Review of Restrictions on Director, Officer and Employee Interlocks, Cross-Marketing Activities, and the Purchase and Sale of Financial Assets Between a Section 20 Subsidiary and an Affiliated Bank or Thrift*, 61 FR 57679, 57683 (Nov. 7, 1996); *see also* 75 Fed. Res. Bull. 192 (1989). Investment banking income derived from ''bank eligible securities,'' such as U.S. government securities and general obligation municipal bonds that banks were expressly allowed to deal in under section 16 of Glass-Steagall, were not counted as securities for the purpose of calculating the revenue limit. Riskless principal and private placement securities activities also were not deemed to be ''ineligible'' securities for these purposes. *Bankers Trust New York Corporation*, 75 Fed. Res. Bull. 829 (1989). Thus, under the test, the more gross revenue the Section 20 subsidiary derived from bank eligible securities, the more income they could also derive from bank ineligible securities. In other words, bank holding companies had an incentive to ensure that bank eligible securities activities were handled in a Section 20 broker-dealer subsidiary, rather than in the bank itself. *See generally Revenue Limit on Bank-Ineligible Activities of Subsidiaries of Bank Holding Companies Engaged in Underwriting and Dealing in Securities*, 61 FR 68750, 68752 (Dec. 30, 1996).

[279] 12 CFR 5.34, 61 FR 60342 (Nov. 27, 1996); Comptroller News Releases NR 96–129 (Nov. 20, 1996) (''Questions and Answers on Part 5''); NR 96–128 (Nov. 20, 1996) (''Part 5 Fact Sheet'').

[280] The exceptions from the Exchange Act definitions of ''broker'' and ''dealer'' are only available to the bank itself. *See supra* note 10, regarding current definitions of ''broker'' and ''dealer.''

[281] Comptroller Conditional Approval No. 262 (Dec. 11, 1997) (approval to Zion's First National Bank to engage through an operating subsidiary in underwriting and dealing in municipal revenue bonds); Comptroller Conditional Approval No. 331 (November 3, 1999) (approval to National Bank of Commerce to engage through an operating subsidiary in underwriting and dealing in corporate bonds, dealing in and privately placing trust preferred securities and buying and selling collateralized mortgage obligations).

[282] Economists describe the common characteristic of nontraditional activities as being that they produce fee income rather than interest income. Kevin Rogers and Joseph F. Sinkey, Jr., An Analysis of Nontraditional Activities at U.S. Commercial Banks, 1 Review of Financial Economics, Jan. 1, 1999, at 25. Commercial banks' non-interest income has risen from 30% in 1988 to 43% in 2000. FDIC, Trends in Commercial Bank Income and Expense 1988–2000 available at http://www2.fdic.gov/qbp/2000dec/ctrends.html.

[283] *Id.*

effecting private placements and riskless principal transactions.

Once the broker-dealer registration provisions of the GLBA become effective, banks that engage in the securities activities described above will need to determine whether they can continue to engage in those activities in the same way, or whether they will need to restructure their businesses to comply with the new statutory requirements. The interim final rules adopted today are designed to provide banks with guidance in this process. The new definitions should clarify the parameters of the new statutory exemptions from the definitions of broker and dealer. In addition, the interim final rules provide banks with additional specific exemptive relief.

As always, we are mindful of the costs imposed by our rules. We believe the rules are consistent with Congress's intent in enacting the GLBA. Congress determined that all securities activities should be functionally regulated to ensure investor protection, regardless of the entity in which the activities occur. Thus, the majority of regulatory costs arise from Congress's determination that amendment of the Exchange Act was necessary in light of the liberalization of banking laws, such as Glass-Steagall. Otherwise banks that engaged in underwriting corporate securities would be subject to a fragmented securities regulatory scheme.

Banks that fall outside the scope of one of the exceptions enumerated by Congress in amended Exchange Act Sections 3(a)(4) and 3(a)(5), as further refined through these interim final rules, may incur costs from the GLBA. Even banks that have existing relationships with registered broker-dealers may incur costs in connection with discrete lines of securities business that have nonetheless been conducted directly by those banks. These costs could relate to restructuring their business operations, to transferring their non-excepted securities business to registered broker-dealers, or to entering into networking arrangements with registered broker-dealers. As noted earlier, most of banks' securities activities are currently effected by SEC regulated broker-dealers. In the following section, we outline some of the choices banks may have in determining how they can best comply with the new requirements of the GLBA as well as the interim final rules.

3. Options for Compliance With the GLBA Under the Statute in Light of These Interim Final Rules

Banks will have a number of preliminary decisions [284] in determining how to comply with these interim final rules and the amended definitions of broker and dealer under the Exchange Act.[285] While most banks already conduct their securities activities through registered broker-dealers, the GLBA may require some banks to shift some securities activities formerly conducted internally to registered broker-dealers.

A bank that engages in securities activities that are not covered by an exception in the GLBA definitions of broker and dealer may choose to shift those activities to a registered broker-dealer. The registered broker-dealer could be a broker-dealer with which the bank already has a relationship. Alternatively, the bank could enter into a new relationship. One form of relationship could be contractual—that is, a bank could enter into a third-party brokerage arrangement with a registered broker-dealer. Alternatively, a bank could choose to register an affiliate as a broker-dealer.

If a bank registers a broker-dealer affiliate, the bank has additional choices. A banking group may register a broker-dealer affiliate that is a subsidiary of the bank holding company or a financial holding company. Alternatively, a bank may register a broker-dealer that is an operating or financial subsidiary of the bank. In all cases when a bank uses a registered broker-dealer, a bank may effect securities transactions using bank employees who also are associated persons of the registered broker-dealer.[286] Most non-bank registered broker-dealers must also become members of the Securities Investor Protection Corporation.[287]

As a final option, a bank that wishes to act as a broker-dealer may register with the Commission and with at least one SRO. To begin the registration process, a broker-dealer completes the uniform form for broker-dealer registration, Form BD. The completed Form BD is submitted to the Central Registration Depository (CRD), which is operated by the NASD. Broker-dealers seeking to become members of the NASD must also provide certain information. This includes a detailed business plan, as well as descriptions of their financial controls, their communications and operational systems, their supervisory systems and written procedures, their recordkeeping systems, and their continuing education plans. The NASD conducts in-person membership interviews with all applicants. Approval for membership with the NASD is contingent upon the submission of a written membership agreement. Broker-dealers also must register their personnel. Registration of personnel is accomplished by submitting a Form U–4 and a fingerprint card. Registered personnel also need to successfully complete qualification examinations. We believe, however, that most banks will not utilize this final alternative, finding it impracticable due to the disparate capital and customer protection regulatory requirements [288] applicable to banks and securities firms, including employment prohibitions.[289]

[284] Banking and Financial Services Policy Report, Volume 19 (Oct. 2000), ''Banks as Securities Lending Agents: To Register or Not as a Broker'' (discussing decisions to be made by bank upon determination of GLBA to banks' own securities activities).

[285] Barbara A. Rehm, *No Merger Wave, But Money Saved*, The American Banker, Nov. 7, 2000, at 1, noted that most banks would continue to do business as usual, except that the bank, would no longer require specific ''loopholes to sell insurance or underwrite securities.'' The article further noted that the biggest change for the banking industry was ''it put an end to 20 years of battling over who could do what.''

[286] Broker-dealers may also have to register with the states in which they do business.

[287] The Securities Investor Protection Act of 1970 created the Securities Investor Protection Corporation (SIPC). 15 U.S.C. 78aaa, *et seq.* SIPC is a nonprofit membership corporation funded by its member securities broker-dealers. Most broker-dealers (excluding broker-dealers whose business is limited to the following: Distributing shares of mutual funds, selling variable annuities, providing investment advice, or selling United States Government securities) registered with the Commission are automatically members of SIPC. SIPC provide investors with certain protections in the event of a bankruptcy or loss of securities by a broker-dealer.

[288] For unsecured receivables, such as a commercial loan, a bank is generally required to reserve an amount of capital equal to as much as 8% of the loan amount. In contrast, a broker-dealer would be required to reserve an amount of capital equal to 100% of unsecured loan. For certain fully secured loans, such as a margin loan, a bank would be required to reserve as capital up to 8% of the loan. A broker-dealer, however, would not be required to reserve capital for the loan, provided the account meets regulatory margin requirements. To remain in capital compliance, a bank registered as a broker-dealer would need to meet the greater of the banking or securities regulatory capital requirements for credit risk. Also, the customer protection rule applicable to broker-dealers that requires customer assets to be held separately from proprietary assets would be virtually impossible for a bank to comply with it if it accepts customer deposits (the core business of commercial banking). Therefore, in most cases, it would be prohibitively expensive for a bank to engage in traditional banking activity, such as unsecured lending, and for a broker-dealer to conduct traditional securities activities, such as extending margin loans.

[289] Dual employees who are registered representatives for a bank have certain obligations created by SRO rules. For example, transactions for bank customers must comply with NASD Rule 3040

We, therefore, expect that most banks will either enter into networking arrangements or create broker-dealer affiliates.

We are setting forth below additional benefits and costs that we believe arise from the promulgation of these interim final rules. We note, however, that due to the multitude of banking charters that distinguish a ''trust bank'' from a ''commercial bank'' from a ''savings and loan,'' we have delegated authority to the Division of Market Regulation to consider and to process a bank's or savings and loan's request for additional relief not encompassed within either these interim final rules or the GLBA.

a. Benefits. We believe that these interim final rules will provide legal certainty for banks in connection with their determination of whether they meet the terms and conditions for an exception to the definitions of broker and dealer under the Exchange Act. By adopting specific objective criteria, with particular dollar limitations, business activities, and time conditions, we have provided banks with a basis to assess accurately if and when they may need to register as broker-dealers.

As discussed earlier, the GLBA replaced the general exception for banks from the definitions of broker and dealer with specific functional exceptions for certain bank securities activities. These interim final rules clarify exceptions to these amended definitions by defining key terms used in the new functional exceptions.

Moreover, Rules 3a4–2, 3a4–3, 3a4–4, 3a4–5, 3a4–6, and the definition of trustee in Rule 3b–17 provide targeted exemptions for certain banks from these new definitions of broker and dealer. Banks that meet the provisions of those exemptions need not transfer their non-excepted securities business to registered broker-dealers.

Rule 15a–7 extends the date for banks to comply with the requirements of the exceptions. This alleviates the need for banks to apply individually to us for specific relief. To promote certainty in commercial markets as to the legal validity of contracts, Rule 15a–8 conditionally exempts banks temporarily from risk of rescission rights under Exchange Act Section 29. Finally, new Rule 15a–9 exempts savings associations and savings banks from the terms ''broker'' and ''dealer'' under Exchange Act Sections 3(a)(4) and 3(a)(5) on the same terms and conditions that apply to banks.

These interim final rules were written in response to requests from the banking industry for guidance. By clarifying terms in the GLBA, these interim final rules provide legal certainty to banks seeking to conform their business activities to the exceptions from the definitions of broker and dealer. This, in turn, will assist banks in planning their ongoing business operations. In the event they need additional time, we have provided temporary exemptions from compliance with the new terms.

These interim final rules, including the temporary exemptions from registration as a broker-dealer and the temporary exemption from liability under Section 29 for banks that would have been required to register as a broker-dealer, will enable banks to plan and structure their business operations to fully comply with the statute. This latter exemption, in particular, will eliminate costs that banks might have otherwise incurred from actions to rescind securities transactions during the transition to compliance with the new GLBA requirements.

In addition, Rules 3a4–2, 3a4–3, 3a4–4, 3a4–5, 3a4–6, 3a5–1, and the definition of trustee capacity in Rule 3b–17 exclude certain bank activities from the scope of the GLBA's amended definition of broker-dealer. They, therefore, provide relief to banks from potential costs they might incur in registering as a broker-dealer, registering an affiliate as a broker-dealer, or entering into a third-party brokerage arrangement with a broker-dealer. These costs could include engaging securities counsel, registering as a broker-dealer, paying personnel to study for and pass applicable securities examinations, and joining a SRO. Indeed, Rules 3b–17 and 3b–18, and the four limited exemptions, clarify the permissible activities in which banks may engage without triggering the statutory requirement to register as a broker or dealer under the Exchange Act after May 12, 2001. As noted earlier, most of banks' securities business is currently effected through SEC-registered broker-dealers. Consequently, we do not anticipate that banks will derive a large benefit from this rulemaking in relation to their current securities business.

However, failure to adopt these interim final rules could result in additional costs. Without the certainty and uniformity these interim final rules provide, banks would have more difficulty planning and operating their existing businesses in compliance with the GLBA. This, in turn, could result in disruption of their securities business. In addition, banks could be subject to regulatory costs if their activities were later determined to fall outside of the scope of the GLBA's exceptions.

In addition, the extension of time in Rule 15a–7, and exemptions in Rules 3a4–2, 3a4–3, 3a4–4, 3a4–5, 3a4–6, 3a5–1, and the definition of trustee capacity in Rule 3b–17 benefit banks that may not otherwise be able to comply with the statutory deadline of GLBA. Most banks that need additional time to restructure their operations may rely on these temporary exemptions and not need to seek individual relief from our staff. Banks seeking individual relief may request a specific exemption from us.

b. Costs. We believe that, regardless of how a bank chooses to comply with the GLBA in light of these interim final rules, it will likely incur certain costs. We believe, however, that almost all of these costs will be necessary because of the statutory change and not because of the interim final rules.

Interim final Rules 3b–17 and 3b–18 are intended to clarify the meanings of certain terms in the exceptions to the definitions of broker and dealer, as amended by the GLBA. Although they are not intended to impose costs on any market participant, we expect that some banks may experience some *de minimis* costs from the determination of how to best comply with the GLBA. In ascertaining this *de minimis* impact, we reviewed the number of banks that are already heavily involved in securities-related activities.

Some banks seeking to meet the exceptions to broker-dealer registration could incur *de minimis* administrative costs. For instance, Rule 3b–17 provides an objective test for determining whether a bank is ''chiefly compensated'' through securities activities as excepted by Exchange Act Section 3(a)(4)(B)(ii). Banks seeking to qualify for this particular exception will need to undertake a financial accounting review to determine their compliance with this objective compensation test. Some banks may already keep and analyze the data required to perform this analysis in accordance with their customary audit and reporting procedures under applicable banking regulations. It is possible, however, that some banks may

that restricts the ability of any person associated with a member to participate in a ''private securities transaction,'' which is defined as ''any securities transactions outside the regular course or scope of an associated person's employment with a member,'' subject to limited exceptions. NASD Rule 3040 requires broker-dealers to review all transactions in which a registered representative participates, including transactions where the registered representative acts as an investment adviser. The registered broker-dealer must develop and maintain a record keeping system ''to enable the member to properly supervise the RR/IA by aiding the member's understanding of the nature of the service provided by an RR/IA, the scope of the RR/IA's authority, and the suitability of the transactions. NASD Notice to Members 96–33.

need to supplement their existing accounting or financial procedures and activities to perform this calculation on an annual basis. Moreover, some banks may incur similar costs in calculating compensation on an account-by-account basis.

Banks also may need to make limited software changes to make the ''chiefly compensated'' calculation.[290] Because of the differences in banks' existing computer systems, the types of account information resident in those systems, and the range of ways in which they may choose to alter those systems, we cannot estimate this cost with specificity. We believe, however, that the costs of computer alterations could include the cost of purchasing new computer hardware, as well as new computer software. Banks also could incur the costs of personnel time to re-program software. As noted previously, almost all of these costs arise from the functional regulation mandated by the GLBA and not from these interim final rules.

We also expect that many banks may incur costs for legal and other professional accounting review. Many banks will utilize their in-house counsel, accountants, and compliance officers. Banks that have provided cost information have estimated their in-house legal resources to range from $75.00 to $125.00 an hour as a composite rate based upon the yearly salary of in-house counsel. Estimates of legal counsel review time include the hours spent by in-house counsel on review and compliance with the GLBA. Discussions with banks offering services impacted by the GLBA indicate that some banks have estimated the review time of attorneys to fall within the range of 30 to 60 hours. We expect that most banks affected by the functional regulation provisions of the GLBA will either use in-house counsel or bank officers for this review. We believe that most of these costs arise from the requirements of GLBA rather than from our interim final rules.

Some banks may choose to utilize outside counsel, either exclusively or as a supplement to in-house resources. We estimate these costs as the high end of the in-house range.

If a bank affiliates with a registered broker-dealer or enters into a third-party brokerage arrangement, it may also incur certain other costs. In making these changes, the costs arise from the statutory language of the GLBA, which removed the exception banks had for certain securities operations. These costs could include, for example, the cost of training, examining, and licensing associated persons of the bank as registered representatives of the broker-dealer. In addition, banks may incur additional expenses to establish a relationship with a broker-dealer or to inform their customers of their changes in operating procedures. Since most banks operate their securities related business through broker-dealers registered with us, we believe that these costs, if any, would be quite small.

We request comments on the costs and benefits of the interim final rules, and ask commenters to provide supporting empirical data for any positions advanced. Commenters should address in particular whether any of the new rules will generate the anticipated benefits or impose any costs on investors, banks, registered broker-dealers or other market participants. As always, commenters are specifically invited to share quantifiable costs and benefits.

D. Consideration of Burden on Competition, and on Promotion of Efficiency, Competition, and Capital Formation

In accordance with our responsibilities under Section 3(f) of the Exchange Act, we have considered both the protection of investors and whether the interim final rules will promote efficiency, competition, and capital formation in determining whether they are consistent with the public interest.[291] In addition, Section 23(a)(2) of the Exchange Act [292] requires us, in adopting rules under the Exchange Act, to consider the anticompetitive effects of such rules, if any, and to refrain from adopting a rule that will impose a burden on competition not necessary or appropriate in furthering the purpose of the Exchange Act.

We do not believe that the interpretations, definitions, and exemptions will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act or Congress's intent to impose functional regulation upon banks that conduct a brokerage business outside a statutory exception in the GLBA. These interim final rules define terms in the statutory exceptions to the definitions of broker and dealer added to the Exchange Act by Congress in the GLBA, and provide guidance to banks as to the appropriate scope of those exceptions. These interim final rules, therefore, do not impose any additional competitive burdens on banks engaging in a securities business, other than those imposed through by Congress through functional regulation in the GLBA.

The conditional exemptions from broker-dealer registration granted through these interim final rules permit banks more time to fully comply with the statutory requirements of GLBA and therefore do not impose any burden on banks seeking to avail themselves of those limited exemptions.

We do not believe that the new definitional rules will adversely affect capital formation. Nothing in the interim final rules is intended to adversely affect banks' compliance with the GLBA. Banks that alter their securities-related activities in accordance with the GLBA will continue to be able to provide securities services to their customers. In enacting the GLBA, Congress determined that functional regulation was appropriate—that is, when a bank was conducting a securities business outside of the enumerated exceptions, that bank should be registered as a broker-dealer. In the interest of protecting the public and ensuring orderly markets, Congress determined that banks, with a broad securities business, should be subject to the same regulatory oversight as broker-dealers conducting the same types of activities. These interim final rules promote Congress' intent.

Since these interim final rules define statutory exceptions mandated by Congress and provide temporary exemptive relief for banks unable to comply with certain of the exceptions by the effective date of GLBA, we do not believe that the rules impose any extra-statutory adverse effects on efficiency, competition, or capital formation.[293] Once Congress passed the GLBA, Congress determined that regulation of banks conducting a securities operation outside of certain exceptions was necessary and appropriate and in the public interest.

We are, however, interested in receiving comments regarding the effect of these interim final rules on efficiency, competition, and capital formation. We will consider those comments in making

[290] Depending on the number of accounts in the bank, the accounts affected by the definition of ''chiefly compensated,'' and the number of accounts resident, a bank may need to customize its computer software to match the bank's specific accounts and data.

[291] 15 U.S.C. 78c(f).

[292] 15 U.S.C. 78w(a)(2).

[293] Indeed, these rules actually enhance competition by providing relief to savings associations and savings banks as well as ''commercial banks.'' Letter from Scott M. Albinson, Managing Director, OTS, to Annette L. Nazareth, Director, Division of Market Regulation, Commission and Paul F. Roye, Director, Division of Investment Management, Commission (Mar. 20, 2001).

any changes to the interim final rules as necessary.

We also solicit comment on the potential effect of these interim final rules on the U.S. economy on an annual basis. Commenters are requested to provide empirical data to support their views.

E. Summary of Regulatory Flexibility Analysis

We have prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with the Regulatory Flexibility Act (''RFA'') [294] regarding the interim final rules under the Exchange Act that define certain terms in the GLBA's amendments to Sections 3(a)(4) and 3(a)(5) of the Exchange Act and provide exemptions from broker-dealer registration for certain banks and savings and loan associations.[295] The following summarizes the IRFA:

Rules 3b–17 and 3b–18 are intended to provide banks with guidance on how to interpret the exceptions to the definitions of broker and dealer in Sections 3(a)(4) and 3(a)(5) of the Exchange Act. This guidance is intended to assist banks in structuring their securities activities so as to continue to fit within the exceptions for their securities activities, as well as to provide more certainty as to when broker-dealer registration would be required if they choose to engage in more extensive securities activities. Rule 15a–7 provides certain limited time periods for banks to determine whether they should register as broker-dealers or restructure certain of their securities activities so as to continue to be exempted from registration. Rule 15a–8 temporarily exempts banks from liability under Exchange Act Section 29 by providing that no contract into which a bank enters before January 1, 2003 will be void or considered voidable because the bank violates the registration requirements of Exchange Act Section 15(a) or any rule under the Exchange Act based solely on the bank's status as a broker-dealer. New Rules 3a4–2, 3a4–3, 3a4–4, 3a4–5, 3a4–6, 3a5–1, and the definition of trustee capacity in Rule 3b–17 provide exemptive relief that permits banks that meet the conditions in the exemptions to continue to effect brokerage transactions for customers in specified circumstances without registering as broker-dealers under the Exchange Act.

Specifically, Rules 3a4–2 and 3a4–3 provide that, under certain conditions, banks will not be deemed to be brokers under the trust and fiduciary activities exception if the bank fails to satisfy the compensation requirement, as long as the bank complies with the other requirements of the exception. Rule 3a4–4 conditionally exempts small banks effecting transactions in investment company securities for tax-deferred custody accounts. Rule 3a4–5 conditionally exempts banks effecting transactions in securities for tax-deferred custody accounts. Rule 3a4–6 permits banks to process transactions in investment company securities through the NSCC's Mutual Fund Services, including Fund/SERV. Rule 3a5–1 provides that a bank will not be considered a dealer if it engages in riskless principal transactions as long as the number of those transactions, combined with any agency transactions effected by the bank, is less than 500. The definition of trustee capacity makes clear that banks acting as indenture trustees and trustees for tax-deferred ERISA and IRA accounts will be eligible for the trustee exception if they meet its requirements.

Some banks affected by these interim final rules would fall under the definition of small entities for purposes of the Regulatory Flexibility Act (''RFA''). As discussed more fully in the IRFA, unlike for broker-dealers and other entities that historically have been subject to our jurisdiction, we do not have a definition of ''small entity bank'' for purposes of the RFA. The banking regulators have defined small entities for purposes of the RFA to include banks with less than $100 million in assets.[296] For purposes of this analysis, we have used the banking regulators' definition of small entity. According to information from the FDIC, there are approximately 8,375 FDIC-insured commercial banks; of these, 4,922 are small entity banks with less than $100 million in assets.[297] As explained more fully below, one of the interim final rules provides only small entity banks with an exception from the definition of broker. All of the other rules apply equally to all banks. Thus, all banks could be affected by the interim final rules.

The clarification of statutory terms set out in Rules 3b–17 and 3b–18 provide additional guidance to all banks in connection with their determination of whether they fall within the terms and conditions for the exceptions to the definitions of broker and dealer under the Exchange Act as amended by the GLBA. These interim final rules provide uniform definitions that will enable banks to accurately assess whether they are subject to our jurisdiction. The extensions of time in Rule 15a–7 give limited relief to certain banks that cannot comply with the GLBA provisions by the statutory effective date of May 12, 2001.

In addition, Rules 3a4–2, 3a4–3, 3a4–4, 3a4–5, 3a5–1, and the definition of trustee capacity in Rule 3b–17 provide exemptions from the definitions of broker and dealer under the amended Exchange Act. Rule 3a4–4 benefits small entity banks that may not readily have access (through affiliation or otherwise) to a registered broker or dealer to establish a networking arrangement meeting the criteria of the GLBA, and that maintain custody accounts for the convenience of their customers. Under this interim final rule, small banks may engage in minor securities transaction activities as an accommodation to their customers in limited circumstances and still fall outside of the definition of broker under the Exchange Act.

Rules 3a4–2, 3a4–3, 3a4–4, 3a4–6, 3a5–1 and the definition of trustee capacity in Rule 3b–17 are not limited to small entity banks, but rather exempt all banks. Rules 3a4–2 and 3a4–3 are discussed above. The definition of trustee capacity makes clear that banks acting as indenture trustees and trustees for tax-deferred ERISA and IRA accounts will be eligible for the trustee exception if they meet the other requirements of the trust and fiduciary activities exception.

As definitional and exemptive rules, the interim final rules should not have a significant regulatory impact on banks, including small entity banks. Moreover, we do not anticipate that the rules will impose any additional recordkeeping requirements on banks other than recordkeeping currently required under

[294] 5 U.S.C. 601 *et seq. See also* 5 U.S.C. 603 (requiring the preparation of an IRFA).

[295] Although the requirements of the RFA are not applicable to rules adopted under the Administrative Procedures Act's good cause exception, *see* 5 U.S.C. 601(2) (defining ''rule'' and notice requirements under the APA), we nevertheless prepared an Initial Regulatory Flexibility Analysis because we may supplant the interim final rules with final rules.

[296] *See* Joint Release of the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency and Office of Thrift Supervision, ''Interagency Guidelines Establishing Standards for Safeguarding Customer Information and Rescission of Year 2000 Standards for Safety and Soundness,'' 65 FR 39471 (June 26, 2000).

[297] *See* FDIC, Statistics on Banking, available at http://www.fdic/gov/bank/statistical/statistics/0009/cbrc01a.html. There may be additional banks that fall within the Exchange Act's definition of ''bank'' under Section 3(a)(6) that may be subject to GLBA that are not reflected in these figures. For example, U.S.-licensed branches and agencies of foreign banks may not be included in the FDIC's tally because they typically are not insured. Nevertheless, we do not believe that any such omissions are material to the analysis set forth in the IRFA.

applicable banking statutes and regulations.

As described in the IRFA, we have considered and will continue to consider alternatives to the interim final rules that would accomplish our stated objectives. These objectives are to implement the Congressional requirement to provide for functional regulation of securities activities, to provide banks with clear guidance on whether they are subject to broker-dealer registration, and to provide exemptive relief to banks that require additional time to restructure their business operations to comply with the GLBA.

Congress did not exempt small entity banks from the application of the GLBA. Because the interim final rules are intended to provide guidance to all banks that are subject to the GBLA, it would not be appropriate to exempt small entity banks from operation of these interim final rules. Nevertheless, because we recognize that small banks may not have established networking relationships with broker-dealers for purposes of the GLBA amendments, we have provided an exemption for small entities that maintain custody accounts through Rule 3a4–4.

Because Rules 3b–17 and 3b–18 are definitional and clarify the securities-related activities in which banks may engage without registering as broker-dealers, these interim final rules must apply to all banks engaged in securities brokerage activities. Accordingly, providing different compliance and reporting requirements under, or exemptions from any of the requirements pursuant to, these rules for small entities would not be practicable or promote the purposes of functional regulation adopted by Congress.

The new interim final rules and exemptions provide banks with more legal certainty and additional flexibility in determining how to structure their operations to comply with the provisions of the GLBA. This flexibility benefits all banks, including small entity banks, that wish to continue to provide securities activities without being required to shift those securities activities to registered broker-dealers.

As noted in the IRFA, we encourage the submission of written comments with respect to any aspect of the IRFA. Comment is specifically is requested on the costs of compliance with these rules and suggested alternatives that would accomplish the objectives of these rules. Comments received will be considered in the preparation, if required, of a Final Regulatory Flexibility Analysis.

A copy of the IRFA may be obtained from Nancy Appel, Attorney, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001; (202) 942–0073.

XI. Statutory Authority

The Commission is amending Title 17, Chapter II of the Code of Federal Regulations by amending Section 200.30–3, and by adding, as interim final rules, Rules 3a4–2, 3a4–3, 3a4–4, 3a4–5, 3a4–6, 3a5–1, 3b–17, 3b–18, 15a–7, 15a–8, and 15a–9 [Sections 240.3a4–2, 240.3a4–3, 240.3a4–4, 240.3a4–5, 240.3a4–6, 240.3a5–1, 240.3b–17, 240.3b–18, 240.15a–7, 240.15a–8, and 240.15a–9, respectively] pursuant to authority set forth in Sections 3(b), 15, 23(a), and 36 of the Exchange Act (15 U.S.C. 78c(b), 78o, 78w(a), and 78mm, respectively).

XII. Text of Rules and Rule Amendments

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

17 CFR Part 240

Broker-dealers, Reporting and recordkeeping requirements, Securities.

Text of Amendment

For the reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

1. The authority citation for Part 200, subpart A, continues to read, in part, as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. Section 200.30–3 is amended by adding paragraph (a)(72) to read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(72) Pursuant to Sections 15(a)(2) and 36 of the Act (15 U.S.C. 78o(a)(2) and 78mm), to review and, either unconditionally or on specified terms and conditions, to grant or deny exemptions to any bank, savings association, or savings bank from the broker-dealer registration requirements of Section 15(a)(1) of the Act (15 U.S.C. 78o(a)(1)) or any applicable provision of this Act (15 U.S.C. 78c *et seq.*) and the rules and regulations thereunder based solely on such bank's, savings association's, or savings bank's status as a broker or dealer.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

4. Sections 240.3a4–2, 240.3a4–3, 240.3a4–4, 240.3a4–5, and 240.3a4–6 are added to read as follows:

§ 240.3a4–2 Exemption from the definition of ''broker'' for bank calculating compensation for effecting transactions in fiduciary accounts.

(a) A bank that meets the conditions for exception from the definition of the term ''broker'' under Section 3(a)(4)(B)(ii) of the Act (15 U.S.C. 78c(a)(4)(B)(ii)), except for the ''chiefly compensated'' condition in Section 3(a)(4)(B)(ii)(I) of the Act (15 U.S.C. 78c(a)(4)(B)(ii)(I)), is exempt from the definition of the term ''broker'' under Section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)) solely for effecting transactions in securities pursuant to Section 3(a)(4)(B)(ii) of the Act (15 U.S.C. 78c(a)(4)(B)(ii)) if:

(1) The bank can demonstrate that sales compensation, as defined in § 240.3b–17(j), received during the immediately preceding year is less than 10% of the total amount of relationship compensation, as defined in § 240.3b–17(i), received during that year;

(2) The bank maintains procedures reasonably designed to ensure compliance with the ''chiefly compensated'' condition in Section 3(a)(4)(B)(ii)(I) of the Act (15 U.S.C. 78c(a)(4)(B)(ii)(I)) with respect to a trust or fiduciary account:

(i) When the account is opened;

(ii) When the compensation arrangement for the account is changed; and

(iii) When sales compensation, as defined in § 240.3b–17, received from the account is reviewed by the bank for

purposes of determining an employee's compensation; and

(3) The bank complies with Section 3(a)(4)(C) of the Act (15 U.S.C. 78c(a)(4)(C)).

(b) For purposes of this section, the term *year* means either a calendar year or other fiscal year consistently used by the bank for recordkeeping and reporting purposes.

§ 240.3a4–3 Exemption from the definition of ''broker'' for bank effecting transactions as an indenture trustee in a no-load money market fund.

A bank that meets the conditions for exception from the definition of the term ''broker'' under Section 3(a)(4)(B)(ii) of the Act (15 U.S.C. 78c(a)(4)(B)(ii)), except for the ''chiefly compensated'' condition in Section 3(a)(4)(B)(ii)(I) of the Act (15 U.S.C. 78c(a)(4)(B)(ii)(I)), is exempt from the definition of the term ''broker'' under Section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)) solely for effecting transactions as an indenture trustee in a no-load money market fund, as defined in § 240.3b–17(f) and § 240.3b–17(e), respectively.

§ 240.3a4–4 Exemption from the definition of ''broker'' for small bank effecting transactions in investment company securities in a tax-deferred custody account.

(a) A small bank is exempt from the definition of the term ''broker'' under Section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)) solely for effecting transactions in securities of an open-end management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) in a tax-deferred account for which the bank acts as custodian under Section 3(a)(4)(B)(viii) of the Act (15 U.S.C. 78c(a)(4)(B)(viii)) if:

(1) The bank is not associated with a broker or dealer and does not have an arrangement with a broker or dealer to effect transactions in securities for the bank's customers;

(2) Any bank employee effecting such transactions:

(i) Is not an associated person of a broker or dealer;

(ii) Primarily performs duties for the bank other than effecting transactions in securities for customers; and

(iii) Does not receive compensation for such transactions from the bank, the executing broker or dealer, or any other person related to:

(A) The size, value, or completion of any securities transaction;

(B) The amount of securities-related assets gathered; or

(C) The size or value of any customer's securities account;

(3) The bank complies with Section 3(a)(4)(C) of the Act (15 U.S.C. 78c(a)(4)(C));

(4) The bank makes available to the tax-deferred account the securities of investment companies that are not affiliated persons, as defined in Section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3)), of the bank and that have similar characteristics to the securities of investment companies made available that are affiliated persons;

(5) The bank does not solicit securities transactions except through the following activities:

(i) Delivering advertising and sales literature for the security that is prepared by the registered broker-dealer that is the principal underwriter of an open-end management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), or prepared by an open-end management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) that is not an affiliated person, as defined in Section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3)), of the bank;

(ii) Responding to inquiries of a potential purchaser in a communication initiated by the potential purchaser; provided, however, that the content of such responses is limited to information contained in a registration statement for the security of an investment company filed under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) or sales literature prepared by the investment company security's principal underwriter that is a registered broker-dealer;

(iii) Advertising of trust activities, if any, permitted under Section 3(a)(4)(B)(ii)(II) of the Act (15 U.S.C. 78c(a)(4)(B)(ii)(II)); or

(iv) Notifying its existing customers that it accepts orders for investment company securities in conjunction with solicitations related to its other activities concerning tax-deferred accounts; and

(6) The bank's annual compensation related to effecting transactions in securities pursuant to this exemption is less than 3% of its annual revenue.

(b) *Definitions.* For purposes of this section:

(1) The phrase *compensation related to effecting transactions in securities pursuant to this exemption* means the total annual compensation received for effecting transactions in securities pursuant to this exemption, including fees received from investment companies for distribution.

(2) The term *networking arrangement* means a contractual or other written arrangement with a broker or dealer to effect transactions in securities for the bank's customers.

(3) The term *principal underwriter* has the meaning given in Section 2(a)(29) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(29)).

(4) The term *revenue* means the total annual net interest income and noninterest income from the bank's most recent Consolidated Reports of Condition and Income (Call Reports) or any successor forms the bank is required to file by its appropriate Federal banking agency (as defined in Section 3 of the FDIA (12 U.S.C. 1813).

(5) (i) The term *small bank* means a bank that:

(A) Had less than $100 million in assets as of December 31 of both of the prior two calendar years; and

(B) Is not, and since December 31 of the third prior calendar year has not been, an affiliate of a bank holding company or a financial holding company that as of December 31 of both of the prior two calendar years had consolidated assets of more than $1 billion.

(ii) For purposes of this paragraph (b)(5) the terms *affiliate, bank holding company,* and *financial holding company* have the same meanings as given in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*).

(6) The term *tax-deferred account* means those accounts described in Sections 401(a), 403, 408, and 408A under Subchapter D and in Section 457 under Subchapter E of the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*).

§ 240.3a4–5 Exemption from the definition of ''broker'' for banks effecting transactions in securities in a custody account.

(a) A bank is exempt from the definition of the term ''broker'' under Section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)) solely for effecting transactions in securities in an account for which the bank acts as custodian under Section 3(a)(4)(B)(viii) of the Act (15 U.S.C. 78c(a)(4)(B)(viii)) if:

(1) The bank does not directly or indirectly receive any compensation for effecting such transactions;

(2) Any bank employee effecting such transactions:

(i) Is not an associated person of a broker or dealer;

(ii) Primarily performs duties for the bank other than effecting transactions in securities for customers;

(iii) Does not receive compensation for such transactions related to:

(A) The size, value, or completion of any securities transaction;

(B) The amount of securities-related assets gathered; or

(C) The size or value of any customer's securities account; and

(iv) Does not receive compensation for the referral of any customer to the broker or dealer;

(3) The bank complies with Section 3(a)(4)(C) of the Act (15 U.S.C. 78c(a)(4)(C));

(4) The bank makes available to the account the securities of investment companies with similar characteristics that are not affiliated persons, as defined in Section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3)), of the bank, if the bank makes available the securities of investment companies that are affiliated persons, as defined in Section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3)); and

(5) The bank does not solicit securities transactions except through the following activities:

(i) Delivering advertising and sales literature for the security that is prepared by the registered broker-dealer that is the principal underwriter of an investment company, or prepared by an investment company that is not an affiliated person, as defined in Section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3)), of the bank;

(ii) Responding to inquiries of a potential purchaser in a communication initiated by the potential purchaser of the security; provided, however, that the content of such responses is limited to information contained in a registration statement for the security filed under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) or sales literature prepared by the principal underwriter that is a registered broker-dealer;

(iii) Advertising of trust activities, if any, permitted under Section 3(a)(4)(B)(ii)(II) of the Act (15 U.S.C. 78c(a)(4)(B)(ii)(II)); and

(iv) Notifying its existing customers that it accepts orders for securities in conjunction with solicitations related to its other custody activities.

(b) For purposes of this section, the term *principal underwriter* has the meaning given in Section 2(a)(29) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(29)).

§ 240.3a4–6 Exemption from the definition of ''broker'' for banks that execute transactions in investment company securities through NSCC Mutual Fund Services.

A bank that meets the conditions for an exception or exemption from the definition of the term ''broker,'' except for the condition in Section 3(a)(4)(C)(i) of the Act (15 U.S.C. 78c(a)(4)(C)(i)), is exempt from such condition solely for transactions in investment company securities effected through the National Securities Clearing Corporation's Mutual Fund Services.

5. Section 240.3a5–1 is added to read as follows:

§ 240.3a5–1 Exemption from the definition of ''dealer'' for bank engaged in riskless principal transactions.

(a) A bank is exempt from the definition of the term ''dealer'' solely for engaging in riskless principal transactions if the number of such riskless principal transactions during a calendar year combined with transactions in which the bank is acting as an agent for a customer pursuant to Section 3(a)(4)(B)(xi) of the Act (15 U.S.C. 78c(a)(4)(B)(xi)) during that same year do not exceed 500 transactions.

(b) For purposes of the 500-transaction limit in paragraph (a) of this section, a riskless principal transaction counts as:

(1) Two transactions if neither transaction comprising the riskless principal transaction is with a broker or dealer; or

(2) One transaction if either transaction comprising the riskless principal transaction is with a broker or dealer.

(c) For purposes of this section, the term *riskless principal transaction* means a transaction in which, after having received an order to buy from a customer, the bank purchased the security from another person to offset a contemporaneous sale to such customer or, after having received an order to sell from a customer, the bank sold the security to another person to offset a contemporaneous purchase from such customer.

6. Sections 240.3b–17 and 240.3b–18 are added to read as follows:

§ 240.3b–17 Definitions of terms used in Section 3(a)(4) of the Act.

For purposes of Section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)):

(a) The term *chiefly compensated* means that the ''relationship compensation'' received by a bank from a trust or fiduciary account exceeds the ''sales compensation'' received by the bank from such account during the immediately preceding year, which is either a calendar year or other fiscal year consistently used by the bank for recordkeeping and reporting purposes.

(b) The term *flat or capped per order processing fee equal to not more than the cost incurred by the bank in connection with executing securities transactions for trustee and fiduciary customers* means a fee that is no more than the amount a broker-dealer charged the bank for executing the transaction, plus the costs of any resources of the bank that are exclusively dedicated to transaction execution, comparison, and settlement for trust and fiduciary customers.

(c) The term *indenture trustee* means any trustee for an indenture to which the definition given in Section 303 of the Trust Indenture Act of 1939 (15 U.S.C. 77ccc) applies, and any trustee for an indenture to which the definition in Section 303 of the Trust Indenture Act of 1939 (15 U.S.C. 77ccc) would apply but for an exemption from qualification pursuant to Section 304 of the Trust Indenture Act of 1939 (15 U.S.C. 77ddd).

(d) The term *investment adviser if the bank receives a fee for its investment advice* means a bank that has a relationship with the customer paying the fee in which the bank:

(1) Provides, in return for the fee, continuous and regular investment advice to the customer's account that is based upon the individual needs of the customer; and

(2) Under state law, federal law, contract, or customer agreement owes a duty of loyalty, including an affirmative duty to make full and fair disclosure to the customer of all material facts relating to conflicts.

(e) The term *money market fund* means an open-end management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) that is regulated as a money market fund pursuant to § 270.2a–7 of this chapter.

(f)(1) The term *no-load* in the context of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) means:

(i) Purchases of the investment company's securities are not subject to a sales load, as that term is defined in Section 2(a)(35) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(35)), or a deferred sales load, as that term is defined in § 270.6c–10 of this chapter; and

(ii) The investment company's total charges against net assets for sales or sales promotion expenses and personal service or the maintenance of shareholder accounts do not exceed 0.25 of 1% of average net assets annually and are disclosed in the money market fund's prospectus.

(2) For purposes of paragraph (f)(1) of this section, charges for the following will not be considered charges for personal service or for the maintenance of shareholder accounts:

(i) Transfer agent and subtransfer agent services for beneficial owners of the investment company shares;

(ii) Aggregating and processing purchase and redemption orders;

(iii) Providing beneficial owners with statements showing their positions in the investment companies;

(iv) Processing dividend payments;

(v) Providing subaccounting services for investment company shares held beneficially;

(vi) Forwarding shareholder communications, such as proxies, shareholder reports, dividend and tax notices, and updating prospectuses to beneficial owners; or (vii) Receiving, tabulating, and transmitting proxies executed by beneficial owners.

(g)(1) The term *nominal one-time cash fee of a fixed dollar amount* means a payment in either of the following forms that meets the requirements of subparagraph (2):

(i) A payment that does not exceed one hour of the gross cash wages of the unregistered bank employee making a referral; or

(ii) Points in a system or program that covers a range of bank products and non-securities related services where the points count toward a bonus that is cash or non-cash if the points (and their value) awarded for referrals involving securities are not greater than the points (and their value) awarded for activities not involving securities.

(2) Regardless of the form of payment, the payment may not be related to:

(i) The size, value, or completion of any securities transaction;

(ii) The amount of securities-related assets gathered;

(iii) The size or value of any customer's bank or securities account; or

(iv) The customer's financial status.

(h) The term *referral* means a bank employee arranging a first securities-related contact between a registered broker-dealer and a bank customer, but does not include any activity (including any part of the account opening process) related to effecting transactions in securities beyond arranging that first contact.

(i) The term *relationship compensation* means any compensation received by a bank in connection with activities for which the bank relies on an exception under Section 3(a)(4)(B)(ii) of the Act (15 U.S.C. 78c(a)(4)(B)(ii)) that is received directly from a customer or beneficiary, or directly from the assets of the trust or fiduciary account, and consists solely of an administration or annual fee (payable on a monthly, quarterly, or other basis), a percentage of assets under management fee, or a flat or capped per order processing fee equal to not more than the cost incurred by the bank in connection with executing securities transactions for trust and fiduciary accounts, or any combination of such fees.

(j) The term *sales compensation* means any compensation received by a bank in connection with activities for which the bank relies on an exception under Section 3(a)(4)(B)(ii) of the Act (15 U.S.C. 78c(a)(4)(B)(ii)) that:

(1) Is a fee for effecting a transaction in securities that is not a flat or capped per order processing fee equal to not more than the cost incurred by the bank in connection with executing securities transactions for trustee and fiduciary customers;

(2) Is compensation that if paid to a broker or dealer would be payment for order flow, as defined in § 240.10b–10;

(3) Is a finders' fee received in connection with a securities transaction or account, except a fee received pursuant to Section 3(a)(4)(B)(i) of the Act (15 U.S.C. 78c(a)(4)(B)(i));

(4) Is a fee paid for an offering of securities that is not received directly from a customer or beneficiary, or directly from the assets of the trust or fiduciary account;

(5) Is a fee paid pursuant to a Rule 12b–1 plan under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*); or

(6) Is a fee paid by an investment company for personal service or the maintenance of shareholder accounts, except a fee that is not part of a Rule 12b–1 plan under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) for:

(i) Transfer agent and subtransfer agent services for beneficial owners of shares in the investment company;

(ii) Aggregating and processing purchase and redemption orders;

(iii) Providing beneficial owners with statements showing their positions in the investment companies;

(iv) Processing dividend payments;

(v) Providing subaccounting services for shares in the investment company held beneficially;

(vi) Forwarding shareholder communications, such as proxies, shareholder reports, dividend and tax notices, and updating prospectuses to beneficial owners; or

(vii) Receiving, tabulating, and transmitting proxies executed by beneficial owners.

(k) The term *trustee capacity* in Section 3(a)(4)(B)(ii) of the Act (15 U.S.C. 78c(a)(4)(B)(ii)) includes an indenture trustee or a trustee for a tax-deferred account described in Sections 401(a), 408, and 408A under subchapter D and in Section 457 under subchapter E of the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*).

§ 240.3b–18 Definitions of terms used in Section 3(a)(5) of the Act.

For purposes of Section 3(a)(5)(C) of the Act (15 U.S.C. 78c(a)(5)(C):

(a) The term *affiliate* means any company that controls, is controlled by, or is under common control with another company.

(b) The term *consumer-related receivable* means any obligation incurred by any natural person to pay money arising out of a transaction in which the money, property, insurance, or services (being purchased) are primarily for personal, family, or household purposes.

(c) The term *member of a syndicate of banks* means a bank that is a participant in a syndicate of banks and contributes no less than 10% of the money loaned by the syndicate.

(d) The term *obligation* means any note, draft, acceptance, loan, lease, receivable, or other evidence of indebtedness that is not a security issued by a person other than the bank.

(e) The term *originated* means initially making and funding an obligation.

(f) The term *pool* means more than one obligation or type of obligation grouped together to provide collateral for a securities offering.

(g) The term *predominantly originated* means that the bank or its affiliates, not including any broker or dealer affiliates, originated no less than 85% of the value of the obligations in any pool. For this purpose, the bank and its affiliates include any financial institution with which the bank or its affiliates have merged but does not include the purchase of a pool of obligations or the purchase of a line of business.

(h) The term *syndicate of banks* means a group of banks that acts jointly, on a temporary basis, to loan money in one or more bank credit obligations.

7. Section 240.15a–7, 240.15a–8, 240.15a–9 are added to read as follows:

§ 240.15a–7 Exemption from the definitions of ''broker'' or ''dealer'' for banks for limited period of time.

(a) A bank is exempt from the definitions of the term ''broker'' under Section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)) and the term ''dealer'' under Section 3(a)(5) of the Act (15 U.S.C. 78c(a)(5) until October 1, 2001; and

(b) A bank is exempt from the definition of the term ''broker'' under Section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)) until January 1, 2002, for activities that meet the conditions of an

exception or exemption for banks from the definition of the term ''broker'' except for those conditions of Section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)) and the rules thereunder relating to compensation of the bank or its employees.

§ 240.15a–8 Exemption for banks from Section 29 liability.

No contract entered into before January 1, 2003 shall be void or considered voidable by reason of Section 29 of the Act (15 U.S.C. 78cc) because any bank that is a party to the contract violated the registration requirements of Section 15(a) of the Act (15 U.S.C. 78o(a)) or any applicable provision of the Act (15 U.S.C. 78a *et seq.*) and the rules and regulations thereunder based solely on the bank's status as a broker or dealer when the contract was created.

§ 240.15a–9 Exemption from the definitions of ''broker'' and ''dealer'' for savings associations and savings banks.

Any savings association or savings bank that has deposits insured by the Federal Deposit Insurance Corporation under the FDIA (12 U.S.C. 1811 *et seq.*), and is not operated for the purpose of evading the provisions of the Act (15 U.S.C. 78a *et seq.*), is exempt from the definitions of the terms ''broker'' and ''dealer'' under Sections 3(a)(4) and 3(a)(5) of the Act (15 U.S.C. 78c(a)(4) and 15 U.S.C. 78c(a)(5)), based solely on the savings association's or savings bank's status as a broker or dealer on the same terms and under the same conditions that banks are excepted or exempted, provided that if a savings association or savings bank acts as a municipal securities dealer, it shall be considered a bank municipal securities dealer for purposes of the Act (15 U.S.C. 78a *et seq.*) and the rules thereunder, including the rules of the Municipal Securities Rulemaking Board.

By the Commission.

Dated: May 11, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–12388 Filed 5–11–01; 4:21 pm]

BILLING CODE 8010–01–P

Federal Register

Friday,
May 18, 2001

Part III

Department of Education

Office of Special Education and Rehabilitative Services; Special Education—Technology and Media Services for Individuals With Disabilities Program; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Special Education—Technology and Media Services for Individuals With Disabilities Program

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2001.

SUMMARY: This notice provides closing dates and other information regarding the transmittal of applications for two FY 2001 competitions under one program authorized by the Individuals with Disabilities Education Act (IDEA), as amended: Special Education—Technology and Media Services for Individuals with Disabilities.

National Education Goals

The eight National Education Goals focus the Nation's education reform efforts and provide a framework for improving teaching and learning.

This priority addresses the National Education Goals that promote new partnerships to strengthen schools and expand the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These priorities would address the National Education Goals by helping to improve results for children with disabilities.

Waiver of Rulemaking

It is generally our practice to offer interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the Administrative Procedure Act (5 U.S.C. 553) inapplicable to the priorities in this notice.

General Requirements

(a) The projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities in project activities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see section 661(f)(1)(A) of IDEA).

(c) The projects funded under these priorities must budget for a two-day Project Directors' meeting in Washington, DC during each year of the project.

(d) In a single application, an applicant must address only one absolute priority in this notice.

(e) Part III of each application submitted under a priority in this notice, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. You must limit Part III to the equivalent of no more than the number of pages listed in the table at the end of this notice for each applicable priority, using the following standards:

- A ''page'' is 8.5″ × 11″ (on one side only) with one-inch margins (top, bottom, and sides).
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs.
- If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters per inch.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography or references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject without consideration or evaluation any application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Pilot Project for Electronic Submission of Applications

The U.S. Department of Education is expanding its pilot project of electronic submission of applications. The program in this announcement is included in the pilot project. If you are an applicant for a grant under this 2 program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Fax a signed copy of the Application for Federal Assistance (ED 424) after following these steps:

1. Print ED 424 from the e-APPLICATION system.
2. Make sure that the institution's Authorizing Representative signs this form.
3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
4. Place the PR/Award number in the upper right hand corner of ED 424.
5. Fax ED 424 to the Application Control Center within three working days of submitting your electronic application. We will indicate a fax number in e-APPLICATION at the time of your submission.

- We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the program at: *http://e-grants.ed.gov*

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Technology and Media Services for Individuals With Disabilities (CFDA 84.327)

Purpose of Program: The purpose of this program is to promote the development, demonstration, and utilization of technology and to support educational media activities designed to be of educational value to children with disabilities. This program also provides support for some captioning, video description, and cultural activities.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; (b) The selection criteria for the priorities under this program are drawn from the EDGAR general selection criteria menu. The specific selection criteria for each priority are included in the funding application packet for the applicable competition.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Eligible Applicants: State and local educational agencies; institutions of higher education; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

Priority

Under section 687 of IDEA and 34 CFR 75.105(c)(3), we consider only applications that meet the following priorities:

Absolute Priority 1—Cultural Experiences for Deaf or Hard of Hearing Individuals (84.327T)

Background

Past projects funded under this priority supported a variety of activities, including: theatrical experiences in which cast members included deaf, hard-of-hearing, and hearing performers; theater and set design, directing, dance, and storytelling; cultural experiences focusing on Native American art and culture; hands-on theatre experience involving persons from minority groups; a touring ''instant theater;'' producing videos of performances and documentaries of performances; and drama workshops.

Priority

This priority supports a variety of cultural activities designed to enrich the lives of deaf or hard-of-hearing individuals, children, or adults. These activities must use an approach that integrates deaf or hard-of-hearing individuals with those who can hear, while conducting cultural experiences that will increase public awareness and understanding of deafness, deaf culture, and of the artistic and intellectual achievements of deaf and hard-of-hearing individuals.

A grantee may not use funds under this priority for passive activities, such as viewing a play or video or passively watching a storyteller or artist at work.

To be considered for funding under this priority, a project must—

(a) Use an integrated approach that mixes children or adults who are deaf or hard-of-hearing with those who are hearing in carrying out project activities; and

(b) Develop and implement strategies that will increase public awareness and understanding of deafness, deaf culture, and of the artistic and intellectual achievements of deaf and hard-of-hearing individuals. Outreach activities such as promoting the project to schools, community organizations, news media, and relevant national organizations are encouraged.

Invitational Priority

Within this absolute priority, the Secretary is particularly interested in applications that meet the following invitational priority. However, pursuant to 34 CFR 75.105(c)(1), an application that meets this invitational priority does not receive competitive or absolute preference over applications that do not meet this priority:

Projects that include people from a variety of cultural, racial, or ethnic backgrounds.

Competitive Preference

Within this absolute priority, we will give the following competitive preference points under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the effectiveness of the applicant's strategies for employing and advancing in employment qualified individuals with disabilities in project activities as required under paragraph (a) of the ''General Requirements'' section of this notice. In determining the effectiveness of those strategies, we may consider the applicant's past success in pursuit of this goal.

Therefore, for purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: Up to 36 months.

Maximum Award: The maximum award amount is $110,000 per year. Consistent with EDGAR 34 CFR 75.104(b), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year.

Page Limits: The maximum page limit for this priority is 50 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

Absolute Priority 2—Center to Support Technology Innovation for Students With Disabilities (84.327Z) Background

Technology can dramatically improve early intervention and educational results for infants, toddlers, and children with disabilities, whether it is designed specifically for use by individuals with disabilities, or for a general population and is accessible for individuals with disabilities.

The Federal government has a number of programs that may augment the benefits of technology for infants, toddlers, and children with disabilities. For example, programs in the Office of Special Education Programs (OSEP) and in the National Institute on Disability and Rehabilitation Research (NIDRR) support a range of technology innovation and implementation efforts focused on the needs of individuals with disabilities. Other Federal programs have the potential to provide support in this area as well. These include, but are not limited to:

(a) Technology research and innovation programs offered in other offices in the Department of Education (*e.g.,* Small Business Innovation Research);

(b) The Access Board and the Federal Information Technology Accessibility Initiative (FITAI) that promote technology accessibility; and

(c) Technology research, development, and transfer programs operated by other Federal agencies (*e.g.,* National Aeronautics and Space Administration, Department of Defense, National Science Foundation).

Technology benefits can also be enhanced by federally-supported technical assistance and dissemination projects sponsored by OSEP (*e.g.,* Regional and Federal Resource Centers, Partnership Projects, and the Center to Link Urban Schools (LINK US)), and other projects in the Department of Education (*e.g.,* Regional Educational Laboratories, ABLEDATA Database Program).

Non-Federal resources and efforts can affect the benefits that infants, toddlers, and children with disabilities derive from technology. These include, but are not limited to:

(a) State and local policies (*e.g.,* technology acquisition standards, policies for program access);

(b) State and local programs and resources (e.g., technology programs and personnel, including numerous innovative technology efforts);

(c) Teacher training and professional development programs offered by State

and local educational agencies and institutions of higher education;

(d) Efforts by professional groups and trade associations (*e.g.,* the Technology and Media Division of the Council for Exceptional Children, the Quality Indicators for Assistive Technology (QIAT) Consortium, the Schools Interoperability Framework (SIF) sponsored by the Software and Information Industry Association);

(e) Technology products that are commercially developed and distributed; and

(f) Public-private partnerships focusing on technology (*e.g.,* the IMS Global Learning Consortium and the federally-funded Specifications for Accessible Learning Technologies (SALT) Partnership, the Center for Innovative Learning Technologies (CILT)).

In addition, general trends and developments in technology and instruction affect the benefits derived from technology. These include, but are not limited to:

(a) The development of faster, smaller, and cheaper computers;

(b) Increased use of wireless communications;

(c) Increased speed and capacity of the internet;

(d) Use of new information models (e.g., extensible markup language (XML));

(e) Increased use of special-purpose and ''ubiquitous'' computers (e.g., computers in appliances, TVs, and telephones); and

(f) New technology-based instructional approaches (*e.g.,* distance learning, simulations).

Clearly, the benefits that infants, toddlers, and children with disabilities can derive from technology are influenced by a number of programs, policies, resources, professional activities, trends, and other factors. It would be useful if all of these factors collectively contributed to maximizing the benefits of technology for this population of children.

However, such an outcome cannot be assumed. Technology innovations will not result in widespread benefits unless they are disseminated effectively. Commercially developed products may not benefit infants, toddlers, and children with disabilities unless they are designed to meet their needs. Special education researchers and technology developers cannot draw upon technology innovations and trends of which they are unaware.

Priority

This priority will support a Center to improve the use of technology to achieve better early intervention and educational results for infants, toddlers, and children with disabilities by: (a) Cultivating a collaborative network; (b) analyzing, synthesizing, and disseminating research-based and best practice information; (c) promoting the distribution and use as appropriate of technology-related products and approaches with potential to improve results, including products and approaches developed with OSEP funding; and (d) analyzing needs, issues, trends, and promising approaches.

(a) The Center's activities for cultivating a collaborative network must include, but are not limited to:

(1) Developing and updating on a regular basis a database of projects (including OSEP-funded projects), agencies, professional and trade associations, commercial companies, and other organizations and entities as discussed in the background section that may contribute to the Center's efforts to improve the use of technology to achieve better results. This database is to be posted on the web site.

(2) Forming an advisory board of eight to ten representatives with various perspectives, and maintaining communication with this board, including convening an annual meeting in Washington, DC. The purpose of this board is to review and comment at least annually on the Center's plans and evaluation findings, and to provide additional advisory support as needed. Perspectives to be represented on the advisory board must include, but are not limited to: technology developers, technology researchers, Federal agencies and programs, commercial vendors, technical assistance providers, personnel preparation programs, teachers and other service providers, persons with disabilities who use technology, and parents of children with disabilities.

(3) Developing and implementing procedures to collect information on relevant activities of the entities identified in paragraph (1).

(4) Distributing a quarterly e-mail newsletter (with links to the web site) describing the activities of the Center and of other members of the network, including the activities of OSEP-funded projects, in improving the use of technology to achieve better results.

(b) The Center's activities for analyzing, synthesizing, and disseminating research-based and best practice information must be targeted to audiences of practitioners, administrators, policymakers, parents, children, and other audiences as appropriate. These activities must include, but are not limited to:

(1) Completing and disseminating one to four syntheses of research and best practice knowledge per year on topics related to the effective use of technology to achieve better results. The results of these syntheses must be packaged in formats suitable for the target audiences, as well as technology researchers and developers. Products must include a series of research briefs announced in the newsletter and posted on the web site.

(2) Completing and disseminating at least one video package per year designed for use in teacher training, staff development, program improvement, and similar efforts presenting research-based, and best-practice information on the use of technology to achieve better results. Each package must include one 15 to 20 minute video and supporting materials intended for target audiences as previously described.

(3) Conducting technical assistance, dissemination or training activities for target audiences. The Center must conduct at least two of these activities in the first year and at least four in each subsequent year. These activities must be conducted in collaboration with other members of the network. The activities may draw upon OSEP-sponsored projects and other sources, including the materials developed by the Center. The activities must be designed to disseminate research-based and best practice information on using technology to achieve better results.

(c) The Center's activities for promoting the distribution and use as appropriate of technology-related products and approaches with potential to improve results, including products and approaches developed with OSEP funding, must include, but are not limited to:

(1) Maintaining a listing of commercial and noncommercial resources for disseminating findings and products of technology projects, and including these resources in the network.

(2) Providing technical assistance and training for developers of technology-related products and approaches on developing high quality and marketable products, and finding dissemination or marketing resources. This technical assistance and training may be delivered in conjunction with the annual meeting on technology and infants, toddlers and children with disabilities described in this priority.

(3) Including information about technology-related products and approaches with potential to improve

results in the newsletter, and providing follow-up information to potential dissemination or marketing resources.

(d) The Center's activities for analyzing needs, issues, trends, and promising approaches must include, but are not limited to:

(1) Annually convening from one to four consensus panels of experts to focus on specific needs, issues, trends, and promising approaches, and produce documents describing implications for using technology to achieve better results. Consensus panels may involve preparation of background papers prior to meetings. The Center must post all background papers and the products of consensus panels on the web site.

(2) Maintaining ongoing collection of information on developments in government, private industry, early intervention, education, and similar arenas relevant to needs, issues, trends, and promising approaches. This information must be reported in the newsletter and on the web site.

In addition to, and supportive of the activities listed previously, the Center must do all of the following:

(a) Maintain a web site that includes: The network database, on-line documents and products of the Center activities, on-line descriptions of products developed by OSERS-funded projects, links to web resources (including all web sites maintained by OSERS-funded projects involved in technology innovation), articles linked to the newsletter, and discussion groups. This web site must conform to all relevant standards regarding accessibility.

(b) Conduct an annual meeting in Washington DC on technology and infants, toddlers, and children with disabilities. This meeting must include approximately 110 directors of OSEP-sponsored projects involved in technology innovations, and 20 other local participants representing Federal agencies, professional groups, etc. The Center must pay for travel and lodging for an estimate of 85 project directors (the remaining participants are local or will pay for their travel with their own project funds). The conference must include a demonstration event of OSEP-supported technologies.

(c) Meet with OSEP staff during the first month of each project year to discuss and obtain approval for plans for the year.

(d) Conduct project evaluation activities to ascertain the quality of the Center's activities and products, and to determine the Center's progress toward improving the use of technology to achieve better results.

(e) Submit quarterly reports describing and documenting Center activities, including results of the evaluation activities described in the previous paragraph.

Accessibility: All products developed by the Center must conform to relevant standards of accessibility, including captioning all videos and providing alternative formats for written materials.

Competitive Preferences

Within this absolute priority, we will award the following competitive preference points under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the effectiveness of the applicant's strategies for employing and advancing in employment qualified individuals with disabilities in project activities as required under paragraph (a) of the ''General Requirements'' section of this notice. In determining the effectiveness of those strategies, we may consider the applicant's past success in pursuit of this goal.

Therefore, for purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: Under this priority, we will make one award for a cooperative agreement for a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In deciding whether to continue the Center for the fourth and fifth years, we will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary, which review will be conducted during the last half of the project's second year in Washington DC. Projects must budget for travel associated with this review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center; and

(c) The degree to which the Center is making a positive contribution to improving the use of technology to achieve better results for infants, toddlers, and children with disabilities.

Maximum Award: The maximum award amount is $750,000 for the first budget period of 12 months and $1,000,000 for subsequent budget periods of 12 months. Consistent with EDGAR 34 CFR 75.104(b), we will reject any application that proposes a budget funding level for any year that exceeds the stated maximum award amount for that year.

Page Limits: The maximum page limit for this priority is 60 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, Maryland 20794–1398. Telephone (toll free): 1–877–4ED–Pubs (1–877–433–7827). FAX: 301–470–1244. Individuals who use a telecommunications device for the deaf (TDD) may call (toll free) 1–877–576–7734.

You may also contact Ed Pubs via its Web site (*http://www.ed.gov/pubs/edpubs.html*) or its E-mail address (*edpubs@inet.ed.gov*).

If you request an application from ED Pubs, be sure to identify these competitions as follows: CFDA 84.327T and CFDA 84.327Z.

FOR FURTHER INFORMATION CONTACT: Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, S.W., room 3317, Switzer Building, Washington, D.C. 20202–2550. Telephone: (202) 260–9182.

If you use a TDD you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Department as listed above. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Intergovernmental Review

This notice is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for those programs.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT APPLICATION NOTICE FOR FISCAL YEAR 2001

CFDA No. and name	Applications available	Application deadline date	Deadline for Intergovernmental review	Maximum award (per year)*	Project period	Page limit**	Estimated number of awards
84.327T Cultural Experiences for Deaf or Hard of Hearing Individuals.	05/25/01	07/09/01	09/10/01	$110,000	Up to 36 mos	50	5
84.327Z Center to Support Technology Innovation for Students with Disabilities.	05/25/01	07/20/01	09/20/01	.....	Up to 60 mos	60	1
First twelve-month funding period.	.....	.....	.....	750,000	.....	.....	.....
Subsequent twelve-month funding periods.	.....	.....	.....	1,000,000	.....	.....	.....

*Consistent with EDGAR 34 CFR 75.104(b), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year.

**Applicants must limit the Application Narrative, Part III of the Application, to the page limits noted above. Please refer to the ''Page Limit'' requirements included under each priority description and the page limit standards described in the ''General Requirements'' section. We will reject and will not consider an application that does not adhere to this requirement.

Electronic Access to This Document

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To use PDF you must have Adobe Acrobat Reader, which is available free at the previous site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), 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/nara/index.html*

Program Authority: 20 U.S.C. 1487.

Dated: May 14, 2001.

Francis V. Corrigan,

Deputy Director, National Institute on Disability and Rehabilitation Research.

[FR Doc. 01–12519 Filed 5–17–01; 8:45 am]

BILLING CODE 4000–01–U

Federal Register

Friday,
May 18, 2001

Part IV

Department of Education

Office of Special Education and Rehabilitative Services; Special Education—Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities Program; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Special Education—Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities Program

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2001.

SUMMARY: This notice provides closing dates, a priority, and other information regarding the transmittal of applications for a FY 2001 competition under one program authorized by the Individuals with Disabilities Education Act (IDEA), as amended: Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities.

National Education Goals

The eight National Education Goals focus the Nation's education reform efforts and provide a framework for improving teaching and learning.

This priority addresses the National Education Goals that promote new partnerships to strengthen schools and expand the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

This priority would address the National Education Goals by helping to improve results for children with disabilities.

Waiver of Rulemaking

It is generally our practice to offer interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the Administrative Procedure Act (5 U.S.C. 553) inapplicable to the priority in this notice.

General Requirements

(a) The projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities in project activities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see section 661(f)(1)(A) of IDEA).

(c) The projects funded under this notice must budget for a two-day Project Directors' meeting in Washington, DC during the project period.

(d) Part III of each application submitted under this notice, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. You must limit Part III to the equivalent of no more than the number of pages listed in the table at the end of this notice, using the following standards:

- A ''page'' is 8.5″ x 11″ (on one side only) with one-inch margins (top, bottom, and sides).
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs.
- If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters per inch.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography or references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject without consideration or evaluation any application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Special Education—Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities (CFDA 84.326)

Purpose of Program: The purpose of this program is to provide technical assistance and information that support States and local entities in building capacity, to improve early intervention, educational, and transitional services and results for children with disabilities and their families, and address systemic-change goals and priorities.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; (b) The selection criteria for the priority under this program are drawn from the EDGAR general selection criteria menu. The specific selection criteria for this priority are included in the funding application packet for this competition.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Eligible Applicants: State educational agencies (SEAs) of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and outlying areas (United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands). Freely Associated States (Federated States of Micronesia, Republic of Palau, Republic of the Marshall Islands) are also eligible to apply for funding, but only to address system needs of Part B of the IDEA because the Freely Associated States do not receive funding under Part C of IDEA. An entity eligible to apply for funding under Section 661(b)(1)(A) of IDEA may apply on behalf of an SEA or a Freely Associated State, but the entity must include a signed letter of endorsement from the Director of the SEA or the appropriate official from the Freely Associated State. The Assistant Secretary will not fund applications submitted by two agencies or entities on behalf of a single State, but encourages joint applications from SEAs and State Lead Agencies for Part C early intervention services (State Lead Agencies) in States where the SEA is not the State Lead Agency. An SEA may endorse the State Lead Agency as the State's applicant under the conditions set forth in the Maximum Award section.

Priority

Under section 685 of IDEA and 34 CFR 75.105(c)(3) we consider only applications that meet the following absolute priority:

Absolute Priority—IDEA General Supervision Enhancement Grant (84.326X)

Background

Over the past five years, the Office of Special Education Programs (OSEP) has worked with SEAs, local educational agencies (LEAs), parents, advocates, and other key stakeholders to shape its monitoring system in a way that will drive and support improved results for infants, toddlers, and children with disabilities, and their families. In order to ensure compliance with IDEA and support positive results, OSEP has implemented a Continuous Improvement Monitoring Process (CIMP) that:

(a) Is continuous;
(b) Is data-driven;
(c) Is public;
(d) Includes technical assistance;
(e) Includes partnerships with stakeholders;
(f) Includes State accountability; and
(g) Includes self-assessment.

The CIMP includes the following phases:

(a) Self-assessment;

(b) Public input;

(c) Data collection;

(d) Reporting to the public;

(e) Improvement planning;

(f) Implementation of improvement strategies; and

(g) Verification and consequences.

An in-depth explanation of the CIMP can be found at: *http://dssc.org/frc/monitor* ''Click'' on *manual100.doc* to view in MS WORD or on *manual100.pdf* to view as a pdf file.

Since the implementation of the CIMP, SEAs and State Lead Agencies have embraced the continuous improvement concept. Twenty-one States have been monitored using the CIMP, four have submitted Improvement Plans, fifteen States have recently completed self-assessments, and the remainder are about to initiate the process. From a State systems change perspective, many States have begun the difficult process of: (1) Developing CIMP systems at the State level; (2) supporting the development of CIMP systems at the LEA level; (3) developing new data systems to support State and local CIMP systems; and (4) developing and implementing improvement plans that include the development or enhancement of State systems to identify and disseminate research-based educational and early intervention promising practices. Providing the States with some initial funds to support their participation in the CIMP, as well as to support unique State solutions and strategies developed in response to State-specific challenges identified through participation in the CIMP, will reinforce OSEP's and the States' commitment to CIMP.

Absolute Priority

This priority has been established to support State activities in one or more of the following focus areas. Applicants are encouraged to use these funds in combination with other State or Federal funds in carrying out project activities, but grant funds awarded under this priority must be used to support specific activities whose impact will be evaluated separately from activities supported with other funding sources. SEA applicants are encouraged to submit joint applications with the State Lead Agency.

Focus 1: Developing or Enhancing a Process to Conduct a Self-Assessment

SEAs and State Lead Agencies often require technical assistance to participate in the self-assessment phase of the CIMP. This focus supports the development or enhancement of a process for statewide self-assessment of the provision of early intervention or special education and related services, or both. The process should address such areas as:

(a) Identifying and implementing fiscally efficient processes to operate the CIMP Steering Committee;

(b) Identifying and obtaining data needed to evaluate the provision of early intervention and/or special education and related services, or both;

(c) Identifying and using methods to determine data validity and reliability;

(d) Identifying and using valid and reliable techniques to collect data from parents, LEAs, advocates, service providers, and other stakeholders in early intervention, special education, and related services;

(e) Identifying and using valid and reliable data analysis techniques; and

(f) Identifying and using a decision-making process, based on data analysis, that results in valid conclusions regarding areas: (1) In compliance; (2) in need of improvement; (3) out of compliance; and (4) of strength.

The self-assessment process *must* be aligned with the self-assessment requirements of the CIMP.

Focus 2: Developing or Enhancing a Data System to Support the Needs of a CIMP at the State or Local Level

An analysis of State self-assessments has shown that many of the States, and their LEAs and local Part C agencies, lack the infrastructure to collect sufficient data to determine the impact of special education and early intervention services. The collection and use of valid and reliable data are cornerstones of the CIMP.

This focus supports the development or enhancement of a data system that will provide results-oriented information about one or more of the following:

(a) Appropriate early intervention services and/or special education and related services;

(b) The effectiveness of the monitoring system of the SEA or State Lead Agency, or both;

(c) Interagency coordination and fiscal responsibility;

(d) The effectiveness of the State's dispute resolution system;

(e) The effectiveness of the State's child find systems;

(f) Personnel shortages, including those related to retention;

(g) The system for exercising its general supervisory authority of the SEA or State Lead Agency, or both;

(h) Efforts to address family needs and enhance families' capacities to meet the developmental needs of their children;

(i) Early intervention services in the natural environment and/or special education and related services in the least restrictive environment;

(j) The transition from Part C to Part B services;

(k) The involvement of parents; and

(l) Transition from school to work or postsecondary education.

The data system *must* be aligned with the data collection needs of the CIMP.

Focus 3: Developing or Enhancing a Process to Conduct Improvement Planning Activities Based on the Self-Assessment, Data Collection and Public Reporting Phases of the CIMP

Based upon an analysis of Improvement Plans submitted by States in response to OSEP monitoring reports, OSEP recognizes that many States lack a cohesive data-based approach to developing their Improvement Plans. Many States engaging in the improvement planning process have had trouble identifying and addressing the systemic barriers or factors that contributed to the existence of the practice that the State or OSEP determined needed improvement. Improvement Plans should include solutions that: (1) Are not based on strategies previously employed without garnering the proposed results; (2) are based on a clear understanding of the systemic variables that are creating the problem; (3) address primary, rather than tangential issues and result in significant, rather than minimal changes; (4) propose process changes that result in practice changes; and perhaps most importantly, (5) address the positive impact they intend to have on children with disabilities. The process of developing Improvement Plans is a critical component of the CIMP, and if done properly will result in improved special education, related services, and early intervention services. This focus supports the development or enhancement of a process for improvement planning that, for example, will result in solutions that:

(a) Identify systemic barriers to improved early intervention services, and/or special education and related services;

(b) Address the systemic barriers to improved early intervention services, and/or special education and related services;

(c) Include an evaluation component that will demonstrate the positive impact of early intervention services, and/or special education and related services;

(d) Include an evaluation component that will demonstrate the positive changes in staff practice relative to the

provision of special education, related, or early intervention services;

(e) Are aligned or coordinated with the State's general education reform initiatives; and

(f) Are consistent with and responsive to OSEP monitoring report findings.

The process *must* be aligned with the improvement planning phase of the CIMP.

Focus 4: Developing or Enhancing State Systems to Identify, Disseminate, and Implement Research-Based Promising Educational or Early Intervention Practices

Based upon an analysis of the Self-Assessment and additional data collected through the Data Collection phase of the CIMP, an Improvement Plan that addresses both compliance with IDEA and improvement of results is developed. OSEP has found that, in order to be fully effective, many Improvement Plans require a State technical assistance and dissemination infrastructure to identify, disseminate, and implement research-based promising educational or early intervention practices. In many States, this structure is either nonexistent or lacks sufficient resources to be effective.

This focus supports the development or enhancement of a statewide technical assistance system that will address such areas as:

(a) Providing information about research-based intervention and instructional practices;

(b) Supporting the use of research-based instructional and service delivery approaches in local schools and agencies;

(c) Serving as a conduit for the dissemination of research-based information between SEAs, State Lead Agencies, local educational and Part C agencies, and national technical assistance centers; and

(d) Improving the efficacy of disseminating information.

The proposed activities must be aligned with the Improvement Planning process.

Competitive Preferences

Within this absolute priority, we will award the following competitive preference points under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the effectiveness of the applicant's strategies for employing and advancing in employment qualified individuals with disabilities in project activities as required under paragraph (a) of the ''General Requirements'' section of this notice. In determining the effectiveness of those strategies, we may consider the applicant's past success in pursuit of this goal.

Therefore, for purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Maximum Award

Project award amounts are for a single budget period of twelve (12) months. Maximum FY 2001 State basic grant awards are listed in this notice. Applicants should note that they may apply for awards of differing amounts based on whether the application addresses the needs of: (1) Only the Part B program; or (2) both the Parts B and C programs.

In order to apply for the combined Parts B and C award, the application must describe in Part III: (1) How the SEA and State Lead Agency participated in developing the application; and (2) how the applicant will use the funding to address the needs of both the Parts B and C programs.

If an SEA endorses the State Lead Agency as the State's applicant, the application must describe: (1) How the State Lead Agency and SEA collaborated to develop the application; and (2) how the State Lead Agency will use the award to address the needs of both the Parts C and B programs (e.g., developing or enhancing a data system that tracks the transition of toddlers from Part C to Part B services). The amounts for the State basic grant are based on OSEP's assessment that the minimal amounts necessary to address only Part B program needs and both Parts B and C program needs are $120,000 and $200,000 respectively. Amounts above the minimum levels were calculated based on the 85 percent population and 15 percent poverty rates used in the Part B formula grant award calculations. Outlying area levels are $80,000 for addressing only Part B and $100,000 for addressing both Parts B and C. Because Freely Associated States participate only in the Part B program, a level of $80,000 has been established for addressing Part B only. States should not propose a budget in their application for the basic grant award that exceeds the amounts in this notice.

At our discretion, we may reduce the grant award levels based on available funds. We will reject and will not consider an application that proposes a budget period exceeding twelve (12) months or that, for the basic grant award, exceeds the amounts listed in this notice for each State.

SUPPLEMENTARY INFORMATION: OSEP may have additional funds available to support enhancements to the activities described in the applications approved for funding under this competition. Applicants wishing to apply for enhancement funds may add up to five (5) additional pages to Part III to describe additional activities that augment or complement those presented in the narrative section of their basic grant proposal. Enhancement activities may be simply an expansion of activities already described in the narrative or they may be new activities that will improve the quality of the previously proposed tasks; for example, additional staff training, the acquisition of expert technical assistance, or improved stakeholder involvement. A separate budget for the enhancement funds must be prepared and included in Part II of the application. The budget for the enhancement funds must not exceed thirty percent of the award amount listed for the basic grant (i.e., either 30 percent of the award for Part B only *or* 30 percent of the award for Parts B and C, depending on whether the application addresses only the needs of Part B or the needs of Parts B and C).

Page Limits: The maximum page limit for this priority, if only applying to address Part B is twenty (20) double-spaced pages for a basic grant and twenty-five (25) pages for a basic grant with enhancements. The maximum page limit if applying to address Part B and Part C is thirty (30) double-spaced pages for a basic grant and thirty-five (35) pages for a basic grant with enhancements.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, Maryland 20794–1398. Telephone (toll free): 1–877–4ED–Pubs (1–877–433–7827). FAX: 301–470–1244. Individuals who use a telecommunications device for the deaf (TDD) may call (toll free) 1–877–576–7734.

You may also contact ED Pubs via its Web site (http://www.ed.gov/pubs/edpubs.html) or its E-mail address (edpubs@inet.ed.gov).

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA 84.326X.

FOR FURTHER INFORMATION CONTACT: Grants and Contracts Services Team, U.S. Department of Education, 400

Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 260–9182.

If you use a TDD you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact office listed.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Department contact office. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Intergovernmental Review

This notice is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for those programs.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT—APPLICATION NOTICE FOR FISCAL YEAR 2001

CFDA No. and name—84.326X IDEA General Supervision Enhancement Grant	Applications available 05/25/01	Application deadline date 07/13/01	Deadline for intergovernmental review 09/13/01	Maximum award for basic grants (per year)*		Project period, 12 months	Page limit**	Estimated number of awards, 24
				IDEA Parts B&C	IDEA Part B only			
Alabama				$326,995	228,311		(1)	
Alaska				222,501	139,433			
Arizona				365,640	260,720			
Arkansas				274,755	183,358			
California				1,152,434	919,827			
Colorado				317,398	221,322			
Connecticut				287,921	196,339			
Delaware				220,315	137,458			
Florida				615,644	476,477			
Georgia				452,348	338,250			
Hawaii				230,944	146,523			
Idaho				240,805	155,155			
Illinois				549,460	419,137			
Indiana				341,761	239,728			
Iowa				280,665	189,877			
Kansas				277,239	187,070			
Kentucky				311,373	215,831			
Louisiana				354,317	255,084			
Maine				230,857	146,922			
Maryland				337,094	238,616			
Massachusetts				365,732	264,459			
Michigan				496,541	378,845			
Minnesota				347,591	247,414			
Mississippi				288,884	195,955			
Missouri				355,803	253,942			
Montana				223,824	140,575			
Nebraska				250,664	163,832			
Nevada				255,904	167,713			
New Hampshire				233,410	149,042			
New Jersey				423,010	314,418			
New Mexico				262,833	174,414			
New York				748,801	595,330			
North Carolina				423,520	310,992			
North Dakota				219,041	136,474			
Ohio				522,298	398,591			
Oklahoma				307,176	213,685			
Oregon				301,101	207,084			
Pennsylvania				522,568	401,520			
Rhode Island				227,361	143,826			
South Carolina				316,041	220,783			
South Dakota				222,534	139,590			
Tennessee				359,337	255,436			
Texas				896,367	714,091			
Utah				282,274	189,654			
Vermont				216,439	134,520			
Virginia				389,523	284,536			
Washington				361,309	259,608			
West Virginia				250,142	163,554			
Wisconsin				348,438	248,360			
Wyoming				214,698	132,919			
D.C				214,178	132,336			
Puerto Rico				361,591	256,775			
American Samoa				100,000	80,000			

INDIVIDUALS WITH DISABILITIES EDUCATION ACT—APPLICATION NOTICE FOR FISCAL YEAR 2001—Continued

CFDA No. and name—84.326X IDEA General Supervision Enhancement Grant	Applications available 05/25/01	Application deadline date 07/13/01	Deadline for intergovernmental review 09/13/01	Maximum award for basic grants (per year)*		Project period, 12 months	Page limit**	Estimated number of awards, 24
				IDEA Parts B&C	IDEA Part B only			
Guam				100,000	80,000			
Northern Marianas				100,000	80,000			
Virgin Islands				100,000	80,000			
Federated States of Micronesia					80,000			
Republic of Palau					80,000			
Republic of the Marshall Islands					80,000			

Consistent with EDGAR 34 CFR 75.104(b), we will reject any application that proposes a project funding level that exceeds the stated maximum award amount for basic grants.

** Applicants must limit the Application Narrative, Part III of the Application, to the page limits noted above. Please refer to the ''Page Limit'' requirements included under the priority description and the page limit standards described in the ''General Requirements'' section. See also the ''Supplemental Information'' section. We will reject and will not consider an application that does not adhere to this requirement.

[1] Basic Grants: B Only—20; B&C—30.

Basic Grants of Enhancement: B Only—25; B&C—35.

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www.ed.gov/legislation/FedRegister

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Program Authority: 20 U.S.C. 1485.

Dated: May 15, 2001.

Francis V. Corrigan,

Deputy Director, National Institute on Disability and Rehabilitation Research.

[FR Doc. 01–12517 Filed 5–17–01; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Friday,
May 18, 2001

Part V

Department of Education

Office of Special Education and Rehabilitative Services; Special Education—Training and Information for Parents of Children With Disabilities; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Special Education—Training and Information for Parents of Children With Disabilities

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2001.

SUMMARY: This notice provides closing dates and other information regarding the transmittal of applications for FY 2001 competitions under one program authorized by the Individuals with Disabilities Education Act (IDEA), as amended: Special Education— Training and Information for Parents of Children with Disabilities.

National Education Goals

The eight National Education Goals focus the Nation's education reform efforts and provide a framework for improving teaching and learning.

This priority addresses the National Education Goals that promote new partnerships to strengthen schools and expand the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

This priority would address the National Education Goals by helping to improve results for children with disabilities.

Waiver of Rulemaking

It is generally our practice to offer interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the Administrative Procedure Act (5 U.S.C. 553) inapplicable to the priority in this notice.

General Requirements

(a) The projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities in project activities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see section 661(f)(1)(A) of IDEA).

(c) The projects funded under these priorities must budget for a two-day Project Directors' meeting in Washington, D.C. during each year of the project.

(d) In a single application, an applicant must address only one absolute priority in this notice.

(e) Part III of each application submitted under a priority in this notice, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. You must limit Part III to the equivalent of no more than the number of pages listed in the table at the end of this notice for each applicable priority, using the following standards:

- A ''page'' is 8.5″x11″ (on one side only) with one-inch margins (top, bottom, and sides).
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs.
- If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters per inch.

The page limit does not apply to Part I—the cover sheet; Part II—the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography or references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject without consideration or evaluation any application if —

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Special Education—Training and Information for Parents of Children With Disabilities [CFDA No. 84.328]

Purpose of Program: The purpose of this program is to ensure that parents of children with disabilities receive training and information to help improve results for their children.

Under section 682(e) of IDEA, we are required to:

(a) Make at least one award to a parent organization in each State, unless we do not receive an application from such an organization in each State of sufficient quality to warrant approval; and

(b) Select among applications submitted by parent organizations in a State in a manner that ensures the most effective assistance to parents, including parents in urban and rural areas, in the State.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 97, 98, and 99; (b) The selection criteria for this priority are drawn from the EDGAR general selection criteria menu. The specific selection criteria for this priority are included in the funding application package for this competition.

Eligible Applicants: Parent organizations, as defined in section 682(g) of IDEA. A parent organization is a private nonprofit organization (other than an institution of higher education) that:

(a) Has a board of directors, the parent and professional members of which are broadly representative of the population to be served and the majority of whom are parents of children with disabilities, that includes individuals with disabilities and individuals working in the fields of special education, related services, and early intervention; or

(b) Has a membership that represents the interests of individuals with disabilities and has established a special governing committee meeting the requirements for a board of directors in paragraph (a) of this section and develops a memorandum of understanding between this special governing committee and the board of directors of the organization that clearly outlines the relationship between the board and the committee and the decisionmaking responsibilities and authority of each.

Priority

Under section 682 of the Act and 34 CFR 75.105(c)(3), we will give an absolute preference to applications that meet the following priority. We will fund under this competition only those applications that meet this priority:

Absolute Priority—Parent Training and Information Centers (84.328M)

Background

The IDEA Amendments of 1997 strengthen the role of parents and increase their involvement in decisions about their children's education. In order to allocate resources more equitably, create a unified system of service delivery, and provide the broadest coverage for the parents and families in every State, the Department is making awards in five (5)-year cycles for each State. In FY 2001, applications for 5-year awards will be accepted for Alaska, Alabama, Colorado, Florida, Kentucky, Maine, Maryland, Nebraska, New York, North Dakota, Nevada, Vermont, Wisconsin, and Puerto Rico.

In addition to the above State awards, we intend to fund one award that focuses on the needs of Native-American families who have children with disabilities and one award that

focuses on the needs of military families who have children with disabilities.

Until the first five (5)-year cycle is completed, there is a need to have an interim schedule for awards in States where there is more than one PTI and their current awards do not have the same end date. We are holding competitions for one or more awards in these States for the time periods needed to match the end date of the last Center funded.

Applications will be accepted for FY 2001 interim competitions for the State of California and the State of Michigan. We intend to fund five awards for one-year each:

(1) One Center in the State of California that will serve the population in the northern part of the State. This award will be for $399,400.

(2) One Center in the State of California that will serve the population in the central part of the State. This award will be for $230,470.

(3) One Center in the State of California that will serve the population in the southern part of the State. This award will be for $236,970.

(4) One Center in the State of California that will serve the population in the San Francisco Bay area. This award will be for $236,970.

(5) One Center in the State of Michigan that will serve the population in the Detroit area. This award will be for $274,440.

Priority

A Parent Training and Information Center must —

(a) Provide training and information that meets the training and information needs of parents of children with disabilities in the area served by the Center, particularly underserved parents and parents of children who may be inappropriately identified, including those who are not identified at all;

(b) Assist parents to understand the availability of, and how to effectively use, procedural safeguards under IDEA, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in IDEA;

(c) Serve the parents of infants, toddlers, and children with the full range of disabilities;

(d) Assist parents to—

(1) Better understand the nature of their children's disabilities and their educational and developmental needs;

(2) Communicate effectively with personnel responsible for providing special education, early intervention, and related services;

(3) Participate in decisionmaking processes and the development of individualized education programs and individualized family service plans;

(4) Obtain appropriate information about the range of options, programs, services, and resources available to assist children with disabilities and their families;

(5) Understand the provisions of the Act for the education of, and the provision of early intervention services to, children with disabilities; and

(6) Participate in school reform activities;

(e) Contract with the State educational agency, if the State elects to contract with the Parent Training and Information Center, for the purpose of meeting with parents who choose not to use the mediation process to encourage the use, and explain the benefits, of mediation consistent with section 615(e)(2)(B) and (D) of IDEA;

(f) Establish cooperative relations with the Community Parent Resource Center or Centers in their State in accordance with section 683(b)(3) of IDEA;

(g) Network with appropriate clearinghouses, including organizations conducting national dissemination activities under section 685(d) of IDEA, and with other national, State, and local organizations and agencies, such as protection and advocacy agencies, that serve parents and families of children with the full range of disabilities;

(h) Annually report to the Assistant Secretary on—

(1) The number of parents to whom the Parent Training and Information Center provided information and training in the most recently concluded fiscal year, and

(2) The effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities; and

(i) If there is more than one parent center in a particular State, coordinate its activities to ensure the most effective assistance to parents in that State.

An applicant must identify the strategies it will undertake—

(a) To ensure that the needs for training and information of underserved parents of children with disabilities in the areas to be served are effectively met, particularly in underserved areas of the State; and

(b) To work with the community-based organizations, particularly in the underserved areas of the State.

A Parent Training and Information Center that receives assistance under this absolute priority may also conduct the following activities —

(a) Provide information to teachers and other professionals who provide special education and related services to children with disabilities;

(b) Assist students with disabilities to understand their rights and responsibilities on reaching the age of majority, as stated in section 615(m) of IDEA; and

(c) Assist parents of children with disabilities to be informed participants in the development and implementation of the State improvement plan under IDEA.

In addition to the annual Project Directors' meeting included in the ''General Requirements'' section of this notice, a project's budget must include funds to attend a regional Project Directors' meeting to be held each year of the project.

In order to demonstrate eligibility to receive a grant, an applicant must describe how its board or special governing committee meets the criteria for a parent organization in section 682(g) of IDEA. In addition, any parent organization that establishes a special governing committee under section 682(g)(2) of IDEA must demonstrate that the bylaws of its organization allow the governing committee to be responsible for operating the project (consistent with existing fiscal policies of its organization).

Current funding levels and population of school age children were factors in determining the funding levels for these grants.

Competitive Preferences

Within this absolute priority, we will award the following competitive preference points under 34 CFR 75.105(c)(2)(i): An additional 10 points to an application submitted by a parent organization or a consortia of parent organizations that qualify as parent organizations under section 682(g)(1) of IDEA.

In addition, we will give the following competitive preference points under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the effectiveness of the applicant's strategies for employing and advancing in employment qualified individuals with disabilities in project activities as required under paragraph (a) of the ''General Requirements'' section of this notice. In determining the effectiveness of those strategies, we may consider the applicant's past success in pursuit of this goal.

Therefore, for purposes of these competitive preferences, applicants can be awarded up to a total of 20 points in addition to those awarded under the

selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 120 points.

Project Period: With the exception of the following, projects will be funded for a period up to 60 months. Interim projects will be funded for a period up to 12 months.

Estimated Project Awards: Project award amounts are for a single budget period of 12 months. The FY 2001 State awards, interim State awards, and awards focusing on Native American families and military families are listed below:

Alaska	$269,820
Alabama	280,940
Colorado	277,330
Florida	585,020
Kentucky	253,760
Maine	193,350
Maryland	297,890
Nebraska	202,110
New York	1,154,270
North Dakota	210,170
Nevada	210,280
Puerto Rico	278,880
Vermont	193,870
Wisconsin	450,000
Native American Families	100,000
Military Families	100,000
California (4 Interim Awards)	1,103,810
Michigan (Interim Award)	274,440

Awards may also be made to authorized entities in Guam, Palau, the Commonwealth of the Northern Mariana Islands, and the freely associated States. However, maximum funding levels have not been specified.

Consistent with EDGAR 34 CFR 75.104(b), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year.

Page Limits: The maximum page limit for this priority is 50 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, Maryland 20794–1398. Telephone (toll free): 1–877–4ED–Pubs (1–877–433–7827). FAX: 301–470–1244. Individuals who use a telecommunications device for the deaf (TDD) may call (toll free) 1–877–576–7734.

You may also contact ED Pubs via its Web site (http://www.ed.gov/pubs/edpubs.html) or its E-mail address (edpubs@inet.ed.gov).

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA 84.328M.

FOR FURTHER INFORMATION CONTACT: Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 260–9182.

If you use a TDD you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact office.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Department contact office. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Intergovernmental Review

The program in this notice is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for this program.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT APPLICATION NOTICE FOR FISCAL YEAR 2001

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Maximum award (per year)*	Project period	Page limit**	Estimated No. of awards
84.328M Parent Training and Information Centers.	05/25/01	07/13/01	09/13/01	.....	Up to 60 mos	50	21
Alaska	.....	.....	.....	$269,820	.....	.....	.....
Alabama	.....	.....	.....	280,940	.....	.....	.....
Colorado	.....	.....	.....	277,330	.....	.....	.....
Florida	.....	.....	.....	585,020	.....	.....	.....
Kentucky	.....	.....	.....	253,760	.....	.....	.....
Maine	.....	.....	.....	193,350	.....	.....	.....
Maryland	.....	.....	.....	297,890	.....	.....	.....
Nebraska	.....	.....	.....	202,110	.....	.....	.....
New York	.....	.....	.....	1,154,270	.....	.....	.....
North Dakota	.....	.....	.....	210,170	.....	.....	.....
Nevada	.....	.....	.....	210,280	.....	.....	.....
Puerto Rico	.....	.....	.....	278,880	.....	.....	.....
Vermont	.....	.....	.....	193,870	.....	.....	.....
Wisconsin	.....	.....	.....	450,000	.....	.....	.....
Native American Families	.....	.....	.....	100,000	.....	.....	.....
Military Families	.....	.....	.....	100,000	.....	.....	.....
California (Interim)	.....	.....	.....	1,103,810	.....	.....	.....
Michigan (Interim)	.....	.....	.....	274,440	.....	.....	.....

*Consistent with EDGAR 34 CFR 75.104(b), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year. Awards may also be made to authorized entities in Guam, Palau, the Commonwealth of the Northern Mariana Islands, and the freely associated States. However, maximum funding levels have not been specified.

**Applicants must limit the Application Narrative, Part III of the Application, to the page limits noted above. Please refer to the ''Page Limit'' requirements included under each priority description and the page limit standards described in the ''General Requirements'' section. We will reject and will not consider an application that does not adhere to this requirement.

Electronic Access To This Document

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Program Authority: 20 U.S.C. 1482.

Dated: May 14, 2001.

Frank V. Corrigan,

Deputy Director for National Institute on Disability and Rehabilitation and Research.

[FR Doc. 01–12518 Filed 5–17–01; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Friday,
May 18, 2001

Part VI

Department of Education

Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs; Notices

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs

AGENCY: Department of Education.

ACTION: Notice of final priority and selection criteria for Fiscal Year 2001—Safe Schools/Healthy Students Initiative.

SUMMARY: The Secretary of Education (the Secretary) announces a final priority and selection criteria for fiscal year (FY) 2001. Under this priority, the Departments of Education (ED), Health and Human Services (HHS), and Justice (DOJ) will fund the implementation and enhancement of comprehensive community-wide strategies for creating safe and drug-free schools and promoting healthy childhood development.

To be funded, local comprehensive strategies must address the following six elements and may address other elements as determined by the needs of the community: (1) Safe school environment; (2) alcohol and other drugs and violence prevention and early intervention; (3) school and community mental health preventive and treatment intervention programs; (4) early childhood psychosocial and emotional development services; (5) educational reform; and (6) safe school policies.

EFFECTIVE DATE: This notice takes effect May 18, 2001.

FOR FURTHER INFORMATION CONTACT: Detailed information regarding the Safe Schools/Healthy Students Initiative is available at the following sites on the Internet:

http://www.ed.gov/offices/OESE/SDFS
http://www.ojjdp.ncjrs.org
http://www.samhsa.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: More than a generation of research has provided a solid knowledge base of the complex risk processes that lead to violent outcomes for children, families, schools, and communities. Antisocial behaviors of children and adolescents at highest risk arise from the interaction of multiple environmental and individual antecedents that begin early in the child's life. They include (1) stressful family environments; (2) lack of parenting skills; (3) alienation between family and school (and other community institutions); and (4) individual characteristics of the child that may be biologically based (*e.g.,* irritability, impulsivity), that interfere with critical early attachment and nurturing relationships and later make the child's behavior difficult to control. This results in the early onset of aggressive behaviors, an increase in behavior problems at home, and the continuation and escalation of problems with peers and teachers when the child reaches school age. Unless interrupted, antisocial behavior persists throughout the school career and on into adulthood. High risk converges in middle school and accelerates into adolescence. Risk is exacerbated by exposure to negative peer pressure and a noxious environment where few protective factors are available. This, in turn, increases the likelihood of interpersonal violence and other antisocial behavior, substance abuse and addiction, potential drug dealing, the emergence of disorders such as depression and anxiety, academic failure, risky sexual behaviors leading to increased risk for HIV and other sexually-transmitted diseases, and teen pregnancy.

The Safe Schools/Healthy Students (SS/HS) Initiative draws on the best practices in the fields of education, justice, social service, and mental health to promote a comprehensive, integrated framework for use by communities in planning, designing, and implementing programs to prevent school violence and youth alcohol and other drug use. This comprehensive framework includes: (1) Establishing school-community partnerships; (2) identifying and measuring the problem; (3) setting measurable goals and objectives; (4) identifying appropriate research-based programs and strategies; (5) implementing the programs and strategies in an integrated fashion; (6) evaluating the outcomes of the programs and strategies; and (7) revising the comprehensive plan on the basis of evaluation information.

The goal of the Safe Schools/Healthy Students Initiative is to help students develop the skills and emotional resilience necessary to promote positive mental health and engage in pro-social behavior, thereby preventing violent behavior and alcohol and other drug use so that that all students who attend the schools served by this initiative are able to learn in a safe, disciplined, and drug-free environment. Successful applicants will provide students, schools, and families within the targeted geographic area to be served a network of effective comprehensive services, support, and activities that promote healthy youth development and safety.

Eligible Applicants: Local educational agencies.

The Secretary, with the Secretary of HHS and the Attorney General, will award approximately 15 grants in FY 2001 to local educational agencies. To be eligible for funding, applicants must:

(a) Develop a SS/HS comprehensive plan that addresses the following six elements: (1) Safe school environment, (2) alcohol and other drugs and violence prevention and early intervention programs, (3) school and community mental health preventive and treatment intervention services, (4) early childhood psychosocial and emotional development programs, (5) educational reform, and (6) safe school policies.

The SS/HS comprehensive plan must show evidence of a partnership comprising, at a minimum, the local educational agency, local public mental health authority, local law enforcement agency, family members, teachers, students, juvenile justice officials, and community organizations, including faith-based organizations.

(b) Submit two formal written agreements. The first must describe the goals and objectives of the partnership and include a delineation of the roles and responsibilities of each partner. This agreement must contain the signatures of the school superintendent, the head of the local public mental health authority, and the chief law enforcement executive adopting the SS/HS comprehensive plan, and commitments by each to accomplish all objectives.

The second written agreement must describe the procedures to be used for referral, treatment, and follow-up by the specialty mental health system for children and adolescents with serious mental health problems. This agreement must be signed by the school superintendent and the head of the local public mental health organization.

(c) Provide documentation of the community need and available resources as follows:

—Baseline assessment of risk factors among students, such as (1) students engaged in alcohol and drug use and violent behavior; (2) incidence and prevalence of alcohol and drug use by youth; (3) prevalence of weapons in schools; (4) incidents of serious and violent crime in schools; (5) truancy and other unauthorized absences; (6) suicidal behaviors; (7) student suspensions and expulsions for drug use or violent behavior; (8) students on probation; (9) students in juvenile justice placements; (10) students in foster care and child protective services; (11) students with emotional

and behavioral disorders; (12) children abused and neglected; and (13) school attendance and performance.

—An assessment of community risk factors such as (1) socioeconomic conditions as measured by the percentage of families at or below the poverty level and percentage of students receiving free and reduced price lunch at school; (2) population turnover; (3) racial and ethnic heterogeneity; (4) housing density; (5) household composition; (6) crime and delinquency rates including domestic violence and rape; and (7) suicide rates.

—An assessment of resources and services available to students and their families, such as (1) number of afterschool programs; (2) number of youth served by programs to build social skills; (3) number and quality of community mental health and social service organizations available to provide services to children, adolescents, and families; (4) number of youth participating in academic readiness programs; (5) number and types of early intervention services and programs; (6) number and types of law enforcement prevention programs; (7) number of substance abuse programs; (8) presence of a community anti-drug coalition; and (9) number and types of peer mediation and community mediation programs.

(d) Provide for mental health services to all students in the SS/HS comprehensive plan.

(e) Show that Federal regulations regarding possession of firearms and reporting of firearm offenses to appropriate law enforcement officials and regulations regarding tobacco use are being enforced.

(f) Provide documentation (charter, publications, meeting minutes, etc.) of the existing partnership in operation that will be enhanced and expanded.

In making awards under this grant program, the Secretary, with the Secretary of HHS and the Attorney General, may (1) take into consideration the geographic distribution and diversity of activities addressed by the projects, in addition to the rank order of applicants, and (2) in accordance with 34 CFR 75.217(d) of the Education Department General Administrative Regulations, ensure equitable distribution of grants under this program among urban, suburban, and rural LEAs.

Contingent upon the availability of funds, the Secretary, with the Secretary of HHS and the Attorney General, may make additional awards in FY 2002 from the rank-ordered list of unfunded applicants from this competition.

Note: This notice of final priority and selection criteria does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

Absolute Priority: Under 34 CFR 75.105(c)(3); the Safe and Drug-Free Schools and Communities Act; and Public Laws 106–554 and 106–553 enacted December 21, 2000, the Secretary, with the Secretary of HHS and the Attorney General, gives an absolute preference to applications that meet the following priority:

Implementing and Enhancing Comprehensive Community-wide Strategies for Creating Safe and Drug-free Schools and Promoting Healthy Childhood Development

Applicants proposing a project under this priority must demonstrate how the funds they are requesting support or enhance a comprehensive, integrated strategy for an entire school district that includes, at a minimum, the following six elements: (1) Safe school environment; (2) alcohol and other drugs and violence prevention and early intervention; (3) school and community mental health preventive and treatment intervention programs; (4) early childhood psychosocial and emotion development services; (5) educational reform; and (6) safe school policies. In circumstances where implementation of the strategy for an entire school district is not possible, applicants must provide a full explanation of how the chosen schools will receive services under all six elements of the plan, and why district-wide implementation is not feasible or appropriate.

Selection Criteria

The Secretary, with the Secretary of HHS and the Attorney General, uses the following selection criteria to evaluate applications for new grants under this competition. The maximum total score for all of these criteria is 100 points.

The maximum score for each criterion or factor under that criterion is indicated in parentheses.

(a) *Problems to be addressed* (15 points).

In assessing the extent to which the application is based on a clear and accurate statement of the significant problems faced by the target community, the following factors are considered:

(1) The magnitude or severity of the problem(s) to be addressed by the proposed strategy;

(2) The extent to which existing gaps in services and resources exist, the magnitude of those gaps and weaknesses, and the extent to which the community is ready to improve current conditions;

(3) The factual basis for the problem statement, based on data including, at a minimum but not limited to, the rates of the following:

—Students engaged in alcohol and drug use and violent behavior;
—Incidence and prevalence of alcohol and drug use by youth;
—Prevalence of weapons in schools;
—Incidents of serious and violent crime in schools;
—Truancy and other unauthorized absences;
—Suicidal behaviors;
—Student suspensions and expulsions;
—Students on probation;
—Students in juvenile justice placements;
—Students in foster care and child protective services;
—Child abuse and neglect;
—School attendance and academic performance data;
—Students with emotional and behavioral disorders;

(4) Evidence of community risk factors that may contribute to youth violence, drug use, and delinquency such as the following:

—Socioeconomic conditions as measured by the percentage of families at or below the poverty level and percentage of students receiving free and reduced price lunch at school;
—Population turnover;
—Racial and ethnic heterogeneity;
—Housing density;
—Household composition;
—Crime and delinquency rates including domestic violence and rape;
—Suicide rates;
—Violent crime victimization rate for youth under the age of 18;

(1) The extent to which the problem statement includes an assessment of the community resources available for children and adolescents, including:

—Number of afterschool programs;
—Number of youth served by programs to build social skills;
—Number and quality of community mental health and social service organizations available to provide services to children, adolescents, and families;
—Number of youth participating in academic readiness programs;
—Number and types of early intervention services and programs;
—Number and types of law enforcement prevention programs;

—Number and quality of substance abuse prevention programs;
—Presence of a community anti-drug coalition;
—Presence of community mediation or victim-offender mediation programs; and

(6) Extent of community readiness to collaborate and improve current conditions.

(b) *Goals and objectives* (10 points).

In assessing the goals and objectives of the proposed comprehensive plan, the following factors are considered:

(1) The extent to which the goals and objectives for the proposed strategy are clearly defined, measurable, and attainable;

(2) The extent to which the proposed strategy will meet the established goals and objectives and lead to healthy childhood development and positive mental health, and safe, disciplined, and alcohol- and drug-free learning environments; and

(3) The extent to which the objectives identified are related to measurable action steps needed to achieve the goal(s).

(c) *Design of proposed strategy* (30 points).

In assessing the design of the proposed strategy, the following factors are considered:

(1) The extent to which the proposed strategy represents a comprehensive network in which each element of the Safe Schools/Healthy Students Initiative is addressed and incorporated in an integrated fashion;

(2) The extent to which the intervention is appropriate for the age and developmental levels, gender, and ethnic and cultural diversity of the target population, and demonstrates the ability to engage and respond to the needs of identified ethnic/racial minority populations;

(3) The extent to which the application clearly describes the programs, activities, and services that comprise the proposed strategy;

(4) For Elements 2, 3, and 4 of the SS/HS comprehensive plan described under *Eligible Applicants* (above), the extent to which the proposed programs provide evidence that they are effective and do no harm. (Up to 10 points out of the maximum 30 points for this criterion will be used to assess the strength of the applicant's design for these elements);

(5) The extent to which the proposed strategy will be coordinated with similar or related efforts and will establish linkages with other appropriate agencies and organizations providing services to the target population;

(6) The potential for continued support of the strategy after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support;

(7) The extent to which the implementation process is adequately documented;

(8) The extent to which the program selected is designed to help meet the goals and objectives of the community's comprehensive plan.

(d) *Evaluation plan* (15 points).

In determining the quality of the evaluation plan, the following factors will be considered:

(1) The extent to which the plan provides information for increasing the effectiveness of management and administration of the SS/HS comprehensive plan, documents that objectives have been met, and determines the overall effectiveness of the plan, its programs, and strategies;

(2) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed comprehensive plan;

(3) The adequacy of the identified performance measures to demonstrate whether and to what extent the proposed strategy is meeting its short-term, intermediate, and long-term objectives;

(4) Adequacy and appropriateness of the plan to collect data related to violence from a variety of sources such as mental health services, social services, schools, law enforcement agencies, and the juvenile justice system;

(5) The extent to which the methods of evaluation address data needs for sustainability of the SS/HS comprehensive plan after Federal support has ended.

(e) *Management and organizational capability* (20 points).

In determining the quality of management and organizational capability, the following factors are considered:

(1) The level of commitment proposed by the written agreements signed by the school superintendent, the head of the local public mental health authority, and the chief law enforcement executive, as well as written agreements with other community partners;

(2) The relevance and demonstrated commitment of each partner in the proposed strategy to the implementation and success of the strategy, and how they will participate in the proposed project;

(3) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks;

(4) The adequacy of procedures for communicating and sharing information among all partners to ensure feedback and continuous improvement in the operation of the proposed comprehensive plan;

(5) The skills, experience, time commitments, and educational requirements of key staff and relevance of those qualifications to the objectives of the proposed SS/HS comprehensive plan;

(6) The extent to which staff qualifications and training represent diverse and relevant experience in engaging and providing services to underserved, underrepresented, and/or diverse racial/ethnic groups.

(f) *Budget* (10 points).

In determining the quality of the budget, the following factors will be considered:

(1) The extent to which the costs are reasonable in relation to the number of students to be served and to the anticipated benefits and results;

(2) The extent to which fiscal control and accounting procedures will ensure prudent use, proper and timely disbursement and accurate accounting of funds received under the grant.

Waiver of Proposed Rulemaking

It is the Secretary's practice, in accordance with the Administrative Procedure Act (5 U.S.C. 553), to offer interested parties the opportunity to comment on proposed rules. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, exempts from this requirement rules that apply to the first competition under a new or substantially revised program. Congressional action that provided Department of Labor funds in 2001 for the Safe Schools/Healthy Students constituted a significant change in the initiative. As a result of this change, the Assistant Secretary, in accordance with section 437(d)(1) of GEPA, has decided to forego public comment in order to ensure timely awards.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Applicable Program Regulations: The Education Department General Administrative Guidelines in 34 CFR parts 74, 75 (except 75.102), 77, 79, 80, 81, 82, 85, 98, and 99.

Program Authority: 20 U.S.C. 7131.

Electronic Access to This Document:

You may view this document in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*

To use PDF you must have the Adobe Acrobat Reader, which is available free at the previous site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll-free, at (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*

(Catalog of Federal Domestic Assistance Number 84.184L, Safe and Drug-Free Schools and Communities Act National Programs—Federal Activities Grants Program)

Dated: May 14, 2001.

Thomas M. Corwin,

Acting Deputy Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 01–12557 Filed 5–17–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

(CFDA No: 84.184L)

Safe and Drug-Free Schools and Communities National Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

AGENCY: Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs, Department of Education.

ACTION: Notice inviting applications for new awards for Fiscal Year (FY) 2001.

Purpose of Program: To fund the implementation and enhancement of comprehensive community-wide strategies for creating safe and drug-free schools and promoting healthy childhood development.

Eligible Applicants: Local educational agencies (LEAs).

Applications Available: May 18, 2001.

Deadline for Transmittal of Applications: July 16, 2001.

Deadline for Intergovernmental Review: September 14, 2001.

Estimated Available Funds: $31 million.

Estimated Average Size of Awards: Awards will range from up to $3 million for LEAs in urban areas; up to $2 million for LEAs in suburban areas; and up to $1 million for LEAs in rural areas and tribal school districts.

Estimated Number of Awards: 15.

Note: The Department of Education is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except 75.102), 77, 79, 80, 81, 82, 85, 98, and 99; and (b) the notice of final priority and selection criteria as published elsewhere in this issue of the **Federal Register**.

For Applications and Further Information Contact:

For applications and further information, please contact the agencies as follows:

U.S. Department of Education, Safe and Drug-Free Schools Program
Internet: *http://www.ed.gov./offices/OESE/SDFS*
Phone: (202) 260–3954

U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration
Internet: *http://www.samhsa.gov*
Phone: (800) 789–2647

U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention
Internet: *http://www.ojjdp.ncjrs.org*
Phone: (202) 307–5911

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at (800) 877–8339.

Individuals with disabilities may obtain a copy of this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) upon request. Individuals with disabilities may also obtain a copy of the application package in an alternative format by contacting that person. However, the Departments are not able to reproduce in an alternative format the standard forms included in the application package.

Instructions for Transmittal of Applications

All applications must be received by 5 p.m. Eastern Standard Time on or before the deadline date. Applications received after that time will not be eligible for funding. Postmarked dates will not be accepted. Applications by mail should be sent to: Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 301–519–5535. In the lower left-hand corner of the envelope, clearly write ''Safe Schools/Healthy Students Initiative.''

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Program Authority: 20 U.S.C. 7131.

Dated: May 14, 2001.

Thomas M. Corwin,

Acting Deputy Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 01–12558 Filed 5–17–01; 8:45 am]

BILLING CODE 4000–01–U

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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.

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Summer flounder; published 5-18-01

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Practice and procedure:

Technical amendments; published 4-3-01

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Northeastern United States fisheries—

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.R. 256/P.L. 107–8

To extend for 11 additional months the period for which chapter 12 of title 11 of the United States Code is reenacted. (May 11, 2001; 115 Stat. 10)

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